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Contents

Federal Register

Vol. 64, No. 163

Tuesday, August 24, 1999

Air Force Department

NOTICES

Privacy Act:

Systems of records, 46185–46186

Army Department

NOTICES

Privacy Act:

Systems of records, 46186–46187

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Children and Families Administration

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 46203–46204

Commerce Department

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 46180

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

Fiji, 46184

Defense Department

See Air Force Department

See Army Department

RULES

Civilian health and medical program of uniformed services (CHAMPUS):

Eligibility requirements; revisions, 46133–46141

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 46184–46185

Education Department

RULES

Postsecondary education:

William D. Ford Federal Direct Loan Program, 46251–46255

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 46187–46188

Energy Department

See Energy Efficiency and Renewable Energy Office

See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office

RULES

Energy conservation:

State Energy Program; Special Projects funding; comment request, 46111–46114

Environmental Protection Agency

RULES

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

South Carolina, 46148–46151

PROPOSED RULES

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

South Carolina, 46165–46166

Grants and other Federal assistance:

Technical Assistance Program, 46233–46249

Hazardous waste:

Identification and listing—

Exclusions, 46166–46178

State underground storage tank program approvals—

North Carolina; correction, 46178

NOTICES

Meetings:

Science Advisory Board, 46189–46191

Pesticide, food, and feed additive petitions:

Centre Internationale d'Etudes du Lindane et al., 46191–46197

Federal Aviation Administration

RULES

Air carrier certification and operations:

Digital flight data recorder requirements for Airbus airplanes; comment request, 46117–46122

Airworthiness standards:

Rotorcraft; normal and transport category—

Critical parts regulations; harmonization, 46229–46232

Class B and Class D airspace; correction, 46228

Class D airspace, 46114–46115

Class E airspace, 46115–46117

PROPOSED RULES

Air traffic operating and flight rules, etc.:

Grand Canyon National Park, AZ; special flight rules in vicinity—

Commercial air tour limitation; correction, 46155

NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 46223

Federal Communications Commission

NOTICES

Agency information collection activities:

Proposed collection; comment request, 46197–46198

Submission for OMB review; comment request, 46198–46200

Rulemaking proceedings; petitions filed, granted, denied, etc., 46200

Federal Emergency Management Agency

NOTICES

Disaster and emergency areas:

Iowa, 46200

Minnesota, 46200

Federal Energy Regulatory Commission

NOTICES

Applications, hearings, determinations, etc.:

Electric Clearinghouse, Inc., et al., 46188–46189

El Paso Natural Gas Co., 46188
Natural Gas Pipeline Co. of America, 46189
Northwest Pipeline Corp., 46189

Federal Highway Administration

NOTICES

Environmental statements; notice of intent:
Henry County et al., OH, 46223–46224

Federal Reserve System

NOTICES

Banks and bank holding companies:
Formations, acquisitions, and mergers, 46200–46201
Formations, acquisitions, and mergers; correction, 46200
Permissible nonbanking activities, 46201
Meetings; Sunshine Act, 46201

Federal Trade Commission

NOTICES

Prohibited trade practices:
Pools By Ike, Inc., et al., 46201–46203

Federal Transit Administration

NOTICES

Grant and cooperative agreement awards:
Over-the-Road Bus Accessibility Program; project
selections, 46224–46225

Food and Drug Administration

RULES

Food additives:
Adjuvants, production aids, and sanitizers—
1,3-propanediamine, etc.; correction, 46132–46133
Paper and paperboard components—
Polyethylene glycol monoisotridecyl ether sulfate,
sodium salt, 46130–46132
Tetrakis(hydroxymethyl)phosphonium sulfate, 46129–
46130

NOTICES

Agency information collection activities:
Submission for OMB review; comment request, 46204–
46205
Meetings:
Microbiological safety of drug residues in food;
workshop, 46205

Foreign-Trade Zones Board

NOTICES

Applications, hearings, determinations, etc.:
California, 46180–46181
Texas, 46181
Virginia, 46181

Health and Human Services Department

See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services
Administration

Health Care Financing Administration

NOTICES

Meetings:
Competitive Pricing Advisory Committee, 46205–46206

Hearings and Appeals Office, Interior Department

RULES

Hearings and appeals procedures:
Indian affairs—
Indian trust estates; summary distributions authority,
46151–46153

Housing and Urban Development Department

NOTICES

Agency information collection activities:
Proposed collection; comment request, 46211

Interior Department

See Hearings and Appeals Office, Interior Department
See National Park Service

Internal Revenue Service

PROPOSED RULES

Income taxes:
Controlled corporations; recognition of gain on certain
distributions of stock or securities in connection with
an acquisition, 46155–46165

International Trade Administration

NOTICES

Antidumping:
Freshwater crawfish tail meat from—
China, 46181–46182
Pure magnesium from—
Ukraine, 46182–46183

International Trade Commission

NOTICES

Meetings; Sunshine Act, 46214

Justice Department

See National Institute of Justice

Labor Department

See Occupational Safety and Health Administration

National Foundation on the Arts and the Humanities

NOTICES

Meetings:
Humanities Panel, 46215

National Highway Traffic Safety Administration

NOTICES

Motor vehicle safety standards; exemption petitions, etc.:
Italjet S.p.A, 46225
Lotus Cars Ltd., 46225–46226

National Institute for Literacy

NOTICES

Meetings:
Advisory Board, 46215–46216

National Institute of Justice

NOTICES

Proposed collection; comment request:
Submission for OMB review; comment request, 46214

National Institutes of Health

NOTICES

Inventions, Government-owned; availability for licensing,
46206–46207
Meetings:
National Cancer Institute, 46207–46208

National Institute of Environmental Health Sciences, 46209
 National Institute of Mental Health, 46208–46209
 National Institute on Alcohol Abuse and Alcoholism, 46208
 National Institute on Deafness and Other Communication Disorders, 46208
 Scientific Review Center, 46209–46210

National Oceanic and Atmospheric Administration

RULES

Fishery conservation and management:
 Alaska; fisheries of Exclusive Economic Zone—
 Pacific halibut, 46153–46154
 Pollock-catching vessels, 46153

NOTICES

Permits:
 Exempted fishing; correction, 46183
 Marine mammals, 46184

National Park Service

NOTICES

Agency information collection activities:
 Proposed collection; comment request, 46211–46212
 Environmental statements; notice of intent:
 Capulin Volcano National Monument, NM, 46212–46213
 National Register of Historic Places:
 Pending nominations, 46213–46214

National Transportation Safety Board

NOTICES

Meetings:
 Aviation maintenance repair facilities; public forum, 46216

Occupational Safety and Health Administration

NOTICES

Meetings:
 Occupational Safety and Health Federal Advisory Council, 46214–46215

Postal Service

RULES

International Mail Manual:
 Global Package Link service—
 Argentina, 46141–46147

Public Health Service

See Food and Drug Administration
 See National Institutes of Health
 See Substance Abuse and Mental Health Services Administration

PROPOSED RULES

Occupational safety and health:
 Respiratory devices used to protect workers in hazardous environments; approval, 46178–46179

Railroad Retirement Board

NOTICES

Agency information collection activities:
 Proposed collection; comment request, 46216

Securities and Exchange Commission

NOTICES

Self-regulatory organizations; proposed rule changes:
 Chicago Board Options Exchange, Inc., 46218–46222
 New York Stock Exchange, Inc.; correction, 46228
Applications, hearings, determinations, etc.:
 Norwest Advantage Funds et al., 46216–46218

Social Security Administration

RULES

Social security benefits:
 Federal old age, survivors, and disability insurance—
 Endocrine system and obesity impairments; revised medical criteria for determining disability, 46122–46129

Substance Abuse and Mental Health Services Administration

NOTICES

Meetings:
 SAMHSA special emphasis panels, 46210

Surface Transportation Board

NOTICES

Railroad services abandonment:
 CSX Transportation, Inc., 46227

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Transportation Department

See Federal Aviation Administration
 See Federal Highway Administration
 See Federal Transit Administration
 See National Highway Traffic Safety Administration
 See Surface Transportation Board

NOTICES

Agency information collection activities:
 Proposed collection; comment request, 46222–46223

Treasury Department

See Internal Revenue Service

Separate Parts In This Issue

Part II

Department of Transportation, Federal Aviation Administration, 46229–46232

Part III

Environmental Protection Agency, 46233–46249

Part IV

Department of Education, 46251–46255

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR

420.....46111

14 CFR

27.....46230

29.....46230

71 (5 documents) 46114,
46115, 46116, 46228

121.....46117

125.....46117

Proposed Rules:

93.....46155

20 CFR

404.....46122

21 CFR

176 (2 documents) 46129,
46130

178.....46132

26 CFR**Proposed Rules:**

1.....46155

32 CFR

199.....46133

34 CFR

685.....46252

39 CFR

20.....46141

40 CFR

62.....46148

Proposed Rules:

35.....46234

62.....46165

261.....46166

281.....46178

42 CFR**Proposed Rules:**

84.....46178

43 CFR

4.....46151

50 CFR

679 (2 documents) 46153

Rules and Regulations

Federal Register

Vol. 64, No. 163

Tuesday, August 24, 1999

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 420

[Docket No. EE-RM-96-402]

RIN 1904-AB01

State Energy Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: Today the Department of Energy (DOE or Department) is publishing an interim final rule revising the regulations for its State Energy Program. This rule provides for the possibility of certain activities being funded under the Special Projects part of the program that are not permitted under the formula grant part of the program. The rule also provides for the specification of any Special Projects funding limitations by the sector specific program offices providing the Special Projects funding, and clarifies the applicability of Subpart B to the formula grant part of the program and of Subpart C to the Special Projects part of the program.

DATES: This rule becomes effective August 24, 1999. Written comments on the interim final rule must be received by DOE no later than September 23, 1999, to ensure consideration.

ADDRESSES: Written comments (six copies and, if possible, a computer disk) are to be submitted to: Thomas P. Stapp, U.S. Department of Energy, Office of Building Technology, State and Community Programs, EE-44, Docket Number EE-RM-96-402, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-2096.

Copies of the comments, as well as other parts of the record, will be available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday except Federal holidays, at the following address: DOE Freedom of Information Reading Room, Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-3142.

For more information concerning public participation in this rulemaking proceeding, see Section IV, "Opportunity for Public Comment."

FOR FURTHER INFORMATION CONTACT: Thomas P. Stapp, Office of Building Technology, State and Community Programs, Department of Energy, Mail Stop 5E-080, EE-44, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-2096.

SUPPLEMENTARY INFORMATION:

- I. Introduction and Description of the Program
- II. Rationale for Interim Final Rulemaking
- III. The Revisions to the Rule
- IV. Opportunity for Public Comment
- V. Review Under Executive Order 12612
- VI. Review Under Executive Order 12866
- VII. Review Under Executive Order 12988
- VIII. Review Under the Paperwork Reduction Act
- IX. Review Under the National Environmental Policy Act
- X. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
- XI. Review Under the Unfunded Mandate Reform Act of 1995
- XII. Review Under the Regulatory Flexibility Act
- XIII. The Catalog of Federal Domestic Assistance

I. Introduction and Description of the Program

On July 8, 1996, the Department published in the **Federal Register** an interim final rule consolidating the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP) under the name "State Energy Program" (SEP or program). 61 FR 35890. On May 14, 1997, the Department published in the **Federal Register** a final rule for the program, incorporating revisions to the interim final rule resulting from comments received. 62 FR 26726. The program provides formula grants to States for a wide variety of energy efficiency and renewable energy initiatives, and, in years when funding is available, may

also offer financial assistance for a number of State-oriented competitively awarded Special Projects activities with funding contributed by the Office of Energy Efficiency and Renewable Energy's sector specific program offices. Special Projects have been funded in every fiscal year since SEP was established in 1996. DOE expects the Special Projects part of SEP to continue in future years.

Among the goals of the SEP Special Projects activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and under utilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

When the SEP rule was revised in 1996 to provide for the incorporation of the Special Projects activities, DOE envisioned that States would receive the funding by means of amendments to their SEP formula grants. While the Special Projects requirements are primarily covered under subpart C of the rule, the expenditure prohibitions and limitations specified under § 420.18 of subpart B continued to be worded so that the section was deemed to apply to both the formula grants and the Special Projects amendments to those grants. For the first two years of Special Projects (fiscal years 1996 and 1997), when Special Projects funding was provided via the State SEP grant, that was necessary.

However, starting in fiscal year 1998, Special Projects funding has been provided to States by means of individual grants for each project, separate from the SEP formula grants. DOE therefore believes that the application of the formula grant expenditure prohibitions and limitations to the Special Projects is no longer necessary, and it reduces their potential flexibility. Interest has been expressed in using Special Projects funding for end-use sector specific infrastructure improvements and research and development projects, both of which are precluded or limited under § 420.18. DOE believes the Special Projects should no longer be limited by § 420.18 so that the Special Projects funding approach will be of maximum

benefit to the end-use sectors providing the funding.

Therefore, Special Projects funding will henceforth be required to meet only the limitations and prohibitions that apply to all Federal financial assistance under 10 CFR part 600 and any that may apply to the particular sources of funding used by the respective end-use sectors, as specified under the annual Special Projects solicitation/guidance. To dissociate the Special Projects from the prohibitions under 420.18, DOE is revising the wording of that section so that it applies only to subpart B of the rule, covering the SEP formula grants. DOE is making similar technical revisions to other sections of the rule to achieve consistency in the applicability of the various subparts of the rule.

In addition, technical revisions are being made to change the designations of Regional Support Offices to Regional Offices, and Regional Support Office Directors to Regional Office Directors to conform to the official changes made in these designations as of April 25, 1999.

II. Rationale for Interim Final Rulemaking

In ordinary circumstances, DOE provides an opportunity for public comment prior to making significant final changes in the rules for financial assistance programs. Similarly, DOE ordinarily provides for an effective date 30 days or more following the date of publication so that affected entities have an opportunity to learn of changes and prepare to comply. However, the 1999 Special Projects process is now underway, and DOE would like to maximize the range of projects being considered for funding by removing the formula grant prohibitions and limitations from the Special Projects at this time. Removing these special prohibitions and limitations will provide immediate flexibility and will reduce burdens on State governments consistent with government-wide uniform administrative requirements applicable to grants to States under 10 CFR part 600. There is no reason to anticipate State objections would be forthcoming if DOE were to propose removal for public comment. Moreover, it is unlikely that any member of the public could persuasively object to this regulatory change. On the basis of the foregoing, DOE has decided to waive prior notice and opportunity for public comment because issuance of a Notice of Proposed Rulemaking is impracticable and contrary to the public interest. For the same reasons, DOE is making today's interim final rule effective immediately.

III. The Revisions to the Rule

Part 420 (throughout)

The designations of Regional Support Office and Regional Support Office Director are changed to Regional Office and Regional Office Director, respectively, throughout the rule to conform to the official redesignations made effective on April 25, 1999.

Section 420.12 State Matching Contribution

To clarify that this section applies only to the SEP formula grants, the wording of paragraph (c) is changed so that the reference to "this part" becomes "this subpart." Whereas "this part" refers to the entire 10 CFR part 420, "this subpart," in this context, refers only to subpart B of 10 CFR part 420, covering the SEP formula grants. Cost sharing requirements for Special Projects grants are covered under subpart C.

Section 420.13 Annual State Applications and Amendments to State Plans

To make the wording consistent with changes being made elsewhere in the rule, the wording of paragraphs (a), (b)(3) and (b)(7) is changed so that the references to "subpart B of this part" become "this subpart." To clarify that this section applies only to the SEP formula grants, the wording of paragraph (b)(7) is changed so that the reference to "this part" becomes "this subpart," as further explained under 420.12 above. The applications referred to under 420.13 are for the SEP formula grants. Applications for Special Projects grants are covered under subpart C.

Section 420.14 Review and Approval of Annual State Applications and Amendments to State Plans

To make the wording consistent with changes being made elsewhere in the rule, the wording of paragraph (a) is changed so that the reference to "subpart B of this part" becomes "this subpart." To clarify that this section applies only to the SEP formula grants, the wording of paragraphs (a), (b)(1)(i), (b)(2), and (b)(3) is changed so that the references to "this part" become "subparts A and B of this part." Whereas "this part" refers to the entire 10 CFR part 420, the applications and State plans covered under 420.14 need only meet the requirements of subparts A and B. Subpart C covers applications for Special Projects.

Section 420.17 Optional Elements of State Energy Program Plans

To clarify that the services referenced under paragraph (b)(3) of this section are established under the SEP formula grants, the wording of that paragraph is changed so that the reference to "this part" becomes "this subpart," referring to subpart B covering the formula grants.

Section 420.18 Expenditure Prohibitions and Limitations

To restrict the prohibitions and limitations specified under this section to the formula grants part of SEP, the wording of paragraph (a) is changed so that the reference to "this part" becomes "this subpart" as further explained under the revision to 420.12 above. Expenditure limitations that might apply to Special Projects grants are covered under new § 420.38 under Subpart C. In addition, the references in paragraphs (b), (d) and (e) to "this part" are changed to "this subpart" to clarify that the activities referred to are those undertaken pursuant to the SEP formula grants covered by subpart B. To clarify that the activities referred to under paragraphs (e)(3), (e)(5) and (f) are those introduced under paragraph (e), the wording of those paragraphs is changed so that the references to "this paragraph" become "paragraph (e) of this section."

Section 420.19 Administrative Review

To clarify that the administrative review referred to under this section applies only to the formula grants, wording is added to paragraph (e) specifying that it refers to applications for financial assistance "under this subpart." Paragraph (i) is changed so that reference to "this part" becomes "this subpart" to make clear that the State plans referred to are those for the SEP formula grants covered under subpart B.

Section 420.33 Application Requirements

To clarify that the applications referred to under this section are for SEP Special Projects grants, the wording of paragraph (d) is changed so that the reference to "this part" becomes "this subpart", referring to subpart C which covers Special Projects grants.

Section 420.35 Application Evaluation

To clarify that the information in Special Projects applications must meet the requirements under subpart C of the rule, the wording in paragraph (a) is changed so that the reference to "this part" becomes "this subpart."

New Section 420.38 Special Projects Expenditure Prohibitions and Limitations

This section is being added to provide that expenditure prohibitions and limitations for Special Projects will be any general prohibitions and limitations under 10 CFR part 600 together with any specific prohibitions and limitations that may be required by the respective end-use sectors providing Special Projects funding, as specified each year by category in the Special Projects solicitation/guidance.

IV. Opportunity for Public Comment

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice.

Comments (6 copies and, if possible, a computer disk) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State Energy Program, Interim Final Rule, Docket Number EE-RM-96-402." In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance by calling (202) 586-2096.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim as set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

V. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, legislation and any other policy action be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VI. 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 the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of section 3(a) and (b) of Executive Order 12988.

VIII. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed on the public by today's rules.

IX. Review Under the National Environmental Policy Act

A programmatic environmental assessment has been prepared covering the grant program under the interim final regulations published today which was sent to the States for comment on March 27, 1996. No comments were received by the end of the 14-day comment period. This programmatic environmental assessment resulted in a finding of no significant impact (FONSI). A FONSI was issued on June 7, 1996. The documents relating to this programmatic environmental assessment are available in the DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-3142.

X. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

The interim final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Act), 5 U.S.C. 801. DOE will report to Congress on the promulgation of the interim final regulations prior to the effective date set forth at the beginning of this notice.

XI. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) places a variety of review and consultative obligations on Federal agencies proposing regulatory actions for Federal intergovernmental mandates. Today's rule does not involve such a mandate because the Unfunded Mandates Reform Act excludes from the definition of "Federal intergovernmental mandate" provisions in a regulation that would impose conditions incident to a financial assistance program (not involving an entitlement) or a duty arising from participation in a voluntary Federal program 2 U.S.C. 658(5). This program is a standard non-entitlement financial assistance program and States are not obligated to participate in it.

XII. Review Under the Regulatory Flexibility Act

There is no need to prepare a final regulatory flexibility analysis of today's interim final regulations under the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, because they are not subject to a legal requirement for a general notice of proposed rulemaking.

XIII. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Program is 81.041. The Catalog of Federal Domestic Assistance number for the State Energy Program Special Projects is 81.119.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical Assistance, Incorporation by reference.

Issued in Washington, DC, on July 20, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of

Federal Regulations is amended as follows:

PART 420—[AMENDED]

1. The authority citation for part 420 continues to read as follows:

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

PART 420—[AMENDED]

2. In part 420, revise all references to “Regional Support Office” to read “Regional Office.”

3. In part 420, revise all references to “Regional Support Office Director” to read “Regional Office Director.”

§§ 420.12, 420.13, 420.17, 420.18, 420.19, 420.33, and 420.35 [Amended]

4. In subpart B, revise all references to “this part” to read “this subpart” in the following sections:

- a. § 420.12(c).
- b. § 420.13(b)(7) (second occurrence).
- c. § 420.17(b)(3).
- d. § 420.18(a).
- e. § 420.18(b).
- f. § 420.18(d) (two occurrences).
- g. § 420.18(e).
- h. § 420.19(i).

5. In subpart C, revise the references to “this part” to read “this subpart” in the following sections:

- a. § 420.33(d).
- b. § 420.35(a).

§§ 420.13, 420.14 [Amended]

6. Revise all references to “subpart B of this part” to read “this subpart” in the following sections:

- a. § 420.13(a).
- b. § 420.13(b)(3).
- c. § 420.13(b)(7).
- d. § 420.14(a).

§ 420.14 [Amended]

7. In section 420.14, revise all references to “this part” to read “subparts A and B of this part” in the following sections:

- a. § 420.14(a).
- b. § 420.14(b)(1)(i).
- c. § 420.14(b)(2).
- d. § 420.14(b)(3).

§ 420.18 [Amended]

8. In section 420.18, revise the words “this paragraph” to read “paragraph (e) of this section” in the following sections:

- a. § 420.18(e)(3).
- b. § 420.18(e)(5).
- c. § 420.18(f).

§ 420.19 [Amended]

9. In 420.19, add the words “under this subpart” after the words “financial assistance” in the following paragraph: § 420.19(e).

10. A new section 420.38 is added under subpart C, to read as follows:

§ 420.38 Special projects expenditure prohibitions and limitations.

(a) Expenditures under the special projects are subject to 10 CFR part 600 and to any prohibitions and limitations required by the DOE programs that are providing the special projects funding.

(b) DOE must state any expenditure prohibitions or limitations specific to a particular category of special projects in the annual SEP special projects solicitation/guidance.

[FR Doc. 99–21896 Filed 8–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–10]

Establishment of Class D Airspace; Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi Airport Authority has installed a control tower at the Tupelo Municipal—C.D. Lemons Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,800 feet MSL within 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport. Control tower hours of operation are scheduled for 0600–2200, daily.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Tupelo, MS, (64 FR 37713). This action provides adequate Class D airspace for IFR operations at Tupelo Municipal—C.D.

Lemons Airport. Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Tupelo, MS. The City of Tupelo, Mississippi, has installed a control tower at the Tupelo Municipal—C.D. Lemons Airport. As a result, Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Tupelo Municipal—C.D. Lemons Airport. Control tower hours of operation are scheduled for 0600–2200, daily.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO MS D Tupelo, MS [New]

Tupelo Municipal—C.D. Lemons Airport, MS (Lat. 34°16'00"N, long 88°46'11"W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of Tupelo Municipal—C.D. Lemons Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on August 17, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21927 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–11]

Amendment of Class E Airspace; Fort Rucker, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Fort Rucker, AL. A Global Positioning System (GPS) Runway (RWY) 22 Standard Instrument Approach Procedure (SIAP) has been developed for Florida Municipal Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the

SIAP and for Instrument Flight Rules (IFR) operations at Florala Municipal Airport.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Fort Rucker, AL (64 FR 37717). This action provides adequate Class E airspace for IFR operations at Florala Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Fort Rucker, AL. A GPS RWY 22 SIAP has been developed for Florala Municipal Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Florala Municipal Airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ASO AL E5 Fort Rucker, AL [Revised]

Fort Rucker, Cairns AAF, AL

(Lat. 31°16'37"N, long. 85°42'36"W)

Andalusia—Opp Airport, Andalusia, AL

(Lat. 31°18'32"N, long. 86°23'38"W)

Florala Municipal Airport, AL

(Lat. 31°02'38"N, long. 86°18'37"W)

That airspace extending upward from 700 feet or more above the surface within the area bounded by a line beginning at lat. 31°38'01"N, long. 86°23'30"W; to 31°45'01"N, long. 85°38'00"W; to lat. 31°17'01"N, long. 85°26'00"W; to lat. 31°04'01"N, long. 85°52'00"W; to lat. 31°03'02"N, long. 86°11'04"W; to and clockwise along the arc of a 6.5-mile radius circle of Florala Municipal Airport to lat. 31°02'14"N, long. 86°26'10"W; to the point of beginning and within a 7-mile radius of Andalusia—Opp Airport.

* * * * *

Issued in College Park, Georgia, on August 17, 1999.

Wade T. Caprenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–21926 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-16]

Removal of Class E Airspace;
Arlington, TNAGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Millington, TN, by revoking the airspace for the Arlington Municipal Airport. The City of Arlington, TN, has closed the Arlington Municipal Airport. Therefore, the Class E5 airspace for the Arlington Municipal Airport must be revoked. This airspace is part of the Millington, TN, Class E5 airspace area.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20626, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

History

The Arlington Municipal Airport is within the Millington, TN, Class E5 airspace area. The City of Arlington, TN, has elected to close the Arlington Municipal Airport. Therefore, the Class E5 airspace must be revoked. This rule will become effective on the date specified in the "DATE" section. Since this action removes the Class E5 airspace, and as a result, eliminates the impact of Class E5 airspace on users of the airspace in the vicinity of the Arlington Municipal Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E5 airspace at Arlington, TN.

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

routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ASO TN E5 Millington, TN [Revised]

Memphis NAS/Millington Municipal Airport, TN

(Lat. 35°21'20"N, long. 89°40'22"W)

Charles W. Baker

(Lat. 35°16'44"N, long. 89°55'53"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Memphis NAS/Millington Municipal Airport and within a 6.3-mile radius of Charles W. Baker Airport; excluding that airspace within the Memphis, TN, Class E airspace area.

* * * * *

Issued in College Park Georgia, on August 17, 1999.

Wade T. Carpenter,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 99-21925 Filed 8-23-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-13]

Establishment of Class E Airspace;
Pikeville, KYAGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Pikeville, KY. A Global Positioning System (GPS) Runway (RWY) 8 Standard Instrument Approach Procedure (SIAP) and a GPS RWY 26 SIAP have been developed for Pike County—Hatcher Field Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Pike County—Hatcher Field Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT:

Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

History

On July 16, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Pikeville, KY (64 FR 38386). This action provides adequate Class E airspace for IFR operations at Pike County—Hatcher Field Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal was received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Pikeville, KY. A GPS RWY 8 SIAP and a GPS RWY 26 SIAP have been developed for Pike County—Hatcher Field Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Pike County—Hatcher Field Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ASO KY E5 Pikeville, KY [New]

Pike County—Hatcher Field Airport
(Lat. 37°33'44" N, long. 81°33'56" W)
Prestonburg, Big Sandy Regional Airport, KY
(Lat. 37°45'04" N, long. 82°38'13" W)

That airspace extending upward from 700 feet or more above the surface within a 6.7-mile radius of Pike County—Hatcher Field Airport, excluding that airspace within the Prestonburg, KY, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on August 17, 1999.

Wade T. Carpenter,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 99–21924 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125

[Docket No. FAA–1999–6140; Amdt. Nos. 121–271 & 125–32]

RIN 2120–AG88

Revisions to Digital Flight Data Recorder Requirements for Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the flight data recorder regulations by adding language to allow certain Airbus airplanes to record certain data parameters using resolution and sampling requirements that differ slightly from the current regulation. This amendment is necessary because the Airbus airplanes are unable to record certain flight parameters under the existing criteria without undergoing unintended and expensive retrofit.

DATES: This final rule is effective August 17, 1999. Comments must be submitted on or before September 17, 1999.

ADDRESSES: Comments on this final rule should be mailed or delivered, in duplicate to: US Department of Transportation Dockets, Docket No. FAA–1999–6140, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between

10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Air Carrier Operations Branch (AFS–201), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–6140. The postcard will be date-stamped by the FAA and mailed to the commenter."

Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm>, or the Government Printing Office's webpage at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the notice number or docket number of this rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking or Final Rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM-27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1-888-551-1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at <http://www.faa.gov> and may send electronic inquiries to the following internet address: 9-AWA-SBREFA@faa.gov.

Background

Statement of the Problem

After the amendments to the DFDR requirements become effective on August 18, 1997 (62 FR 38362), the FAA began receiving telephone inquiries, requests for meetings, and petitions for exemption from Airbus Industries (Airbus) concerning the economic impact of the amendments on certain Airbus airplanes. Airbus claimed that in order to comply with the new DFDR recording requirements of 14 CFR Appendix M, its A300 B2/B4 series,

A318/A319/A320/A321 series, and its A330/A340 series airplanes would have to undergo major equipment retrofits. During the rulemaking, the FAA had stated that the rule was being tailored to avoid major equipment retrofits.

The digital flight data recorders (DFDRs) in the affected Airbus airplanes already record the required parameters, but some of the resolution and sampling intervals for certain parameters differ slightly from those required by Appendix M. Airbus noted this difference in its comment to the NPRM, but the comment was not fully addressed in the preamble to the final rule, issued in August 1997.

History of Amendments to DFDR Requirements

On February 22, 1995, the NTSB recommended that the FAA require upgrades of the flight data recorders installed on certain airplanes to record certain additional parameters not required by the current regulations. Two of the recommendations made by the NTSB affected the subject Airbus airplanes:

Recommendation No. A-95-26.
Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that Boeing 727 airplanes, Lockheed L-1011 airplanes, and all transport category airplanes operated under 14 CFR parts 121, 125, or 135 whose type certificates apply to airplanes still in production, be equipped to record on a flight data recorder system, as a minimum, the parameters listed in "Proposed Minimum FDR Parameter Requirements for Airplanes in Service" plus any other parameters required by current regulations applicable to each individual airplane. Specify that the airplanes be so equipped by January 1, 1998, or by the later date when they meet Stage 3 noise requirements but, regardless of Stage 3 compliance status, no later than December 31, 1999. (Classified as Class II, Priority Action)

Recommendation No. A-95-27.
Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that all airplanes operated under 14 CFR parts 121, 125, or 135, having 10 or more seats, and for which an original airworthiness certificate is received after

December 31, 1996, record the parameters listed in "Proposed FDA Enhancements for Newly Manufactured Airplanes" on a flight data recorder having at least a 25-hour recording capacity. (Classified as Class II, Priority Action)

Notice of Proposed Rulemaking

On July 16, 1996, the FAA published a notice for proposed rulemaking (NPRM) (Notice No. 96-7, 61 FR 37143) addressing revisions to DFDR rules. The proposals were based on the NTSB recommendations, information obtained through the public hearing, and the efforts of the ARAC working group.

As part of its comment to the proposed rule, Airbus stated that there were current recorder systems that record the required parameters at sampling rates or resolutions that differ from the proposed appendix M. Airbus suggested that the rates and resolutions be changed since meeting them would impose significant retrofit costs on operators of Airbus airplanes. It was not until Airbus petitioned for exemption from the Appendix M requirements that the FAA's attention was focused on the insufficient response to the Airbus comment, the significant number of Airbus airplanes involved, and the minor variations that would be required from Appendix M requirements. As stated previously, it was never the intention of the FAA to require operators of any airplanes to incur significant equipment retrofit costs in order to comply with the requirements for DFDR upgrades.

The FAA believes that had it fully understood the overall impact the final rule would place on operators of Airbus airplanes, it would have made specific provisions to reduce or eliminate that impact in the final rule.

Petitions for Exemption

On April 9, 1998, Airbus petitioned the FAA for permanent exemptions from part 121, appendix M. Airbus requested that the A319/320/321 series aircraft be exempted from the appendix M resolution requirements and be allowed to record these alternatives for the following parameters:

Parameter	Current resolution	Record resolution
(12B) pitch control input position	0.088°	0.064°
(13b) lateral control input position	0.088°	0.080°
(14a) rudder pedal position	0.088°	0.050°
(19) pitch trim surface position	0.088°	0.084°

Airbus requested that the A330/340 series aircraft be exempted from the

Appendix M resolution requirements and be allowed to record these

alternatives for the following parameters:

Parameter	Current resolution	Required resolution
(7) roll attitude	0.703°	0.500°
(12B) pitch control input position	0.703°	0.064°
(13B) lateral control input position	0.703°	0.80°
(14a) ruder pedal position	0.703°	0.120°
(15) left & right elevator position	0.352°	0.090°
(16) aileron & spoiler position: right inboard and outboard aileron left inboard and outboard aileron right and left spoiler no. 2 to 6	0.352°	0.100°
	0.352°	0.100°
	0.703°	0.100°
(17) rudder position	0.176°	0.120°
(19) pitch trim surface position	0.088°	0.051°
(20) flap position	0.250°	0.165°
(21) slat position	0.250°	0.120°
(24) outside air temperature	0.5°	0.3°

Airbus also requested that the A330/340 series aircraft be exempted from the appendix M resolution requirements and be allowed to record these alternatives for the following parameters:

Parameter Interval in seconds—	Current sampling	Required Sampling
(14) rudder pedal position	1	0.5
(17) rudder position	1	0.5

Airbus industries stated that current Airbus A319, 320, 321, 330, and 340 series airplanes are equipped with a digital flight data recording system (DFDRS) that records all mandatory parameters, numbers 1 through 34.

The FAA has determined that it would not be appropriate to grant an exemption to Airbus on behalf of the operators of its aircraft. Even if exemptions were granted to individual operators, they would have to be permanent. The FAA has determined that, under such circumstances, a change to the rule language of appendix M is the only appropriate means to account for the differences in Airbus DFDR equipment. Accordingly, the FAA is amending part 121 appendix M, and part 125 appendix E to indicate that certain Airbus airplanes already in service may record the indicated parameters using the rates and resolutions listed. The FAA consulted with the NTSB concerning this variation, and the NTSB indicated that the proposed change would not significantly affect its ability to investigate accident or incidents.

The FAA has determined that these changes will not adversely affect the safety of the aircraft, hinder the

investigation of accidents or incidents by the NTSB, nor compromise the intent of the DFDR rules. This amendment will revise the resolution recording requirements of parameters 7, 12(b), 13(b), 14(a), 15, 16, 17, 19, 20, 21 and 24, and the sampling interval for parameters 14(a) and 17. The FAA has determined that these changes can be accommodated by footnotes in appendix M to part 121 and appendix E to part 125.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act (APA) 5 U.S.C. 553(b)(3)(B) and 553(d)(3) authorize agencies to dispense with certain notice procedures for rules when they find “good cause” to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. This final rule amends the flight data recorder regulations by adding language to the appendices of parts 121 and 125 to allow certain Airbus airplanes to record certain data parameters using resolution and sampling requirements that differ slightly from the current regulation. As a result, the FAA has determined that notice and public comment are unnecessary because the change effectuates the original intent of the

regulation, is not controversial, and is unlikely to result in adverse comments since it affects only operations of Airbus airplanes.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effects of regulatory changes on international trade.

The FAA has determined that there are no costs associated with this final rule; the rule imposes no costs upon operators of Airbus airplanes. Instead, this rule change relieves operators of Airbus airplanes from a regulatory burden that was inadvertently imposed on them in the adoption of the 1997 regulations, and would have an impact beginning August 18, 1999. This change effectuates the original intent of the 1997 regulations.

The FAA has determined this rule is not “a significant regulatory action” under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that there are no costs associated with this final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The revised rule will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this final rule.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate” under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million a year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically

excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Reporting and recordkeeping requirements, Transportation

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements

The Amendment

Accordingly, the Federal Aviation Administration amends parts 121 and 125 of Chapter I of Title 14 of the Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In appendix M, the heading of the appendix, and item numbers 1, 7, 12b, 13b, 14a, 15, 16, 17, 19, 20, 21, 23, and 24 are revised and the introductory text is republished to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling in- terval	Resolution	Remarks
1. Time or Relative Times Counts. ¹					

Parameters	Range	Accuracy (sensor input)	Seconds per sampling in- terval	Resolution	Remarks
7. Roll Attitude. ²	*	*	*	*	*
12b. Pitch Control(s) position (fly-by-wire systems). ³	*	*	*	*	*
13b. Lateral Control position(s) (fly-by-wire). ⁴	*	*	*	*	*
14a. Yaw Control position(s) (non-fly-by-wire). ⁵	*	*	*	*	*
15. Pitch Control Surface(s) Position. ⁶	*	*	*	*	*
16. Lateral Control Surface(2) Position. ⁷	*	*	*	*	*
17. Yaw Control Surface(s) Position. ⁸	*	*	*	*	*
19. Pitch Trim Surface Position. ⁹	*	*	*	*	*
20. Trailing Edge Flap or Cockpit Control Selection. ¹⁰	*	*	*	*	*
21. Leading Edge Flap or Cockpit Control Selection. ¹¹	*	*	*	*	*
23. Ground Spoiler Position or Speed Brake Selection. ¹²	*	*	*	*	*
24. Outside Air Temperature or Total Air Temperature. ¹³	*	*	*	*	*

¹ For A300 B2/B4 airplanes, resolution=6 seconds.

² For A330/A340 series airplanes, resolution=0.703°.

³ For A318/A319/A320/A321 series airplanes, resolution=0.275% (0.088°>0.064°).

For A330/A340 series airplanes, resolution=2.20% (0.703°>0.064°).

⁴ For A318/A319/A320/A321 series airplanes, resolution=0.22% (0.088°>0.080°).

For A330/A340 series airplanes, resolution=1.76% (0.703°>0.080°).

⁵ For A318/A319/A320/A321 series airplanes, resolution=0.21% (0.088°>0.084°).

For A330/A340 series airplanes, resolution=1.18% (0.703°>0.120°).

⁶ For A330/A340 series airplanes, resolution=0.783% (0.352°>0.090°).

⁷ For A330/A340 series airplanes, aileron resolution=0.704% (0.352°>0.100°).

For A330/A340 series airplanes, spoiler resolution=1.406% (0.703°>0.100°).

⁸ For A330/A340 series airplanes, resolution=0.30% (0.176°>0.12°).

For A330/A340 series airplanes, seconds per sampling interval=1.

⁹ For all Airbus airplanes, resolution=0.518% (0.088°>0.051°).

¹⁰ For A330/A340 series airplanes, resolution=1.05% (0.250°>0.120°).

¹¹ For A330/A340 series airplanes, resolution=1.05% (0.250°>0.120°).

For A300 B2/B4 series airplanes, resolution=0.92% (0.230°>0.125°).

¹² For A300–600/A310 series airplanes, speed brake resolution=0.224% (0.112°>0.100°).

For A330/A340 series airplanes, spoiler resolution=1.406% (0.703°>0.100°).

¹³ For A330/A340 series airplanes, resolution=0.5°C.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

3. The authority citation for part 125 continues to read as follows:

4. In Appendix E, the heading of the Appendix, and item numbers 1, 7, 12b, 13b, 14a, 15, 16, 17, 19, 20, 21, 23, and 24 are revised and the introductory text is republished to read as follows:

Appendix E to Part 125—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

[RIN # 2120–AG88 Revisions to Digital Flight Data Recorder Requirements for Airbus, Airplanes]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling in- terval	Resolution	Remarks
1. Time or Relative Times Counts. ¹	*	*	*	*	*
7. Roll Attitude. ²	*	*	*	*	*
12b. Pitch Control(s) Position (fly-by-wire systems). ³	*	*	*	*	*
13b. Lateral Control position(s) (fly-by-wire). ⁴	*	*	*	*	*
14a. Yaw Control position(s) (non-fly-by-wire). ⁵	*	*	*	*	*

[RIN # 2120-AG88 Revisions to Digital Flight Data Recorder Requirements for Airbus, Airplanes]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
15. Pitch Control Surface(s) Position. ⁶					
16. Lateral Control Surface(s) Position. ⁷					
17. Yaw Control Surface(s) Position. ⁸					
19. Pitch Trim Surface Position. ⁹					
20. Trailing Edge Flap or Cockpit Control Selection. ¹⁰					
23. Ground Spoiler Position or Speed Brake Selection. ¹²					
24. Outside Air Temperature or Total Air Temperature. ¹³					

¹ For A300 B2/B4 airplanes, resolution = 6 seconds.² For A330/A340 series airplanes, resolution = 0.703°.³ For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088°>0.064°)

For A330/A340 series airplanes, resolution = 2.20% (0.703°>0.064°)

⁴ For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088°>0.080°)

For A330/A340 series airplanes, resolution = 1.76% (0.703°>0.080°)

⁵ For A318/A319/A320/A321 series airplanes, resolution = 0.21% (0.088°>0.084°)

For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°)

⁶ For A330/A340 series airplanes, resolution = 0.783% (0.352°>0.090°)⁷ For A330/A340/A320/A321 series airplanes, aileron resolution = 0.704% (0.352°>0.100°)

For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°)

⁸ For A330/A340 series airplanes, resolution = 0.30% (0.176°>0.12°)

For A330/A340 series airplanes, seconds per sampling interval = 1

⁹ For all Airbus airplanes, resolution = 0.518% (0.088°>0.051°)¹⁰ For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°)¹¹ For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°)

For A300 B2/B4 series airplanes, resolution = 0.92% (0.230°>0.125°)

¹² For A300-600/A310 series airplanes, speed brake resolution = 0.224% (0.112°>0.100°)

For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°)

¹³ For A330/A340 series airplanes, resolution = 0.5°C.

Issued in Washington, DC on August 17, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99-21783 Filed 8-23-99; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960-AE65

Revised Medical Criteria for Determination of Disability, Endocrine System and Related Criteria

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are deleting listing 9.09, "Obesity," from appendix 1, subpart P of part 404, the "Listing of Impairments" (the listings). Although many individuals with obesity are appropriately found "disabled" within the meaning of the Social Security Act (the Act), we have determined that the criteria in listing 9.09 were not appropriate indicators of listing-level

severity because they did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity. However, in response to public comments, we are adding guidance about evaluating claims for benefits involving obesity to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings.

DATES: These regulations will be effective on October 25, 1999.

FOR FURTHER INFORMATION CONTACT:

Robert Augustine, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 966-5121 or TTY (410) 966-5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778.

SUPPLEMENTARY INFORMATION: Title II of the Act provides for the payment of disability insurance benefits to workers insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance

benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, title XVI of the Act provides for supplemental security income (SSI) payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs and for persons claiming child's insurance benefits based on disability under the title II program, "disability" means that an impairment(s) results in an inability to engage in any substantial gainful activity. (For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) results in "marked and severe functional limitations.") Under both title II and title XVI, disability must be the result of any medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

To determine whether an individual (except for an individual under age 18 claiming SSI benefits based on disability) is disabled based upon this statutory definition, our longstanding regulations at §§ 404.1520 and 416.920 provide for a five-step sequential evaluation process, as follows:

1. Is the individual engaging in substantial gainful activity? If the individual is working and the work is substantial gainful activity, we find that he or she is not disabled. Otherwise, we proceed to step 2 of the sequence.

2. Does the individual have an impairment or combination of impairments that is severe? If the individual does not have a severe impairment or combination of impairments, we find that he or she is not disabled. If the individual has a severe impairment or combination of impairments, we proceed to step 3 of the sequence.

3. Does the individual's impairment(s) meet or equal in severity the criteria of a listed impairment in appendix 1 of subpart P of part 404? Sections 404.1525(a) and 416.925(a) of our regulations explain that the listings describe, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity. If an individual has an impairment(s) that meets or is equal in severity to the criteria of a listed impairment, we find that he or she is disabled. If not, we proceed to step 4 of the sequence.

4. Does the individual's impairment(s) prevent him or her from doing his or her past relevant work, considering his or her residual functional capacity? If not, we find that he or she is not disabled. If so, we proceed to step 5 of the sequence.

5. Does the individual's impairment(s) prevent him or her from performing other work that exists in significant numbers in the national economy, considering his or her residual functional capacity together with the "vocational factors" of age, education, and work experience? If so, we find that the individual is disabled. If not, we find that he or she is not disabled.

Section 416.924 of our regulations provides a separate sequential evaluation process for individuals under age 18 who claim eligibility for SSI based on disability. As in the sequential evaluation process for adults, we determine at step 3 of this process whether the child's impairment(s) meets or medically equals the requirements of any listing. At this step, we also consider whether the child's impairment(s) "functionally" equals the requirements of any listing that includes

disabling functional limitations among its criteria.

Although the listings are contained only in part 404, we incorporate them by reference in § 416.925 of subpart I of part 416. The listings are divided into part A and part B. We apply the criteria in part A in evaluating impairments of persons age 18 or over. We may also apply the criteria in part A in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and children. Part B contains additional criteria that we only use to evaluate impairments of children under age 18 when the criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for a person under age 18, we first use the criteria in part B. If the criteria in part B do not apply, we will use the criteria in part A (see §§ 404.1525 and 416.925).

When we revised and published the listing on obesity and several other listings in the **Federal Register** on December 6, 1985 (50 FR 50068), we indicated that medical advances in disability evaluation and treatment, and program experience, would require that we periodically review and update the medical criteria in the listings. Accordingly, we published expiration dates ranging from 3 to 8 years for the listings in each of the body systems. These dates appeared in our regulations in the introductory statement before part A of the listings. We subsequently extended these dates in final rules published in the **Federal Register** on December 6, 1993 (58 FR 64121) and again on June 5, 1997 (62 FR 30746). Most recently, we published final rules on June 3, 1999 (64 FR 29786), extending the expiration date of these listings to July 2, 2001, for both part A, including the listings for the endocrine system and obesity (9.00), and part B. (There was no listing for obesity in part B.)

On March 11, 1998, we proposed to delete listing 9.09, "Obesity," and related provisions in the listings, and to rename the section "Endocrine System" (63 FR 11854). We are now adopting the proposed rules as final rules, with the changes discussed below. These changes will not affect the current expiration date for the endocrine system listings.

In these final rules, we are removing listing 9.09 because our experience adjudicating cases under this listing indicates that the criteria in the listing were not appropriate indicators of listing-level severity. In our experience, the criteria in listing 9.09 did not represent a degree of functional

limitation that would prevent an individual from engaging in any gainful activity. However, even though we have deleted listing 9.09, we are making some changes to the listings in response to public comments to ensure that obesity is still addressed in our listings.

A number of public commenters, including professional medical and advocacy organizations, submitted medical literature to us in support of their view that we should not delete listing 9.09. We carefully reviewed these comments and the medical literature cited to us. We also considered whether we should revise the obesity listing by clarifying the severity criteria related to the affected body systems in listing 9.09 (i.e., the musculoskeletal, respiratory and cardiovascular systems), or by making other changes in the listings suggested by the commenters. However, we concluded that, because of the widely varying effects obesity and related impairments may have on an individual's functioning, the only way we could be confident that individuals would be disabled under the listings would be to require the other impairments to meet or equal the severity of their respective listings. We also considered whether to raise the weights in the tables to the extent that the level of obesity would ensure that the individuals would be disabled based on weight alone. We chose not to revise the listing in this way because we would have had to raise the weights in the tables to such high levels that we would rarely use the listing.

In response to various concerns about the potential effects of removing all reference to obesity from the listings, we are adding guidance about the evaluation of claims for benefits involving obesity to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings. Our purpose in making these changes is to ensure that adjudicators understand that we consider obesity to be a medically determinable impairment that can be the basis for a finding of disability, and that obesity in combination with other impairments must be considered when evaluating disability at the listings step and other steps of the sequential evaluation process. We are making this change to clarify our intent.

We also want to make clear that we are deleting listing 9.09 because we have determined that the listing is no longer an appropriate rule and because we were unable to propose a reliable alternative. However, we will continue to consider whether we can make improvements in our evaluation of claims filed by individuals with obesity. We intend to obtain information from

the medical community and other interested parties regarding our adjudication of claims of individuals with obesity. We also intend to provide guidance to our adjudicators about the evaluation of claims involving obesity in a Social Security Ruling. Social Security Rulings make available to the public our policy interpretations and provide uniform, binding guidance for all components of the SSA and the State agencies that make disability determinations for us.

The following is a detailed summary of the revisions, together with our reasons for the changes.

Regulatory Provisions

Revisions to Part A of Appendix 1

Table of Contents

We are deleting “and Obesity” from section 9.00 to reflect the deletion of listing 9.09.

1.00 Musculoskeletal System

3.00 Respiratory System

4.00 Cardiovascular System

We are adding new paragraphs 1.00F., 3.00I., and 4.00F. to the prefaces to the listings for the body systems named above. The paragraphs state clearly that we consider obesity to be a medically determinable impairment and remind adjudicators to consider its effects when evaluating disability. The provisions also remind adjudicators that the combined effects of obesity with other impairments can be greater than the effects of each of the impairments considered separately. They also instruct adjudicators to consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity.

9.00 Endocrine System

We are deleting “and Obesity” from the heading of this section of the listings to reflect the deletion of listing 9.09. We are also deleting the second and third paragraphs from the preface of 9.00 because they discussed aspects of the evaluation of obesity in connection with listing 9.09.

9.01 Category of Impairments, Endocrine System

We are deleting “and Obesity” from the heading of this listing to reflect the deletion of listing 9.09.

9.09 Obesity

We are deleting listing 9.09. In our experience, its criteria were not

appropriate indicators of listing-level severity because they did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity. For example, listing 9.09A required a “[h]istory of pain and limitation of motion in any weight-bearing joint or the lumbosacral spine (on physical examination) associated with findings on medically acceptable imaging techniques of arthritis in the affected joint or lumbosacral spine.” While such findings certainly could be a cause of disability depending on their impact on a particular individual's functioning, the listing was not specific. It did not indicate any degree of pain, nor did it require current pain—only a history of pain—and did not indicate a degree of limitation of motion. Thus, the listing could have been satisfied with only minimal additional findings over and above the specified weight levels, even though many individuals with those findings in conjunction with the specified weight levels were not precluded from performing any gainful activity.

The same holds true for the other criteria in listing 9.09. Although the findings in listings 9.09B through 9.09E could be disabling in a given individual, in our experience the findings contained in these listings were not consistently so severe that they would warrant a presumption that an individual is incapable of performing any gainful activity. Indeed, only listings 9.09B and 9.09E specified laboratory values, but those findings might or might not have prevented an individual from performing any gainful activity.

Individuals with the kinds of additional impairments previously listed in 9.09 will still have their cases evaluated as appropriate under the listings for the affected body systems, and can still be found to have impairments that meet the requirements of those other listings. They may also be found to have impairments that equal the severity of other listings, considering the combined effect of obesity and the other impairments. Individuals whose impairments related to, or in combination with, obesity are not of listing-level severity will have their cases evaluated based on their residual functional capacity, and may be found disabled at step 5 of the sequential evaluation process.

Other Revisions

Introductory Text

We are deleting “and Obesity” from item 10 of the introductory text that precedes part A of the listings. We are

also revising item 10 of the introductory text to read “Endocrine System (9.00 and 109.00): July 7, 1999.”

3.00 Respiratory System

We are deleting the last sentence of 3.00H, which referred to the obesity listing. We are also deleting the reference to listing 9.09 in listing 3.10, *Sleep-related breathing disorders*.

Public Comments

When we published the Notice of Proposed Rulemaking (NPRM) on March 11, 1998 (63 FR 11854), we provided the public with a 60-day comment period. On June 10, 1998, we extended the comment period until July 13, 1998 (63 FR 31680).

We received comments from just over 500 individuals and organizations. Almost 300 of the comment letters were form letters that included comments on subjects unrelated to the deletion of listing 9.09; we have forwarded the comments on the unrelated issues to the appropriate components within SSA and do not address them below. The other comment letters included detailed comments submitted on behalf of advocacy organizations representing individuals with obesity, medical researchers and medical advocates for individuals with disability, and legal advocates for individuals with obesity. We also received comments from some State agencies that make disability determinations for us, organizations representing disability adjudicators at the State level, several legal services organizations, individual disability beneficiaries and their families, attorneys, non-attorney representatives, and SSA employees.

When we proposed these rules, we stated that we intended to delete the obesity listing because “[c]urrent medical and vocational research demonstrates that, while many individuals with obesity are disabled, obesity, in and of itself, is not necessarily determinative of an individual's inability to engage in any gainful activity” (63 FR 11854). A number of the comments (discussed more fully below) indicated that there may have been some misunderstanding about why we were proposing to remove the listing. Therefore, in addition to responding to the specific comments, we want to provide a fuller explanation of why we are making the change.

Some commenters believed that we claimed that we had conducted extensive research, that this research was the sole basis for our proposal, but that we were not making this research available to the public. This was not the

case, and it was not what we meant in the NPRM.

We proposed to delete listing 9.09 primarily because our program and adjudicative experience helped to convince us that the listing was difficult to administer, subject to misinterpretation, and required findings of disability in some cases in which the claimants were clearly not "disabled" as defined in the Act. Some of the criteria, such as the criteria in listings 9.09A and D, were vague and overly subjective. Some, such as the criteria in listings 9.09A and C, did not necessarily relate to current impairment status. These concerns were echoed by some of the comments from our adjudicators, who also noted that the listing was problematic.

Over the years, we had received many questions from adjudicators and others about the meaning of the criteria and how to apply them. We also had extensive experience reviewing individual claims that adjudicators referred to us for advice and for resolution of questions about the correct interpretation of the criteria. This experience convinced us that listing 9.09 was no longer appropriate.

In addition, before we published the NPRM, we reviewed a small group of cases in which individuals were found disabled based on a finding that their impairments met or equaled listing 9.09. Although our reviews did not constitute a statistically valid study, they did provide further confirmation of our program and adjudicative experience. We found that, in the majority of the cases we studied, the determinations would not have been affected by the deletion of listing 9.09; i.e., we would have found the individuals disabled. The majority of individuals had impairments that met or equaled other listings, or that we would have found disabling at step 5 of the sequential evaluation process; most of these individuals had impairments that met or equaled other listings. However, consistent with our experience, we also found that, in a significant number of the cases, we would not have found the individuals disabled under other listings or at step 5 of the sequential evaluation process.

We also reviewed medical literature to see if any generally accepted research showed a correlation between obesity and loss of functional capacity for work that might support retention of the listing without change or serve as a basis for an alternative proposal. There is significant medical literature correlating obesity with a variety of health risks. A number of commenters cited such literature to us; one comment

letter cited many such sources. However, we reviewed the cited sources and determined that they did not provide support for the retention of listing 9.09 because they did not demonstrate a significant correlation between obesity and current loss of functional ability for work. Although the sources did show that the risk for having another impairment goes up significantly if an individual is severely obese, they did not provide a basis for concluding that a given individual will currently be unable to engage in any gainful activity.

For all the foregoing reasons, we have decided that we must delete listing 9.09 and that it is most appropriate to evaluate disability under the listings for the other impairments an individual with severe obesity might have. We also concluded that we should instruct our adjudicators that the combined effects of obesity with other impairments may be greater than the effects of each of the impairments considered separately, and that such evaluations should be made on an individualized, case-by-case basis.

Summaries of the significant comments and our responses follow. Because some of the comments were quite detailed, we had to condense, summarize, or paraphrase them. We have, however, tried to summarize the commenters' views accurately and have responded to all of the significant issues raised by the commenters that are within the scope of the proposed rules. As we discuss below in responding to the comments, we have made revisions and additions in the final rules to clarify our intent.

Comment: A number of commenters said that deleting listing 9.09 will result in longer, more costly, and less consistent determinations and decisions, and will also result in increased case backlogs. They said that the listing saved administrative resources by using objective medical criteria to avoid a more costly case-by-case inquiry into an individual's functional ability.

Response: Although some individual cases will require more development and analysis than they would have under listing 9.09, in our cost/benefit analysis, we estimate that, overall, there will be slight administrative savings from these final rules when all future actions are considered. For example, even though some cases will require more initial development than under listing 9.09, there will be fewer continuing disability reviews because we anticipate there will be fewer people whose claims will be allowed than under the prior rules. Moreover, obesity is the primary impairment in just under

3 percent of all disability claims filed each year under titles II and XVI. Also, as we have already noted, there will be no effect on many cases because many of the individuals with severe obesity who file applications each year and who would have met listing 9.09 will be found to have impairments that meet or equal other listings based on the medical and other evidence we obtain in our routine development of all cases.

With regard to the second part of the comment, and as we have noted earlier in this preamble, we do not agree that listing 9.09 was objective or accurate as a measure of listing-level impairment severity in a significant number of cases.

Comment: Many commenters thought that deletion of listing 9.09 would result in the denial of benefits to disabled individuals. Many of the commenters believed that without listing 9.09, adjudicators would overlook or improperly evaluate a claimant's obesity. Some stated that obesity is a disease that can affect an individual's ability to stand, sit, walk, climb, etc., and should be treated as such. They said that for SSA to eliminate this impairment from the listings would be to ignore a genuine medical impairment that causes significant functional limitations.

Some commenters thought that removing any reference to obesity from our listings would send an implicit message to our adjudicators that we do not want them to consider obesity. Several commenters expressed concern that adjudicator "bias" would play a part in case evaluation in the absence of the obesity listing.

Many commenters also indicated that listing 9.09 did not consider obesity alone. They thought that adjudicators would not adequately consider obesity, either under the listings for other body systems, which do not provide criteria that specifically take into account the effects of obesity, or in the assessment of an individual's residual functional capacity.

Most of these commenters urged us to retain some reference to obesity and its potentially disabling manifestations in our rules.

Response: We made revisions in these final rules in response to the comments. Our proposal to delete listing 9.09 neither stated nor implied that we would no longer consider obesity to be a medically determinable impairment, nor did it state or imply that obesity could not be disabling by itself or in combination with other impairments. We agree, however, that our rules should retain some reference to obesity and its potentially disabling manifestations.

Obesity is a medically determinable impairment, and we expect our adjudicators to consider it when evaluating impairment severity. Adjudicators must also incorporate any functional limitations resulting from obesity into the assessment of disability. We are confident that our adjudicators will continue to do so, even in the absence of listing 9.09. We also have a quality assurance review process that helps us ensure that decisions are supported by the evidence and that multiple impairments, including obesity, are properly considered.

Nevertheless, we agree with the commenters that there could have been a potential for misinterpretation of our intent if we simply deleted references to obesity in the listings without anything more. Therefore, in response to the comments, we have added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body systems (the same body systems that were referenced in listings 9.09 A through E), to indicate that we consider obesity to be a medically determinable impairment, that obesity is often associated with disturbances of these body systems, and that disturbances of these body systems can be a major cause of disability in individuals with obesity. We also provide that the combined effects of obesity with impairments in these body systems can be greater than the effects of each of the impairments considered separately. Finally, we provide that, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity. In addition, as noted above, we intend to provide additional guidance to our adjudicators about the evaluation of claims involving obesity in a Social Security Ruling.

Comment: Many commenters stated that listing 9.09 was a carefully drafted regulation that recognized the impact of obesity on certain musculoskeletal, respiratory, and cardiovascular disorders. They said the listing correctly reflected that severe obesity, in conjunction with any of the conditions set forth in listings 9.09 A through E, would result in functional limitations so severe that the individual would not be able to meet the performance or attendance requirements of any employer. They asked that we keep the listing without change.

Response: The listing criteria for obesity we first promulgated on March 27, 1979 (44 FR 18170), represented our attempt to devise criteria that would

“take into account the contributing complication of obesity . . .” (44 FR 18175). However, for the reasons previously discussed, we believe that the listing did not easily or accurately distinguish between individuals who could be presumed to be unable to engage in any gainful activity and those for whom such a presumption was inappropriate.

Comment: Many commenters urged us to revise, rather than delete, the obesity listing, and some offered to assist us in developing new listing criteria. Some recommended specific revisions to the current listing, such as revising the requirements in sections A through E of the listing or converting the listing to a “reference” listing; that is, one that merely cross-refers to other listings. Others suggested that we incorporate specific criteria for obesity in appropriate listings in other body systems (e.g., musculoskeletal, respiratory, cardiovascular, mental) so that adjudicators would not overlook it in determining the severity of an individual’s impairments.

Response: We added paragraphs to the prefaces to other body system listings that we believe address the concerns of many of the commenters who encouraged us, in one way or another, to retain reference to obesity in the listings. However, we did not adopt the commenters’ suggestions for alternative criteria based either on a specific level of obesity alone or on a level of obesity in conjunction with another impairment that is itself of less than listing-level severity. None of the alternative criteria proposed by commenters appeared to describe a level of impairment severity that would allow us reasonably to conclude that an individual who met the alternative criteria would be unable to perform any gainful activity.

Comment: Several commenters were concerned that the proposal to eliminate listing 9.09 was based on assumptions concerning functional capacity. They said that functional capacity has never been a consideration in determining whether an adult claimant meets the listings.

Response: Functioning is an explicit criterion in many of our listings. Moreover, even though we do not assess functional limitations in some listings, §§ 404.1525 and 416.925 of our regulations provide that the listings describe impairments that are considered severe enough to prevent a person from doing any gainful activity.

Comment: A few commenters objected to our statement that some individuals who met listing 9.09 might be able to perform substantial gainful

activity. They did not believe that the listing differed from any of the other listings in that regard, pointing out that individuals with impairments that would meet listings often work. They contended that individuals with the level of obesity and the additional impairment required by the listing were as disabled as anyone who met or equaled any other listing.

Response: Our listings are intended to readily identify individuals who would ultimately be found disabled if they were not already working, and if we considered their residual functional capacity, age, education, and work experience. We know that there are individuals who work despite impairments of the severity reflected in our listings, but we believe that in general the listings are a useful tool for identifying many people who should qualify under our rules. However, based on our program and adjudicative experience, we do not agree with the commenters that listing 9.09 was as accurate an indicator of disability as other listings.

Comment: Some commenters indicated confusion about our statement in the NPRM that obesity in and of itself is not necessarily determinative of an individual’s inability to engage in any gainful activity, and other, similar statements. The commenters pointed out that listing 9.09 did not consider obesity in and of itself; rather, it provided criteria for obesity associated with other impairments.

Response: We agree that listing 9.09 did not consider obesity alone. We intended this statement only to help explain why we did not propose other alternatives to deleting listing 9.09, including a listing for obesity alone.

Comment: Several commenters questioned whether we were targeting impairments with a “volitional” aspect for removal from the listings, citing the removal of drug addiction and alcoholism as a basis for disability.

Response: We are not targeting specific kinds of impairments for review or exclusion from the listings, nor do we believe that obesity and other medical impairments are “volitional.” In December 1985, when we last published final rules containing comprehensive revisions to the listings, we stated that medical advancements in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. These final rules are consistent with our longstanding responsibility to monitor the effectiveness of the listings, so that we can ensure they remain an appropriate and efficient tool to evaluate claims for disability.

The changes to our rules on the evaluation of drug addiction and alcoholism were required by law.

Comment: We received a number of comments on the many causes of obesity and the general ineffectiveness of current treatments. Many commenters cited the increased risk for developing musculoskeletal, respiratory, and cardiovascular problems, and for premature death. They pointed out that when we published revised listings in 1985, we explained that medical advances in treatment and program experience would require periodic evaluation and revision of the listings. They asked what advances in medicine or program experience justified eliminating the obesity listing.

Response: We do not dispute the commenters' statements about the causes of obesity and the general ineffectiveness of current treatments. As noted previously, the changes we are making are not the result of advances in medical evaluation or treatment but the result of program and adjudicative experience.

We also do not dispute the comments that individuals with severe obesity have increased morbidity and mortality risks. However, under the Act and our regulations we must consider whether an individual is currently disabled. We do not consider whether an individual is at risk for disability sometime in the future. The changes we are making in these final rules will enable us to assess disability based on the actual effects (as opposed to potential future effects) of the impairment.

Comment: Some commenters were concerned that many individuals would lose their benefits and have no means of assistance if we were to delete listing 9.09. One commenter recommended that we review all prior allowances based on listing 9.09 under the new rules.

Response: No individual will be removed from the rolls solely because we have deleted listing 9.09, as some commenters suggested. We will not review prior allowances based on listing 9.09 under the new rules.

These final rules have only a prospective effect. Unless otherwise required to do so (for example, by statute), we do not readjudicate previously decided cases when we revise our listings.

We do conduct periodic "continuing disability reviews" of individuals on our rolls to determine whether they are still disabled. However, when we conduct continuing disability reviews, we do not find that disability has ended based on a change in a listing. In most cases, we must show that an

individual's impairment(s) has medically improved and that any medical improvement is "related to the ability to work." If an individual's impairment(s) has not medically improved, we will generally find that the individual is still disabled. Even if the impairment(s) has medically improved, our regulations provide that the improvement is not "related to the ability to work," if the impairment(s) continues to meet or equal the "same listing section used to make our most recent favorable decision." This is true even if, as in these final rules, we have deleted the listing section that we used to make the most recent favorable decision. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A) of our regulations. (A similar provision for continuing disability reviews for children eligible for SSI based on disability appears in § 416.994a(b)(2)). In a case where we find that medical improvement is not related to the ability to work (or the impairment still meets or equals the prior listing, in the case of an individual under age 18), we will find that disability continues, unless an exception to medical improvement applies.

Comment: Some commenters supported our proposal, but had questions about how claims for benefits involving obesity would be adjudicated after the deletion.

Response: We believe that the new paragraphs we have added to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings in the final rules provide guidance for our adjudicators in the proper handling of claims involving obesity. In addition, as we have noted above, we intend to provide additional guidance to our adjudicators regarding the evaluation of claims involving obesity, by issuing a Social Security Ruling.

Comment: Several commenters stated that the proposed change would have a disproportionate impact on particular groups of individuals, such as women, minorities and individuals at lower socioeconomic levels. They thought the proposed rule discriminatory. Some commenters thought the rules reflected societal prejudice against individuals with obesity. Some said, without explanation, that deleting the obesity listing would violate the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, or the Rehabilitation Act of 1973, 29 U.S.C. 794.

Response: SSA is committed to providing fair treatment for all individuals who seek or receive benefits. The deletion of listing 9.09 means only that individuals with severe

impairments who seek benefits based in whole or in part on obesity will have their claims evaluated in accordance with the appropriate body system in the listings, or at later steps of the sequential evaluation process, as we explained in the proposed rules (63 FR 11854, 11855) and above. Our actions in these final rules in no way violate the ADA or the Rehabilitation Act; they are intended to help us ensure that only those individuals who meet the statutory definition of disability are found disabled.

These final rules do not discriminate against any individual or group of individuals based on their impairments. Rather, they ensure that our listings remain an efficient and legally appropriate method for determining that individuals who meet the statutory definition of disability are found disabled, and that individuals who do not meet the statutory definition are not inappropriately found disabled. In our experience, listing 9.09 did not always meet that goal. Consequently, we believe that the best course of action is to delete the listing.

This does not mean that these final rules reflect prejudice against individuals with obesity, or that they are intended to result in discriminatory treatment of any individuals. However, to ensure that adjudicators understand our intent, we have added guidance to the musculoskeletal, respiratory, and cardiovascular body system listings as described above. We believe the changes we have made to the listings will ensure that disability claims based on obesity are evaluated appropriately.

Comment: One commenter said that the proposed rule violated the Administrative Procedure Act (APA) because the agency did not disclose any scientific and technical studies or data in the NPRM. This commenter asserted that the APA requires the agency to disclose scientific material that the agency believes supports its rule to interested parties for comment. Another commenter expressed similar views and asserted that the NPRM violated the APA because the commenter believed it relied on inadequate data.

Response: In the Supplementary Information section of the preamble to the NPRM, we noted that "[c]urrent medical and vocational research demonstrates that the listing is not necessarily reflective of an inability to engage in any gainful activity or even of an inability to engage in substantial gainful activity" (63 FR 11854, 11855). We made a similar comment in the Summary section of the preamble of the NPRM (63 FR 11854). We also noted that we were proposing to remove

listing 9.09 "to recognize that there is no generally accepted current medical and vocational knowledge which establishes that even massive obesity, per se, has a defined adverse effect on an individual's ability to work; i.e., even long-term, massive obesity at the level specified in the listing does not necessarily cause limitations that would prevent an individual from engaging in any gainful activity" (63 FR 11855).

We regret that these statements may have caused some confusion. As we discussed earlier in this preamble, we did not mean to imply that we were relying on any specific research to justify our decision to propose the removal of listing 9.09. Rather, we intended these statements to mean only that there is no generally accepted current medical and vocational knowledge which establishes that even massive obesity, per se, has a defined adverse effect on an individual's ability to work.

In response to these statements in the preamble to the proposed rule, a number of commenters provided us with citations to medical research and other medical literature (e.g., medical manuals and textbooks). The commenters believed the research they cited supported their position that obesity has a specific adverse impact on an individual's functional abilities, such that it results in disability. We have reviewed the medical research and other documents that have been brought to our attention by the commenters, and believe that they are consistent with our experience in adjudicating cases under listing 9.09 or otherwise did not provide a basis for retaining the listing. None of the sources that have been brought to our attention by the commenters, or that we reviewed in the course of developing these final rules, support the conclusion that obesity at the level specified in listing 9.09, taken in conjunction with the findings related to any associated musculoskeletal, respiratory, or cardiovascular impairments set out in listings 9.09A through E, would necessarily have such an adverse impact on an individual's functional abilities that it should be considered to preclude the performance of any gainful activity, in the absence of a case-by-case determination of the effects of the obesity and associated impairments on a particular individual.

We believe our actions in proposing the deletion of listing 9.09 are fully consistent with the APA and have provided the public with a meaningful opportunity to comment on the proposed rule. In fact, we extended the comment period to provide additional time for comment. Moreover, the

supplemental data contained in the studies that were brought to our attention by various commenters did not provide a basis for changing the proposal. We do not believe, therefore, that the APA requires us to withdraw the proposed rule and initiate additional rulemaking, as some commenters suggested.

Comment: Some commenters said that SSA used an unfair and cursory approach in proposing to delete the obesity listing and that we could use the same approach and rationale to delete any listing. They said that SSA's professional image and reputation for commitment to individual equity and due process would be threatened if we proceeded with the proposed deletion.

Response: We have long recognized that medical advances in disability evaluation and treatment and program experience require that we periodically review and update the medical criteria in the listings. On an ongoing basis, we review medical literature and our program and adjudicative experience to monitor the medical criteria in the listings. We do not recommend changes without careful consideration. We do not believe our approach in this case was unfair or cursory.

Accordingly, for the reasons set out above, we are publishing the proposed rules as final rules with the revisions noted.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final regulations meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Therefore, we prepared and submitted to OMB an assessment of the potential costs and benefits of this regulatory action. This assessment also contains an analysis of alternative policies we considered and chose not to adopt. It is available for review by members of the public by contacting the person shown above.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 7, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

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

Authority: Secs. 202, 205(a), (b), and (d)—(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)—(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—Listing of Impairments

2. Item 10 of the introductory text before Part A of appendix 1 is revised to read as follows:

* * * * *

10. Endocrine System (9.00 and 109.00):
July 2, 2001.

* * * * *

3. The Table of Contents for Part A of appendix 1 is amended by removing "and Obesity" from section 9.00.

4. Listing 1.00 in part A of appendix 1 is amended by adding new paragraph F. to read as follows:

1.00 Musculoskeletal System

* * * * *

F. Effects of obesity. Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with musculoskeletal impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must

consider any additional and cumulative effects of obesity.

5. Listing 3.00 in part A of appendix 1 is amended by removing the last sentence of paragraph H and adding new paragraph I. to read as follows:

3.00 Respiratory System

* * * * *

I. *Effects of obesity.* Obesity is a medically determinable impairment that is often associated with disturbance of the respiratory system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity.

6. Listing 3.10 in Part A of appendix 1 is revised to read as follows:

3.10 *Sleep-related breathing disorders.* Evaluate under 3.09 (chronic cor pulmonale) or 12.02 (organic mental disorders).

7. Listing 4.00 in Part A of appendix 1 is amended by adding new paragraph F. to read as follows:

4.00 Cardiovascular System

* * * * *

F. *Effects of obesity.* Obesity is a medically determinable impairment that is often associated with disturbance of the cardiovascular system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with cardiovascular impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity.

8. Listing 9.00 in part A of appendix 1 is amended by removing "AND OBESITY" from the title and removing the last two paragraphs from the preface.

9. Listing 9.01 in part A of appendix 1 is amended by removing "and Obesity" from the title.

10. Listing 9.09 in part A of appendix 1 is removed.

[FR Doc. 99-21935 Filed 8-23-99; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 96F-0145]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tetrakis(hydroxymethyl)phosphonium sulfate (CAS Reg. No. 55566-30-8) as a slimicide for use in the manufacture of paper and paperboard that contact food. This action responds to a petition filed by Albright & Wilson, Ltd.

DATES: This regulation is effective August 24, 1999; submit written objections and requests for a hearing by September 23, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3094.

SUPPLEMENTARY INFORMATION:

In a notice published in the **Federal Register** of May 20, 1996 (61 FR 25228), FDA announced that a food additive petition (FAP 5B4472) had been filed by Albright & Wilson, Ltd., c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814. The petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of tetrakis(hydroxymethyl)phosphonium sulfate as a slimicide in the manufacture of paper and paperboard intended to contact food. Albright and Wilson, Ltd. is currently represented by Lewis & Harrison, 122 C St. NW., suite 740, Washington, DC 20001. (Formerly represented by Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814.)

When the petition was filed on May 20, 1996, it contained an environmental assessment (EA). In the notice of filing, the agency announced that it was placing the EA on display at the Dockets Management Branch for public review

and comment (61 FR 25228). No comments were received. On July 29, 1997 (62 FR 40569), FDA published revised regulations under part 25 (21 CFR part 25), which became effective on August 28, 1997. On January 7, 1999, the petitioner submitted a claim of categorical exclusion under new § 25.32(q), in accordance with the procedures in § 25.15(a) and (d). Because the agency had not completed its review of the earlier submitted EA, the agency reviewed the claim of categorical exclusion under § 25.32(q) for the final rule and has determined that this action is a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an EA nor an environmental impact statement is required.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of tetrakis(hydroxymethyl)phosphonium sulfate as a slimicide in the manufacture of paper and paperboard that contact food is safe; (2) the additive will achieve its intended technical effect; and therefore, (3) the regulation in § 176.300(c) should be amended as set forth below.

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

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 23, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for

which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen

in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:
Authority: 21 U.S.C. 321, 342, 346, 348, 379e.
2. Section 176.300 is amended by alphabetically adding an entry to the table in paragraph (c) to read as follows:

§ 176.300 Slimicides.
* * * * *
(c) * * *

List of Substances				Limitations		
*	*	*	*	*	*	*
Tetrakis(hydroxymethyl)phosphonium sulfate (CAS Reg. No. 55566–30–8)				Maximum use level of 84 mg/kg in the pulp slurry. The additive may also be added to water, which when introduced into the pulp slurry, results in a concentration in the pulp slurry not to exceed 84 mg/kg.		
*	*	*	*	*	*	*

* * * * *
Dated: August 12, 1999.
L. Robert Lake,
Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.
[FR Doc. 99–21851 Filed 8–23–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 98F–0871]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a component of coatings on paper and paperboard intended for use in contact with dry food. This action is in response to a petition filed by Servo Deldon BV.
DATES: This regulation is effective August 24, 1999; submit written objections and requests for a hearing by September 23, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.
SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 13, 1998, (63 FR 54717), FDA announced that a food additive petition (FAP 8B4630) had been filed by Servo Deldon BV, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a component of coatings on paper and paperboard intended for use in contact with dry food.
In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities resulting from the manufacture of the additive.

Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.
I. Determination of Safety
Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as a “reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.”
The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyethylene glycol monoisotridecyl ether sulfate, sodium salt as a surfactant in coatings for paper and paperboard in contact with dry foods, will result in exposure to no greater than 50 parts per billion (ppb) of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake (EDI) of 0.15 milligrams per person per day (mg/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the exposure to the impurities from the petitioned use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive as a surfactant in coatings for paper and paperboard in contact with dry foods to be no more than 0.2 ppb of the daily diet (3 kg) or 0.6 micrograms per person per day ($\mu\text{g/p/d}$) (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused a significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats. Based on the agency's estimate that exposure to 1,4-dioxane will not exceed $0.6 \mu\text{g/p/d}$, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 2.1×10^{-8} (or 2.1 in 100 million) (Ref. 4). Because of the

numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive as a surfactant in coatings for paper and paperboard in contact with dry foods to be no more than 3.9 parts per trillion in the daily diet (3 kg) or 12 nanograms per person per day (ng/p/d) (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach in female rats. Based on the agency's estimate that exposure to ethylene oxide will not exceed 12 ng/p/d , FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 2.24×10^{-8} (or 2.24 in 100 million) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency

would not expect the impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to 1,4-dioxane and ethylene oxide is very low, 2.1 in 100 million and 2.24 in 100 million, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive in adhesives is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 176.180 should be amended as set forth below in this document.

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

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4630 (October 13, 1998, 63 FR 54717). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 23, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons

between 9 a.m. and 4 p.m., Monday through Friday.

1. Memoranda, dated January 13, 1999, and March 8, 1999, from the Chemistry Review Team, FDA, to the file concerning FAP 8B4630 (MATS No. 1011), Servo Delden BV, concerning the use of polyethylene glycol monoisotridecyl ether sulfate sodium salt as a surfactant in coatings in food-contact paper and paperboard.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger and J. K. Marquis, published by S. Karger, New York, NY, pp. 24-33, 1985.

3. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.

4. Memorandum, dated January 25, 1999, from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning estimation of upper-bound lifetime risk from ethylene oxide and 1,4-dioxane in polyethylene glycol monoisotridecyl ether sulfate, sodium salt (PGMES): food additive petition No. 8B4630 (Servo Delden BV).

5. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46: pp. 924-933, 1982.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.180 is amended in the table in paragraph (b)(2) by alphabetically adding an entry under the headings "Lists of Substances" and "Limitations" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

*	*	*	*	*
(b)	*	*	*	
(2)	*	*	*	

List of Substances			Limitations		
*	*	*	*	*	*
Polyethylene glycol monoisotridecyl ether sulfate, sodium salt (CAS Reg. No. 150413-26-6).			For use only as a surfactant at levels not to exceed 3 percent in latex formulations used in pigment binders for paper and paperboard.		
*	*	*	*	*	*

Dated: August 5, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99-21850 Filed 8-23-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F-0399]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of May 14, 1999 (64 FR 26281). The document amended the food additive regulations to provide for the safe use of 1,3-propanediamine, N,N'-

1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine as a light stabilizer for polypropylene and polyethylene. The document was published with an error. This document corrects that error.

DATES: Effective on May 14, 1999.

FOR FURTHER INFORMATION CONTACT:

Julius Smith, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3091.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 14, 1999 (64 FR 26281), FDA amended the food additive regulations to provide for the safe use of 1,3-propanediamine, N,N'-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine as a light stabilizer for polyethylene and polypropylene complying with 21 CFR 177.1520. It has been recently called to the attention of the agency that the Chemical Abstract Services (CAS) Registry has a slightly different nomenclature for the additive 1,3-

propanediamine, N,N'-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine (CAS Reg. No. 136504-96-6). The preferred nomenclature for the additive is 1,3-propanediamine, N,N'-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine. Therefore, the agency is amending 21 CFR 178.2010 to correct the nomenclature of the additive.

In FR Doc. 99-12177, appearing on page 26281, in the **Federal Register** of Friday, May 14, 1999, the following correction is made:

§ 178.2010 [Corrected]

1. On page 26282, in the table in paragraph (b), under the heading "Substances" "1,3-propanediamine, N,N'-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine (CAS Reg. No. 136504-96-

6)'' is corrected to read "1,3-propanediamine, N,N''-1,2-ethanediybis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine (CAS Reg. No. 136504-96-6)''.

Dated: August 10, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99-21849 Filed 8-23-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN-0720-AA51

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revisions to the Eligibility Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Final Rule.

SUMMARY: This final rule revises the comprehensive CHAMPUS regulation pertaining to basic CHAMPUS benefits in accordance with several statutory changes. This final rule: sets forth the requirements for reinstatement of CHAMPUS eligibility for beneficiaries under age 65 who would otherwise have lost eligibility for CHAMPUS due to disability or end-stage renal disease (ESRD); establishes new classes of CHAMPUS eligibles; establishes the Transitional Assistance Management Program which provides transitional health care for members (and their dependents) who served on active duty in support of a contingency operation and for members (and their dependents) who are involuntarily separated from active duty; allows former spouses who buy a conversion health policy to keep CHAMPUS eligibility for twenty-four (24) months for preexisting conditions that are not covered by the conversion policy; and makes minor technical revisions to the double coverage provisions. In order to expedite compliance with the statutory requirements, all of these provisions have been implemented under interim instructions. This final rule also adds a new category of eligible beneficiary under the Continued Health Care Benefit Program.

DATES: This final rule is effective September 23, 1999.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, Aurora, CO 80011-9043.

FOR FURTHER INFORMATION CONTACT:

Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676-3572.

SUPPLEMENTARY INFORMATION:

The following specific paragraphs of § 199.3 have eligibility dates as follows:

Paragraph	Eligibility Date
(b)(2)(ii)(H)(2)	October 23, 1992.
(b)(2)(ii)(H)(3)	November 14, 1986.
(b)(2)(ii)(H)(4) (pertaining to placement by a court).	July 1, 1994.
(b)(2)(ii)(H)(4) (pertaining to placement by a recognized placement agency).	October 5, 1994.
(b)(2)(iii)(A)(1)	November 14, 1986.
(b)(2)(iii)(A)(2)	October 23, 1992.
(e)(1)(i)	April 6, 1991.
§ 199.3(e)(1)(ii)	October 1, 1990.
(e)(1)(iii)	October 1, 1990.
(f)(3)(viii)	October 1, 1991.
(f)(3)(ix)	October 1, 1991.

I. Summary of Final Rule Provisions

This final rule adds or revises a number of eligibility provisions. Following is a brief summary of the classes of beneficiaries affected by this final rule. Generally, each class is eligible for CHAMPUS as a result of the change, and we have included the other salient points regarding each, but the reader should refer to the proposed rule that was published on December 23, 1997, for a detailed discussion regarding the specific conditions and requirements for each class.

CHAMPUS/Medicare dual eligibles

- Must be under age 65, eligible for Medicare due to disability or end-stage renal disease, and enrolled in Medicare Part B
- Applies to all categories of CHAMPUS beneficiaries except dependents of active-duty members
- Effective October 1, 1991

Dependents of a person who dies of an injury, illness, or disease incurred on the way to or from training with a duration of 30 days or less

- Retiree cost-sharing
- Effective November 14, 1986

Victims of abuse

- By a member who was discharged or dismissed as a result of a court-martial conviction for the abuse
- Eligibility limited to one year from member's separation

- Coverage limited to treatment of conditions resulting from abuse
- Effective November 14, 1986 through October 16, 1998
- Effective October 17, 1998, covered services need not be related to the abuse and eligibility coincides with the period that the abused dependent is in receipt of transitional compensation under section 1059 of title 10 U.S.C.
- By a member or former member who loses eligibility to retired pay as a result of the abuse
- Effective October 23, 1992
- Students who become incapable of self-support
- Must be full-time student
- The incapacitating condition must occur between the ages of 21 and 23
- Effective October 23, 1992
- Dependents of an active duty member who dies while on active duty
- These individuals have always been eligible for CHAMPUS with retiree cost-sharing
- The most recent change provides that all care is to be cost-shared as active duty
- Special cost-sharing is limited to one year
- Effective October 1, 1993
- For dependents of active-duty members who die while on active duty between January 1, 1993, and October 1, 1993, only care for pre-existing conditions is to be cost-shared as active duty.
- Dependents placed in the custody of a member or former member by a court or a recognized placement agency.
- Effective July 1, 1994, if placed by a court
- Effective October 5, 1994, if placed by a recognized placement agency
- This category of beneficiary is also added to the Continued Health Care Benefit Program effective October 5, 1994.
- Transitional Assistance Management Program (TAMP)
- Claims for all individuals eligible under TAMP are cost-shared as active-duty dependents
- Members released from active duty in connection with contingency operations
- Eligible up to thirty (30) days
- Effective April 6, 1991
- Members involuntarily separated with less than six (6) years of service
- Eligible up to sixty (60) days
- Effective October 1, 1990
- Members involuntarily separated with six (6) or more years of service
- Eligible up to 120 days
- Effective October 1, 1990

The minor technical revisions to the double coverage provisions in section 199.8 and the addition of a new category of eligible beneficiary under the Continued Health Care Benefit Program contained in section 199.20 are unchanged from the proposed rule. The reader should refer to the proposed rule for a discussion of these provisions.

II. Public Comments

We provided a 60-day comment period on the proposed rule. We received no public comments, but we received a comment from another federal agency with which we are required to coordinate rules. Below we provide a summary of the comment and our response.

Comment—The commenter indicated that the language in paragraphs (f)(3)(viii) and (g)(1) does not accurately reflect the Medicare eligibility provisions for persons with end-stage renal disease (ESRD).

Response—A description of the Medicare eligibility requirements for persons with ESRD is not necessary to this rule, since those requirements are set forth in 42 CFR 406.13. We have deleted the language from the final rule.

III. Changes In the Final Rule

We have made four changes in the final rule to correct errors we discovered in the proposed rule.

The first involves a mathematical error in the supplementary information of the proposed rule. In Section II.D. we provided examples of coordination of benefits calculations for certain Medicare beneficiaries whose CHAMPUS eligibility has been reinstated. In Example 1, Step 4, the result is \$3,938.45 and not \$4,043.95 as was published in the proposed rule. This does not affect the final result of these calculations, but it is important to ensure the steps are accurate.

The second involves paragraph (b)(2)(ii)(H)(2). In the proposed rule this paragraph included the words "has not attained the age of 21". The basic requirement that a child be under 21 is contained elsewhere and this paragraph allows an exception to that requirement. Therefore, we have deleted the words "has not attained the age of 21".

The third involves paragraph (c)(5)(v). In the past, an incapacitated individual age 21 or older (age 23 or older if a student) could be adopted and gain CHAMPUS eligibility. The statute has been revised to restrict adoptions only to individuals that meet the requirements of a dependent at the time of adoption. As a result, we have deleted paragraph (c)(5)(v).

The fourth involves paragraph (c)(7). We have added additional material to this paragraph to distinguish the different beginning eligibility dates for children who are victims of abuse by a person who is discharged from a Uniformed Service as a result of committing the abuse as opposed to a person who has eligibility to receive retired pay on the basis of years of service terminated as a result of committing the abuse.

We have also made changes to paragraphs (b)(2)(iii)(A)(1), (c)(3)(i), and (c)(7) to include the provisions of Section 732 of the National Defense Authorization Act for FY 1999 (Pub. L. 105-261). This statutory change removed the limitation on the extent of services available to certain victims of abuse (i.e., the services must be related to the abuse) so that they are entitled to all benefits available under the Program. It also replaced the one year limitation on services available to them with the period that the abused dependent is in receipt of transitional compensation under section 1059 of title 10 U.S.C.

IV. Regulatory Procedures.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this final rule are minor revisions to the existing regulation. Since this final rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by adding new definitions *abused dependent*, *deceased reservist*, *former member*, *member*, *reservist*, and *spouse*, in alphabetical order, and by revising the definitions for *child*, *deceased service member*, *Defense Enrollment*

Eligibility Reporting System (DEERS), *dependent*, *sponsor*, *widow* or *widower* to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Abused dependent. An eligible spouse or child, who meets the criteria in § 199.3 of this part, of a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense, or of a member or former member who has had their entitlement to receive retired pay terminated because of misconduct involving physical or emotional abuse.

* * * * *

Child. An unmarried child of a member or former member, who meets the criteria (including age requirements) in § 199.3 of this part.

* * * * *

Deceased member. A person who, at the time of his or her death, was an active duty member of a Uniformed Service under a call or order that did not specify a period of 30 days or less.

* * * * *

Deceased reservist. A reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training and dies as a result of that specific injury, illness or disease.

* * * * *

Deceased retiree. A person who, at the time of his or her death, was entitled to retired or retainer pay or equivalent pay based on duty in a Uniformed Service. For purposes of this part, it also includes a person who died before attaining age 60 and at the time of his or her death would have been eligible for retired pay as a reservist but for the fact that he or she was not 60 years of age, and had elected to participate in the Survivor Benefit Plan established under 10 U.S.C. chapter 73.

* * * * *

Defense Enrollment Eligibility Reporting System (DEERS). An automated system maintained by the Department of Defense for the purpose of:

- (1) Enrolling members, former members and their dependents, and
- (2) Verifying members', former members' and their dependents' eligibility for health care benefits in the direct care facilities and for CHAMPUS.

* * * * *

Dependent. Individuals whose relationship to the sponsor (including NATO members who are stationed in or passing through the United States on official business when authorized) leads to entitlement to benefits under this part. (See § 199.3 of this part for specific categories of dependents).

* * * * *

Former member. A retiree, deceased member, deceased retiree, or deceased reservist in certain circumstances (see section 199.3 for additional information related to certain deceased reservists' dependents' eligibility). Under conditions specified under § 199.3 of this part, former member may also include a member of the Uniformed Services who has been discharged from active duty (or, in some cases, full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions and qualifies for CHAMPUS benefits under the Transitional Assistance Management Program or the Continued Health Care Benefit Program.

* * * * *

Member. A person on active duty in a Uniformed Service under a call or order that does not specify a period of 30 days or less. (*For CHAMPUS cost-sharing purposes only,* a former member who received a dishonorable or bad-conduct discharge or was dismissed from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse or was administratively discharged as a result of such an offense is considered a member).

* * * * *

Reservist. A person who is under an active duty call or order to one of the Uniformed Services for a period of 30 days or less or is on inactive training.

* * * * *

Sponsor. A member or former member of a Uniformed Service upon whose status his or her dependents' eligibility for CHAMPUS is based. A sponsor also includes a person who, while a member of the Uniformed Services and after becoming eligible to be retired on the basis of years of service, has his or her eligibility to receive retired pay terminated as a result of misconduct involving abuse of a spouse or dependent child. It also includes NATO members who are stationed in or passing through the United States on official business when authorized. It also includes individuals eligible for CHAMPUS under the Transitional Assistance Management Program.

* * * * *

Spouse. A lawful husband or wife, who meets the criteria in § 199.3 of this

part, regardless of whether or not dependent upon the member or former member for his or her own support.

* * * * *

Widow or Widower. A person who was a spouse at the time of death of a member or former member and who has not remarried.

* * * * *

3. Section 199.3 is revised to read as follows:

§ 199.3 Eligibility.

(a) *General.*—This section sets forth those persons who, by the provisions of 10 U.S.C. chapter 55, and the NATO Status of Forces Agreement, are eligible for CHAMPUS benefits. A determination that a person is eligible does not automatically entitle such a person to CHAMPUS payments. Before any CHAMPUS benefits may be extended, additional requirements, as set forth in other sections of this part, must be met. Additionally, the use of CHAMPUS may be denied if a Uniformed Service medical treatment facility capable of providing the needed care is available. CHAMPUS relies primarily on the Defense Enrollment Eligibility Reporting System (DEERS) for eligibility verification.

(b) *CHAMPUS eligibles*—(1) *Retiree.* A member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

(2) *Dependent.* Individuals whose relationship to the sponsor leads to entitlement to benefits. CHAMPUS eligible dependents include the following:

(i) *Spouse.* A lawful husband or wife of a member or former member. The spouse of a deceased member or retiree must not be remarried. A former spouse also may qualify for benefits as a dependent spouse. A former spouse is a spouse who was married to a military member, or former member, but whose marriage has been terminated by a final decree of divorce, dissolution or annulment. To be eligible for CHAMPUS benefits, a former spouse must meet the criteria described in paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section *and* must qualify under the group defined in paragraph (b)(2)(i)(F)(1) or (b)(2)(i)(F)(2) of this section.

(A) Must be unmarried; and
(B) Must not be covered by an employer-sponsored health plan; and

(C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and

(D) Must not be eligible for Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section; and

(E) Must not be the dependent of a NATO member; *and*

(F) Must meet the requirements of paragraph (b)(2)(i)(F)(1) or (b)(2)(i)(F)(2) of this section:

(1) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section.

(i) If the date of the final decree of divorce, dissolution, or annulment was before February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care received on or after January 1, 1985.

(ii) If the date of the final decree of the divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care which is received on or after the date of the divorce, dissolution, or annulment.

(2) The former spouse must have been married to the same member or former member for at least 20 years, and at least 15, but less than 20 of those married years were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(i) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the divorce, dissolution, or annulment, whichever is later. Eligibility continues indefinitely unless affected by any of the conditions of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section.

(ii) If the date of the final decree of divorce, dissolution or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the decree of divorce, dissolution, or annulment until December 31, 1988, or for two years from the date of the divorce, dissolution, or annulment, whichever is later.

(iii) If the date of the final decree of divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 days in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

(ii) *Child*. A dependent child is an unmarried child of a member or former member who has not reached his or her twenty-first (21st) birthday, except an incapacitated adopted child meeting the requirements of paragraph (b)(2)(ii)(H)(2) of this section, and who bears one of the following relationships to a member or former member of one of the Uniformed Services:

(A) A legitimate child; or

(B) An adopted child whose adoption has been legally completed on or before the child's twenty-first (21st) birthday; or

(C) A legitimate stepchild; or

(D) An illegitimate child of a *member or former member* whose paternity/maternity has been determined judicially, and the member or former member directed to support the child; or

(E) An illegitimate child of a *member or former member* whose paternity/maternity has not been determined judicially, who resides with or in the home provided by the member or former member, and is or continues to be dependent upon the member or former member for over one-half of his or her support, or who was so dependent on the former member at the time of the former member's death; or

(F) An illegitimate child of a *spouse of a member* who resides with or in a home provided by the member and is, and continues to be dependent upon the member for over one-half of his or her support; or

(G) An illegitimate child of a *spouse of a former member* who resides with or in a home provided by a former member or the former member's spouse at the time of death of the former member, and is, or continues to be, or was, dependent upon the former member for more than one-half of his or her support at the time of death; or

(H) An individual who falls into one of the following classes:

(1) A *student*. A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married, has passed his or her 21st birthday but has not passed his or her 23rd birthday, is dependent upon the member or former member for over 50 percent of his or her support or was dependent upon the member or former member for over 50 percent of his or her support on the date of the member's or former member's death, and is pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C. chapters 34 and 35.

Note: Courses of education offered by institutions listed in the "Education Directory," "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to 38 U.S.C. chapters 34 and 35, a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(2) *An incapacitated child*. A child determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, who is not married and is incapable of self-support because of a mental or physical disability that:

(i) Existed before the child's twenty-first (21st) birthday; or

(ii) Occurred between the ages of 21 and 23 while the child was enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education (see NOTE to paragraph (b)(2)(ii)(H)(2)(iii) of this section), and is or was at the time of the member's or former member's death dependent on the member or former member for over one-half of his or her support; and

(iii) The incapacity is continuous. (If the incapacity significantly improves or ceases at any time, CHAMPUS eligibility cannot be reinstated on the basis of the incapacity, unless the incapacity recurs and the beneficiary is under age 21, or is under age 23 and is enrolled as a full-time student under paragraph (b)(2)(ii)(H)(2)(ii) of this section. If the child was not incapacitated after that date, no CHAMPUS eligibility exists on the basis of the incapacity. However, incapacitated children who marry and who subsequently become unmarried through divorce, annulment, or death of spouse, may be reinstated as long as they still meet all other requirements).

Note: An institution of higher learning is a college, university, or similar institution, including a technical or business school, offering post-secondary level academic instruction that leads to an associate or higher degree, if the school is empowered by the appropriate State education authority under State law to grant an associate, or higher, degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. The term also shall include a hospital offering educational programs at the post-secondary level regardless of whether the hospital grants a post-secondary degree. The

term also shall include an educational institution that is not located in a State, that offers a course leading to a standard college degree, or the equivalent, and that is recognized as such by the Secretary of Education (or comparable official) of the country, or other jurisdiction, in which the institution is located (38 U.S.C. chapter 34, section 1661, and chapter 35, section 1701).

Courses of education offered by institutions listed in the "Education Directory," "Higher Education" or "Accredited Higher Institutions" issued periodically by the Department of Education meet the criteria approved by the Administering Secretary or the Secretary of Education. For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to chapters 34 and 35 of 38 U.S.C., a statement may be obtained from the Department of Education, Washington, D.C. 20202.

(3) *A child of a deceased reservist*. A child, who is determined to be a member of one of the classes in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(G) of this section, of a reservist in a Uniformed Service who incurs or aggravates an injury, illness, or disease, during, or on the way to or from, active duty training for a period of 30 days or less or inactive duty training, and the reservist dies as a result of that specific injury, illness or disease.

(4) *A child placed in legal custody of a member or former member*. A child who is placed in legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child.

(iii) *Abused dependents*.—(A) *Categories of abused dependents*. An abused dependent may be either a spouse or a child. Eligibility for either class of abused dependent results from being either:

(1) The spouse (including a former spouse) or child of a member who has received a dishonorable or bad-conduct discharge, or dismissal from a Uniformed Service as a result of a court-martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense. Until October 17, 1998, Medical benefits are limited to care related to the physical or emotional abuse and for a period of 12 months following the member's separation from the Uniformed Service. On or after October 17, 1998, medical benefits can include all under the Basic Program and under the Program for Persons with Disabilities for the period that the spouse or child is in receipt of

transitional compensation under section 1059 of title 10 U.S.C.

(2) The spouse (including a former spouse) or child of a member or former member who while a member and as a result of misconduct involving abuse of the spouse or child has eligibility to receive retired pay on the basis of years of service terminated.

(B) *Requirements for categories of abused dependents.*—(1) *Abused spouse.* As long as the spouse is receiving payments from the DoD Military Retirement Fund under court order, the spouse is eligible for health care under the same conditions as any spouse of a retired member. The abused spouse must:

(i) Under paragraph (b)(2)(iii)(A)(1) of this section, be a lawful husband or wife or a former spouse of the member; or

(ii) Under paragraph (b)(2)(iii)(A)(2) of this section, be a lawful husband or wife or a former spouse of the member or former member, and the spouse is receiving payments from the Department of Defense Military Retirement Fund under 10 U.S.C. 1408(h) pursuant to a court order; and

(A) Be a victim of the abuse; and

(B) Have been married to the member or former member at the time of the abuse; or

(C) Be the natural or adoptive parent of a dependent child of the member or former member who was the victim of the abuse.

(2) *Abused child.* The abused child must:

(i) Under paragraph (b)(2)(iii)(A)(1) of this section, be a dependent child of the member or former member.

(ii) Under paragraph (b)(2)(iii)(A)(2) of this section,

(A) Have been a member of the household where the abuse occurred; and

(B) Be an unmarried legitimate child, including an adopted child or stepchild of the member or former member; and

(C) Be under the age of 18; or

(D) Be incapable of self support because of a mental or physical incapacity that existed before becoming 18 years of age and be dependent on the member or former member for over one-half of his or her support; or

(E) If enrolled in a full-time course of study in an institution of higher learning recognized by the Secretary of Defense (for the purposes of 10 U.S.C. 1408(h)), be under 23 years of age and be dependent on the member or former member for over one-half of his or her support.

(F) The dependent child is eligible for health care, regardless of whether any court order exists, under the same conditions as any dependent of a retired member.

(3) *TAMP eligibles.* A former member, including his or her dependents, who is eligible under the provisions of the Transitional Assistance Management Program as described in paragraph (e) of this § 199.3.

(c) *Beginning dates of eligibility.* (1) Beginning dates of eligibility depend on the class to which the individual belongs and the date the individual became a member of the class. Those who join after the class became eligible attain individual eligibility on the date they join.

(2) Beginning dates of eligibility for each class of spouse (*excluding spouses who are victims of abuse and eligible spouses of certain deceased reservists*) are as follows:

(i) A spouse of a member for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program and benefits under the Program for Persons with Disabilities, January 1, 1967;

(ii) A spouse of a former member:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(iii) A former spouse:

(A) For medical benefits under the Basic Program, dates of beginning eligibility are as indicated for each category of eligible former spouse identified within paragraph (b)(2)(i) of this section.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(3) Beginning dates of eligibility for spouses who are victims of abuse (*excluding spouses who are victims of abuse of certain deceased reservists*) are as follows:

(i) An abused spouse meeting the requirements of paragraph (b)(2)(iii)(A)(1) of this section, including an eligible former spouse:

(A) For medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For all medical and dental benefits under the Basic Program for the period that the spouse is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(C) For medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities for a period up to one year (12 months) following

the person's separation from the Uniformed Service, November 14, 1986.

(D) For all medical and dental benefits described in section 199.5 for the period that the spouse is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(ii) An abused spouse meeting the requirements of paragraphs (b)(2)(iii)(A)(2) of this section, including an eligible former spouse:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(4) Beginning dates of eligibility for spouses of certain deceased reservists, *including spouses who are victims of abuse of certain deceased reservists*, are as follows:

(i) A spouse meeting the requirements of paragraph (b)(2)(i) of this section, including an eligible former spouse:

(A) For benefits under the Basic Program, November 14, 1986.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(ii) An abused spouse of certain deceased reservists, meeting the requirements of paragraphs (b)(2)(iii) of this section, including an eligible former spouse, *for the limited benefits and period of eligibility* described in paragraphs (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, November 14, 1986.

(B) For benefits under the Program for Persons with Disabilities, November 14, 1986.

(iii) An abused spouse of certain deceased reservists, including an eligible former spouse, meeting the requirements of paragraphs (b)(2)(iii) of this section:

(A) For benefits under the Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(5) Beginning dates of eligibility for each class of dependent children, (*excluding dependent children of certain deceased reservists, abused children and incapacitated children whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning*), are as follows:

(i) Legitimate child, adopted child, or legitimate stepchild of a member, for:

(A) Medical benefits authorized by the Dependents' Medical Care Act of 1956, December 7, 1956;

(B) Outpatient medical benefits under the Basic Program, October 1, 1966;

(C) Inpatient medical benefits under the Basic Program and benefits under the Program for Persons with Disabilities, January 1, 1967;

(ii) Legitimate child, adopted child or legitimate stepchild of *former members*:

(A) For medical benefits under the Basic Program, January 1, 1967.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(iii) Illegitimate child of a male or female *member or former member* whose paternity/maternity has been determined judicially and the member or former member has been directed to support the child, for:

(A) All benefits for which otherwise entitled, August 31, 1972.

(B) Program for Persons with Disabilities benefits limited to dependent children of *members only*, August 31, 1972.

(iv) Illegitimate child of:

(A) A male member or former member whose paternity *has not been* determined judicially:

(B) A female member or former member who resides with, or in a home provided by the member or former member, or who was residing in a home provided by the member or former member at the time of the member's or former member's death, and who is or continues to be dependent on the member for over one-half of his or her support, or was so dependent on the member or former member at the time of death;

(C) A spouse of a member or former member who resides with or in a home provided by the member or former member, or the parent who is the spouse of the member or former member or was the spouse of a member or former member at the time of death, and who is and continues to be dependent upon the member or former member for over one-half of his or her support, or was so dependent on the member or former member at the time of death; for:

(1) All benefits for which otherwise eligible, January 1, 1969.

(2) Program for Persons with Disabilities limited to dependent children of *members only*, January 1, 1969.

(6) Beginning dates of eligibility for children of certain deceased reservists who meet the requirements of paragraph (b)(2)(ii)(H)(3) of this section, *excluding incapacitated children who meet the requirements of paragraph*

(b)(2)(ii)(H)(2) of this section, for:

(i) Benefits under the Basic program, November 14, 1986.

(ii) Not eligible for benefits under the Program for Persons with Disabilities.

(7) Beginning dates of eligibility for children who are victims of abuse, *including incapacitated children who meet the requirements of paragraph* (b)(2)(ii)(H)(2) of this section are as follows:

(i) An abused child meeting the requirements of paragraph (b)(2)(iii)(A)(1) of this section:

(A) Medical and dental care for problems associated with the physical or emotional abuse under the Basic Program for a period of up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(B) For all medical and dental benefits under the Basic Program for the period that the child is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(C) Medical and dental care for problems associated with the physical or emotional abuse under the Program for Persons with Disabilities for a period up to one year (12 months) following the person's separation from the Uniformed Service, November 14, 1986.

(D) For all medical and dental benefits described in section 199.5 for the period that the child is in receipt of transitional compensation under section 1059 of title 10 U.S.C., October 17, 1998.

(ii) An abused child meeting the requirements of paragraphs (b)(2)(iii)(A)(2) of this section:

(A) For all benefits under the CHAMPUS Basic Program, October 23, 1992.

(B) Ineligible for benefits under the Program for Persons with Disabilities.

(8) Beginning dates of eligibility for incapacitated children who meet the requirements of paragraph (b)(2)(ii)(H)(2) of this section, whose incapacity occurred between the ages of 21 and 23 while enrolled in a full-time course of study in an institution of higher learning approved by the Administering Secretary or the Department of Education, and, are or were at the time of the member's or former member's death, dependent on the member or former member for over one-half of their support, for:

(i) All benefits for which otherwise entitled, October 23, 1992.

(ii) Program for Persons with Disabilities benefits limited to children of *members only*, October 23, 1992.

(9) Beginning dates of eligibility for a child who meets the requirements of paragraph (b)(2)(ii)(H)(4) and:

(i) Has been placed in custody by a court:

(A) All benefits for which entitled, July 1, 1994.

(B) Program for Persons with Disabilities benefits limited to children of *members only*, July 1, 1994.

(ii) Has been placed in custody by a recognized adoption agency:

(A) All benefits for which entitled, October 5, 1994.

(B) Program for Persons with Disabilities benefits limited to children of *members only*, October 5, 1994.

(10) Beginning dates of eligibility for a retiree for:

(i) Medical benefits under the Basic Program January 1, 1967.

(ii) Retirees and their dependents are not eligible for benefits under the Program for Persons with Disabilities.

(d) *Dual eligibility*. Dual eligibility occurs when a person is entitled to benefits from two sources. For example, when an active duty member is also the dependent of another active duty member, a retiree, or a deceased active duty member or retiree, dual eligibility, that is, entitlement to direct care from the Uniformed Services medical care system and CHAMPUS is the result. Since the active duty status is primary, and it is the intent that all medical care be provided an active duty member through the Uniformed Services medical care system, CHAMPUS eligibility is terminated as of 12:01 a.m. on the day following the day the dual eligibility begins. However, any dependent children in a marriage of two active duty persons or of an active duty member and a retiree, are CHAMPUS eligible in the same manner as dependent children of a marriage involving only one CHAMPUS sponsor. Should a spouse or dependent who has dual eligibility leave active duty status, that person's CHAMPUS eligibility is reinstated as of 12:01 a.m. of the day active duty ends, if he or she otherwise is eligible as a dependent of a CHAMPUS sponsor.

Note: No CHAMPUS eligibility arises as the result of the marriage of two active duty members.

(e) *Eligibility Under the Transitional Assistance Management Program (TAMP)*. Transitional health care benefits under CHAMPUS are authorized for the applicable time period described, for:

(1) Up to thirty (30) days or until again covered by an employer-sponsored health plan, whichever occurs earlier, following release from active duty for:

(i) Activated Guard/Reserve and their dependents,

(ii) Involuntary stop-loss and their dependents,

(iii) Voluntary stop-loss and their dependents, and

(iv) Members who accepted Voluntary Separation Incentives (VSI).

(2) Sixty (60) days for regular DoD military and their dependents when the sponsor is involuntarily separated with less than six years of active service. Involuntary separation must occur

during the five-year period beginning October 1, 1990.

(3) One hundred twenty (120) days for regular military and their dependents when the sponsor is involuntarily separated with six or more years of active service. Involuntary separation must occur during the five year period beginning October 1, 1990. Each branch of service will determine eligibility, including dates, for its members and their dependents and provide data to DEERS.

(f) *Changes in status which result in termination of CHAMPUS eligibility.* Changes in status which result in a loss of CHAMPUS eligibility as of 12:01 a.m. of the day following the day the event occurred, unless otherwise indicated, are as follows:

(1) *Changes in the status of a member.*
(i) When an active duty member's period of active duty ends, excluding retirement or death.

(ii) When an active duty member is placed on desertion status (eligibility is reinstated when the active duty member is removed from desertion status and returned to military control).

Note: A member serving a sentence of confinement in conjunction with a sentence of punitive discharge is still considered on active duty until such time as the discharge is executed.

(2) *Changes in the status of a retiree.*
(i) When a retiree ceases to be entitled to retired, retainer, or equivalent pay for any reason, the retiree's dependents lose their eligibility unless the dependent is otherwise eligible (e.g., some former spouses, some dependents who are victims of abuse and some incapacitated children as outlined in paragraph (b)(2)(ii)(H)(2) of this section).

(ii) A retiree also loses eligibility when no longer entitled to retired, retainer, or equivalent pay.

Note: A retiree who waives his or her retired, retainer or equivalent pay is still considered a retiree for the purposes of CHAMPUS eligibility.

(3) *Changes in the status of a dependent.* (i) Divorce, except for certain classes of former spouses as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and judicially determined illegitimate children).

Note: An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the divorce becomes final.

(ii) Annulment, except for certain classes of former spouse as provided in paragraph (b)(2)(i) of this section and the member or former member's own children (i.e., legitimate, adopted, and

judicially determined illegitimate children).

Note: An unadopted stepchild loses eligibility as of 12:01 a.m. of the day following the day the annulment becomes final.

(iii) Adoption, except for adoptions occurring after the death of a member or former member.

(iv) Marriage of a child, except when the marriage is terminated by death, divorce, or annulment before the child is 21 or 23 if an incapacitated child as provided in paragraph (b)(2)(ii)(H)(2) of this section.

(v) Marriage of a widow or widower, except for the child of the widow or widower who was the stepchild of the deceased member or former member at the time of death. The stepchild continues CHAMPUS eligibility as other classes of dependent children.

(vi) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (f)(3)(viii) and (f)(3)(ix) of this section. (This also applies to individuals living outside the United States where Medicare benefits are not available).

(vii) Attainment of age 65, except for dependents of active duty member's and beneficiaries not eligible for Part A Medicare. CHAMPUS eligibility is lost at 12:01 a.m. on the last day of the month preceding the month of attainment of age 65.

Note: If the person is not eligible for Part A of Medicare, he or she must file a Social Security Administration "Notice of Disallowance" certifying to that fact with the Uniformed Service responsible for the issuance of his or her identification card so a new card showing CHAMPUS eligibility can be issued. Individuals who lose their CHAMPUS eligibility because they have reached the age limitation or were eligible for Part A, Medicare cannot be reinstated under CHAMPUS. Additionally, individuals entitled only to supplementary medical insurance (Part B) of Medicare, but not Part A, or Part A through the Premium HI provisions (provided for under the 1972 Amendments to the Social Security Act retain eligibility under CHAMPUS (refer to section 199.8 of this part for additional information when a double coverage situation is involved).

(viii) End stage renal disease. All beneficiaries, except dependents of active duty members, lose their CHAMPUS eligibility when Medicare coverage becomes available to a person because of chronic renal disease unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426-1(a);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

(ix) Individuals with certain disabilities. Each case relating to Medicare eligibility resulting from being disabled requires individual investigation. All beneficiaries except dependents of active duty members lose their CHAMPUS eligibility when Medicare coverage becomes available to a disabled person unless the following conditions have been met. CHAMPUS eligibility will continue if:

(A) The individual is under 65 years old;

(B) The individual became eligible for Medicare under the provisions of 42 U.S.C. 426(b)(2);

(C) The individual is enrolled in Part B of Medicare; and

(D) The individual has applied and qualified for continued CHAMPUS eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

(x) Disabled students, that is children age 21 or 22, who are pursuing a full-time course of higher education and who, either during the school year or between semesters, suffer a disabling illness or injury with resultant inability to resume attendance at the institution remain eligible for CHAMPUS medical benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, CHAMPUS benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in a full time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status *does not* have eligibility and *may not* qualify for eligibility under the requirements related to mental or physical incapacity as described in paragraph (b)(2)(ii)(H)(2) of this section.

(g) *Reinstatement of CHAMPUS eligibility.* Circumstances which result in reinstatement of CHAMPUS eligibility are as follows:

(1) *End Stage renal disease.* Unless CHAMPUS eligibility has been

continued under paragraph (f)(3)(viii) of the section, when Medicare eligibility ceases for end-stage renal disease patients, CHAMPUS eligibility resumes if the person is otherwise still eligible. He or she is required to take action to be reinstated as a CHAMPUS beneficiary and to obtain a new identification card.

(2) *Disability.* Some disabilities are permanent, others temporary. Each case must be reviewed individually. Unless CHAMPUS eligibility has been continued under paragraph (f)(3)(ix) of this section, when disability ends and Medicare eligibility ceases, CHAMPUS eligibility resumes if the person is otherwise still eligible. Again, he or she is required to take action to obtain a new CHAMPUS identification card.

(h) *Determination of eligibility status.* Determination of an individual's eligibility as a CHAMPUS beneficiary is the primary responsibility of the Uniformed Service in which the member or former member is, or was, a member, or in the case of dependents of a NATO military member, the Service that sponsors the NATO member. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the results of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(i) *Procedures for determination of eligibility.* Procedures for the determination of eligibility are prescribed within the Department of Defense Instruction 1000.13 available at local military facilities personnel offices.

(j) *CHAMPUS procedures for verification of eligibility.* (1) Eligibility for CHAMPUS benefits will be verified through the Defense Enrollment Eligibility Reporting System (DEERS) maintained by the Uniformed Services, except for abused dependents as set forth in paragraph (b)(2)(iii) of this section. It is the responsibility of the CHAMPUS beneficiary, or parent, or legal representative, when appropriate, to provide the necessary evidence required for entry into the DEERS file to establish CHAMPUS eligibility and to ensure that all changes in status that may affect eligibility be reported immediately to the appropriate Uniformed Service for action.

(2) Ineligibility for CHAMPUS benefits may be presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) The Director, OCHAMPUS, shall issue guidelines as necessary to implement the provisions of this section.

4. Section 199.4 is amended by revising paragraphs (e)(5)(iii)(B), (f)(1), (f)(2), introductory text, (f)(2)(ii), introductory text, (f)(2)(iii), (f)(2)(iv), (f)(3), introductory text, (f)(3)(i), (f)(3)(iii), (f)(4), introductory text and (f)(4)(ii) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) In most instances, for costs related to kidney transplants, Medicare (not CHAMPUS) benefits will be applicable. If a CHAMPUS beneficiary participates as a kidney donor for a Medicare beneficiary, Medicare will pay for expenses in connection with the kidney transplant to include all reasonable preparatory, operation and postoperation recovery expenses associated with the donation (postoperative recovery expenses are limited to the actual period of recovery). (See section 199.3 of this part for additional information on end stage renal disease.)

* * * * *

(f) * * *

(1) *General.* As stated in the introductory paragraph to this section, the Basic Program is essentially a supplemental program to the Uniformed Services direct medical care system. To encourage use of the Uniformed Services direct medical care system wherever its facilities are available and appropriate, the Basic Program benefits are designed so that it is to the financial advantage of a CHAMPUS beneficiary or sponsor to use the direct medical care system. When medical care is received from civilian sources, a CHAMPUS beneficiary is responsible for payment of certain deductible and cost-sharing amounts in connection with otherwise covered services and supplies. By statute, this joint financial responsibility between the beneficiary or sponsor and CHAMPUS is more favorable for dependents of members than for other classes of beneficiaries.

(2) *Dependents of members of the Uniformed Services.* CHAMPUS beneficiary or sponsor liability set forth for dependents of members is as follows:

(i) * * *

(ii) *Inpatient cost-sharing.* Dependents of members of the Uniformed Services are responsible for the payment of the first \$25 of the allowable institutional costs incurred with each covered

inpatient admission to a hospital or other authorized institutional provider (refer to § 199.6 of the part), or the amount the beneficiary or sponsor would have been charged had the inpatient care been provided in a Uniformed Service hospital, whichever is greater.

* * * * *

(iii) *Outpatient cost-sharing.*

Dependents of members of the Uniformed Services are responsible for payment of 20 percent of the CHAMPUS-determined allowable cost or charge beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

* * * * *

(iv) *Ambulatory surgery.*

Notwithstanding the above provisions pertaining to outpatient cost-sharing, dependents of members of the Uniformed Services are responsible for payment of \$25 for surgical care that is authorized and received while in an outpatient status and that has been designated in guidelines issued by the Director, OCHAMPUS, or a designee.

* * * * *

(3) *Former members and dependents of former members.* CHAMPUS beneficiary liability set forth for former members and dependents of former members is as follows:

(i) *Annual fiscal year deductible for outpatient services or supplies.* The annual fiscal year deductible for otherwise covered outpatient services or supplies provided former members and dependents of former members is the same as the annual fiscal year outpatient deductible applicable to dependents of active duty members of rank E-5 or above (refer to paragraph (f)(2)(i)(A) or (B) of this section).

(ii) * * *

(iii) *Outpatient cost-sharing.* Former members and dependents of former members are responsible for payment of 25 percent of the CHAMPUS-determined allowable costs or charges beyond the annual fiscal year deductible amount (as described in paragraph (f)(2)(i) of this section) for otherwise covered services or supplies provided on an outpatient basis by authorized providers.

* * * * *

(4) *Former spouses.* CHAMPUS beneficiary liability for former spouses eligible under the provisions set forth in § 199.3 of this part is as follows:

(i) * * *

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for

payment of cost-sharing amounts the same as those required for former members and dependents of former members.

* * * * *

6. Section 199.8 is amended by revising paragraphs (a) and (d)(1) to read as follows.

§ 199.8 Double coverage.

* * * * *

(a) *Introduction.* (1) In enacting CHAMPUS legislation, Congress clearly has intended that CHAMPUS be the secondary payer to all health benefit and insurance plans. 10 U.S.C. 1079(j)(1) specifically provides:

"A benefit may not be paid under a plan (CHAMPUS) covered by this section in the case of a person enrolled in or covered by any other insurance, medical service, or health plan to the extent that the benefit also is a benefit under the other plan, except in the case of a plan (Medicaid) administered under title 19 of the Social Security Act (42 U.S.C. 1396, *et seq.*)."

(2) The above provision is made applicable specifically to retired members, dependents, and survivors by 10 U.S.C. 1086(d). The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges.

* * * * *

(d) * * *

(1) *CHAMPUS and Medicare.* Under certain circumstances a CHAMPUS beneficiary can also be eligible for Medicare. In any double coverage situation involving Medicare, Medicare is always the primary payer. When Part A, "Hospital Insurance," of Medicare is involved, the Medicare "lifetime reserve" benefit must be used before CHAMPUS benefits may be used. The procedures to be followed for these circumstances are as follows.

(i) *Dependents of active duty members.* For dependents of active duty members, payment will be determined in accordance with paragraph (c) of this section.

(ii) *Medicare end stage renal disease beneficiaries.* In any case involving a Medicare end stage renal disease beneficiary as provided in paragraph (f)(3)(viii) of § 199.3, CHAMPUS secondary payments will be determined in accordance with paragraph (c) of this section.

(iii) *Medicare disabled beneficiaries.* In any case involving a Medicare disabled beneficiary as provided in

paragraph (f)(3)(ix) of § 199.3, CHAMPUS payment is determined in accordance with paragraph (c) of this section.

* * * * *

7. Section 199.20 is amended by adding paragraph (d)(1)(iv) to read as follows.

§ 199.20 Continued Health Care Benefit Program (CHCBP).

* * * * *

(d) * * *

(1) * * *

(iv) An unmarried person who:

(A) Is placed in the legal custody of a member or former member by a court or who is placed in the home of a member or former member by a recognized placement agency in anticipation of the legal adoption of the child; and

(B) Either:

(1) Has not attained the age of 21 if not in school or age 23 if enrolled in a full time course of study at an institution of higher learning; or

(2) Is incapable of self-support because of a mental or physical incapacity which occurred while the person was considered a dependent of the member or former member; and

(C) Is dependent on the member or former member for over one-half of the person's support; and

(D) Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation; and

(E) Is not a dependent of a member or former member as described in § 199.3(b)(2).

* * * * *

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-21741 Filed 8-23-99; 8:45 am]

BILLING CODE 5001-10-P

POSTAL SERVICE

39 CFR Part 20

Global Package Link Rate Adjustments and Introduction of Service to Argentina

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service published an interim rule and request for comments concerning adjusting the rates for Global Package Link and introducing a new structure for volume discounts in the **Federal Register** (63 FR

66043) on December 1, 1998. In addition, service to Argentina was initiated. The Postal Service hereby gives notice that it is adopting the interim rule.

EFFECTIVE DATE: August 24, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Michelson, (202) 268-5731.

SUPPLEMENTARY INFORMATION: Global Package Link (GPL) is an international mail service designed for companies sending merchandise packages to other countries. To use GPL, a customer is required to mail at least 10,000 packages per year using the service and agree to link its information systems with the Postal Service so that certain information about the contents of the customer's packages can be extracted for customs clearance and other purposes.

The Postal Service announced new rates and a new discount structure for GPL in the **Federal Register** (63 FR 66043) on December 1, 1998. The increased rates were the result of declining economic conditions in Japan and other countries and rising costs, including implementation of harmonization for all items to Japan. Overall, the base rates were increased approximately 9 percent. See Appendix 1 for specific rates to each GPL country.

Currently, GPL provides a volume discount within each country beginning at 100,000 packages. The new discount structure is based on a mailer's worldwide volume and discounts are available when volume reaches more than 25,000 packages per postal fiscal year. Discounts increase with volume on the basis of the following schedule:

Number of packages	Discount (percent)
25,001 to 50,000	1
50,001 to 75,000	2
75,001 to 100,000	3
100,001 and over	4

Each year's discounts are calculated on the previous postal fiscal year's volume and apply to mailings made during the next calendar year. For example, a mailer who mails 55,000 packages during postal fiscal year 1998 (September 13, 1997, through September 11, 1998) will receive a discount from the base rate for all GPL mailings made during calendar year 1999 (January 1, 1999, through December 31, 1999). Postal fiscal year 1998 will be used for discounts applied in calendar year 1999.

The Postal Service also introduced GPL service to Argentina. Two levels of service, Premium and Standard, are offered. The maximum weight of parcels to Argentina is 44 pounds with a

maximum size of 42 inches in length and a maximum length and girth combined of 79 inches. Rates are shown in Appendix 1. Packages sent in Premium service are insured at no additional charge, subject to the provisions of *Domestic Mail Manual* (DMM) S010 and S500. No insurance is available for packages sent to Argentina as Standard service.

The Postal Service requested comment on or before December 31, 1998. The Postal Service did not receive any written comments on the interim rule. Accordingly, the Postal Service adopts, without change, the interim rule.

The Postal Service adopts the following amendments to Subchapter 620, Global Package Link, and the appropriate Individual Country Listings, International Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate program changes to Subchapter 620 Global Package Link as follows:

620 Global Package Link

621 Description

* * * * *

621.3 Availability

Global Package Link service is available only to Argentina, Brazil, Canada, Chile, China, France, Germany,

Hong Kong, Japan, Mexico, Singapore, and the United Kingdom.

* * * * *

623 General

* * * * *

623.3 Size and Weight Limits

623.31 Weight

The weight limits for Global Package Link service are 70 pounds for Chile, China, and Germany; 66 pounds for Brazil, Canada, France, Singapore, and the United Kingdom; 64 pounds for Mexico; 44 pounds for Argentina and Hong Kong; and 44 pounds for Japan with Premium service. * * *

623.32 Size

The maximum length of GPL packages is 60 inches. The maximum length and girth combined is 108 inches.

Exceptions: Maximum size for Germany is length 47 inches, height 23 inches, width 23 inches; for Japan Standard packages weighing less than 1 pound, the maximum length is 24 inches with a combined maximum length, depth, and height of 36 inches. The maximum size for packages to Argentina is 42 inches in length and 79 inches length and girth combined.

* * * * *

623.4 Postage

* * * * *

623.44 Base Rates

The Postal Service will charge the base rates, in 1-pound increments, unless the mailer qualifies for the discounts in 623.441 by mailing more than 25,000 packages in a postal fiscal year. The discounts apply to mailings made during the following calendar year.

623.441 Discounts

Number of packages	Discount
25,001 to 50,000	1%
50,001 to 75,000	2%
75,001 to 100,000	3%
100,001 and over	4%

* * * * *

626 Services Available

626.1 Delivery Options

* * * * *

626.12 Standard Service

Standard service is available to Argentina, Canada, France, Japan, Singapore, and the United Kingdom. * * *

* * * * *

626.4 Customs

* * * * *

626.43 Payment of Customs Duty

626.431 All Countries Except China, Japan, Hong Kong, and Singapore

For all countries except China, Japan, Hong Kong, and Singapore, the Postal Service will arrange payment of customs duty on behalf of the recipient at the time the merchandise enters the country of destination. Any banking costs or foreign exchange fees applicable to the customs payments will be charged back to the mailer. The Postal Service will notify the mailer electronically of the amount of duty and fees paid, and the mailer will reimburse the Postal Service in a manner and within a time agreed between the mailer and the Postal Service. Because of the need to have funds available for customers at the time of clearance in Argentina, Brazil, Chile, and Mexico, mailers must make an advance deposit prior to the first mailing to cover anticipated duties and taxes in addition to postage. * * *

Appendix 1.—Global Package Link Rates

STANDARD SERVICE RATES—CANADA

Weight not to exceed (pounds)	Premium	U.S. Origin Zone A: Buffalo, New York, Chicago. Canadian Entry: Toronto			U.S. Origin Zone B: Miami, Dallas. Canadian Entry: Toronto*		
		Local	Regional	National	Local	Regional	National
1	\$10.00	\$5.50	\$7.25	\$7.50	\$6.25	\$7.75	\$8.00
2	11.00	6.00	8.25	8.75	7.25	9.50	10.00
3	12.50	6.50	9.25	10.00	8.25	11.00	11.75
4	14.25	7.00	10.00	11.25	9.25	12.25	13.50
5	15.75	7.50	10.75	12.50	10.25	13.75	15.50
6	17.50	8.00	11.75	13.75	11.50	15.25	17.25
7	19.00	8.50	12.50	15.00	12.50	16.50	19.25
8	20.75	9.00	13.25	16.25	13.50	18.00	21.00
9	22.25	9.50	14.25	17.50	14.75	19.50	22.75
10	24.00	10.00	15.00	18.75	15.75	20.75	24.75
11	25.50	10.50	15.50	19.25	16.75	21.75	25.75
12	27.00	11.00	16.25	20.50	17.75	23.25	27.50
13	28.75	11.50	17.25	21.75	19.00	24.75	29.25
14	30.25	12.00	18.00	23.00	20.00	26.00	31.25
15	32.00	12.50	18.75	24.25	21.25	27.50	33.00
16	33.50	13.00	19.75	25.50	22.25	29.00	34.75

STANDARD SERVICE RATES—CANADA—Continued

Weight not to exceed (pounds)	Premium	U.S. Origin Zone A: Buffalo, New York, Chicago. Canadian Entry: Toronto			U.S. Origin Zone B: Miami, Dallas. Canadian Entry: Toronto*		
		Local	Regional	National	Local	Regional	National
17	35.25	13.50	20.50	26.75	23.25	30.25	36.75
18	36.75	14.00	21.25	28.00	24.50	31.75	38.50
19	38.50	14.50	22.25	29.50	25.50	33.25	40.25
20	40.00	15.00	23.00	30.75	26.50	34.50	42.25
21	41.50	15.50	24.00	32.00	27.75	36.00	44.00
22	43.00	16.00	24.25	32.25	28.75	37.00	45.00
23	44.75	16.50	25.25	33.50	29.75	38.50	46.75
24	46.25	17.00	26.00	34.75	30.75	39.75	48.75
25	48.00	17.50	26.75	36.00	32.00	41.25	50.50
26	49.50	18.00	27.75	37.25	33.00	42.75	52.25
27	50.75	18.50	28.50	38.50	34.00	44.00	54.25
28	52.75	19.00	29.25	40.00	35.25	45.50	56.00
29	54.50	19.50	30.25	41.25	36.25	47.00	57.75
30	56.00	20.00	31.00	42.50	37.50	48.25	59.75
31	57.25	20.50	31.75	43.75	38.50	49.75	61.50
32	58.75	21.25	32.75	45.00	39.50	51.25	63.25
33	60.50	21.50	33.00	45.25	40.50	52.25	64.25
34	62.00	22.00	34.00	46.50	41.75	53.50	66.25
35	63.75	22.50	34.75	47.75	42.75	55.00	68.00
36	65.25	23.00	35.75	49.00	43.75	56.50	69.75
37	67.00	23.50	36.50	50.50	45.00	57.75	71.75
38	68.50	24.00	37.25	51.75	46.00	59.25	73.50
39	70.00	24.75	38.25	53.00	47.00	60.75	75.25
40	71.75	25.25	39.00	54.25	48.25	62.00	77.25
41	72.75	25.75	39.75	55.50	49.25	63.50	79.00
42	74.50	26.25	40.75	56.75	50.25	65.00	80.75
43	76.00	26.75	41.50	58.00	51.50	66.25	82.75
44	77.50	27.00	42.00	58.25	52.50	67.25	83.75
45	79.25	27.50	42.75	59.50	53.50	68.75	85.50
46	80.25	28.25	43.75	61.00	54.75	70.00	87.50
47	81.75	28.75	44.50	62.25	55.75	71.50	89.25
48	83.25	29.25	45.25	63.50	56.75	73.00	91.00
49	84.75	29.75	46.25	64.75	58.00	74.25	93.00
50	86.50	30.25	47.00	66.00	59.00	75.75	94.75
51	88.00	30.75	47.75	67.25	60.00	77.25	96.50
52	89.75	31.25	48.75	68.50	61.25	78.50	98.50
53	91.25	31.75	49.50	69.75	62.25	80.00	100.25
54	92.75	32.25	50.00	70.25	63.25	81.00	101.25
55	94.50	32.75	50.75	71.50	64.25	82.50	103.00
56	95.25	33.25	51.50	72.75	65.50	83.75	105.00
57	97.00	33.75	52.50	74.00	66.50	85.25	106.75
58	98.50	34.25	53.25	75.25	67.50	86.75	108.50
59	100.00	34.75	54.25	76.50	68.75	88.00	110.50
60	101.75	35.25	55.00	77.75	69.75	89.50	112.25
61	103.25	35.75	55.75	79.00	71.00	91.00	114.00
62	104.75	36.25	56.75	80.25	72.00	92.25	116.00
63	105.50	36.75	57.50	81.50	73.00	93.75	117.75
64	107.25	37.25	58.25	82.75	74.25	95.25	119.50
65	108.75	37.75	58.75	83.25	75.25	96.25	120.50
66	110.25	38.25	59.50	84.50	76.25	97.50	122.50

*By special arrangement, Dallas origin mail may be entered in Vancouver. This mail will be charged Origin Zone C rates.

Weight not to exceed (pounds)	Schedule C U.S. Origins: Seattle. Canadian Entry: Vancouver			Schedule D U.S. Origins: San Francisco. Canadian Entry: Vancouver			Returns
	Local	Regional	National	Local	Regional	National	
1	\$7.50	\$9.00	\$11.50	\$8.00	\$9.50	\$12.00	\$7.00
2	8.00	9.25	11.75	9.00	10.50	13.00	7.75
3	8.25	9.75	12.25	10.00	11.50	14.00	8.50
4	8.75	10.25	12.75	11.00	12.50	15.00	9.25
5	9.25	10.50	13.00	12.00	13.50	16.00	10.00
6	9.50	11.00	13.50	13.00	14.50	17.00	10.75
7	10.00	11.25	13.75	14.00	15.50	18.00	11.50
8	10.25	11.75	14.25	15.00	16.50	19.00	12.25
9	10.75	12.25	14.75	16.00	17.25	19.75	13.00
10	11.25	12.50	15.00	17.00	18.25	20.75	13.50

Weight not to exceed (pounds)	Schedule C U.S. Origins: Seattle. Canadian Entry: Vancouver			Schedule D U.S. Origins: San Francisco. Canadian Entry: Vancouver			Returns
	Local	Regional	National	Local	Regional	National	
11	11.75	13.00	15.50	18.00	19.50	22.00	14.25
12	12.25	13.75	16.25	19.00	20.50	23.00	15.00
13	12.75	14.25	16.75	20.25	21.75	24.25	15.75
14	13.00	14.75	17.25	21.25	22.75	25.25	16.50
15	13.50	15.25	17.75	22.25	24.00	26.50	17.25
16	14.00	16.00	18.25	23.25	25.00	27.50	18.00
17	14.50	16.50	19.00	24.50	26.25	28.75	18.75
18	15.00	17.00	19.50	25.50	27.25	29.75	19.50
19	15.50	17.50	20.00	26.50	28.50	31.00	20.25
20	16.00	18.00	20.50	27.50	29.75	32.25	21.00
21	16.50	18.75	21.25	28.75	30.75	33.25	21.50
22	17.00	19.25	21.75	29.75	32.00	34.50	22.25
23	17.50	19.75	22.25	30.75	33.00	35.50	23.00
24	18.00	20.25	22.75	31.75	34.25	36.75	23.75
25	18.50	20.75	23.25	33.00	35.25	37.75	24.50
26	19.00	21.50	24.00	34.00	36.50	39.00	25.25
27	19.50	22.00	24.50	35.00	37.50	40.00	26.00
28	20.00	22.50	25.00	36.00	38.75	41.25	26.75
29	20.50	23.00	25.50	37.25	39.75	42.25	27.50
30	21.00	23.50	26.00	38.25	41.00	43.50	28.25
31	21.50	24.25	26.75	39.25	42.00	44.50	29.00
32	22.00	24.75	27.25	40.25	43.25	45.75	29.50
33	22.25	25.25	27.75	41.50	44.25	46.75	30.25
34	22.75	25.75	28.25	42.50	45.50	48.00	31.00
35	23.25	26.25	28.75	43.50	46.50	49.00	31.75
36	23.75	27.00	29.50	44.50	47.75	50.25	32.50
37	24.25	27.50	30.00	45.75	48.75	51.25	33.25
38	24.75	28.00	30.50	46.75	50.00	52.50	34.00
39	25.25	28.50	31.00	47.75	51.00	53.50	34.75
40	25.75	29.00	31.50	49.00	52.25	54.75	35.50
41	26.25	29.75	32.25	50.00	53.25	55.75	36.25
42	26.75	30.25	32.75	51.00	54.50	57.00	37.00
43	27.25	30.75	33.25	52.00	55.50	58.00	37.75
44	27.75	31.25	33.75	53.25	56.75	59.25	38.25
45	28.25	31.75	34.25	54.25	57.75	60.25	39.00
46	28.75	32.50	35.00	55.25	59.00	61.50	39.75
47	29.25	33.00	35.50	56.25	60.00	62.50	40.50
48	29.75	33.50	36.00	57.50	61.25	63.75	41.25
49	30.25	34.00	36.50	58.50	62.25	64.75	42.00
50	30.75	34.50	37.00	59.50	63.50	66.00	42.75
51	31.25	35.25	37.75	60.50	64.50	67.00	43.50
52	31.50	35.75	38.25	61.75	65.75	68.25	44.25
53	32.00	36.25	38.75	62.75	66.75	69.25	45.00
54	32.50	36.75	39.25	63.75	68.00	70.50	45.75
55	33.00	37.25	39.75	64.75	69.00	71.50	46.25
56	33.50	38.00	40.50	66.00	70.25	72.75	47.00
57	34.00	38.50	41.00	67.00	71.25	73.75	47.75
58	34.50	39.00	41.50	68.00	72.50	75.00	48.50
59	35.00	39.50	42.00	69.00	73.50	76.00	49.25
60	35.50	40.00	42.50	70.25	74.75	77.25	50.00
61	36.00	40.75	43.25	71.25	75.75	78.25	50.75
62	36.50	41.25	43.75	72.25	77.00	79.50	51.50
63	37.00	41.75	44.25	73.25	78.00	80.50	52.25
64	37.50	42.25	44.75	74.50	79.25	81.75	53.00
65	38.00	42.75	45.25	75.50	80.50	83.00	53.75
66	38.50	43.50	46.00	76.50	81.50	84.00	54.25

Weight not over (lb.)	Argentina	France	Japan	Singapore	Mexico	UK	UK econ- omy rate
1	\$8.50	\$7.25	\$6.00	\$11.50	\$5.50	\$12.2	\$10.75
2	11.25	9.50	9.25	15.25	6.50	13.50	12.25
3	13.50	11.75	14.25	18.50	7.75	15.00	13.50
4	15.50	14.00	18.00	22.25	8.75	16.50	15.00
5	17.75	16.00	24.00	26.75	9.75	17.75	16.25
6	19.75	18.25	27.25	30.50	11.50	19.25	17.50
7	22.50	20.50	.....	34.25	12.50	20.50	19.00
8	24.75	22.50	.....	38.25	13.75	22.00	20.25
9	26.75	24.75	.....	42.00	14.75	23.50	21.75
10	29.00	27.00	.....	45.75	15.75	24.75	23.00

Weight not over (lb.)	Argentina	France	Japan	Singapore	Mexico	UK	UK economy rate
11	32.25	29.25	.....	49.50	17.00	26.25	24.25
12	34.50	31.25	.....	53.50	18.00	27.50	25.75
13	36.50	33.50	.....	57.25	19.00	29.00	27.00
14	38.75	35.75	.....	61.50	20.25	30.50	28.50
15	41.75	38.00	.....	65.50	21.25	31.75	29.75
16	44.00	40.00	.....	69.25	22.25	33.25	31.00
17	46.25	42.25	.....	73.00	23.50	34.75	32.50
18	48.75	44.50	.....	76.75	24.50	36.00	33.75
19	51.00	46.50	.....	80.75	25.50	37.50	35.25
20	53.75	48.75	.....	85.00	26.75	38.75	36.50
21	56.00	51.00	.....	88.25	27.25	40.25	37.75
22	59.00	53.25	.....	92.00	28.25	41.75	39.25
23	61.50	55.25	.....	98.75	29.50	43.00	40.50
24	63.75	57.50	.....	102.50	30.50	44.50	42.00
25	66.25	59.75	.....	105.75	31.50	45.75	43.25
26	68.50	61.75	.....	109.50	32.75	47.25	44.50
27	71.00	64.00	.....	113.25	33.75	48.75	46.00
28	73.25	66.25	.....	117.25	35.00	50.00	47.25
29	75.75	68.50	.....	120.50	35.50	51.50	48.75
30	78.25	70.50	.....	124.25	36.50	52.75	50.00
31	80.50	72.75	.....	128.00	37.50	54.25	51.50
32	83.00	75.00	.....	132.00	38.75	55.75	52.75
33	85.25	77.00	.....	135.25	39.75	57.00	54.00
34	87.75	79.25	.....	141.75	40.25	58.50	55.50
35	91.25	81.50	.....	145.50	41.50	60.00	56.75
36	93.50	83.75	.....	149.25	42.50	61.25	58.25
37	96.00	85.75	.....	152.50	43.50	62.75	59.50
38	98.50	88.00	.....	156.50	44.25	64.00	60.75
39	100.75	90.25	.....	160.25	45.25	65.50	62.25
40	103.25	92.50	.....	164.00	46.25	67.00	63.50
41	105.50	94.50	.....	167.25	47.50	68.25	65.00
42	108.00	96.75	.....	171.25	48.00	69.75	66.25
43	110.50	99.00	.....	175.00	49.00	71.00	67.50
44	112.75	101.00	.....	178.25	50.25	72.50	69.00
45	.....	103.25	.....	184.75	50.75	74.00	70.25
46	.....	105.50	.....	188.50	51.75	75.25	71.75
47	.....	107.75	.....	192.50	52.75	76.75	73.00
48	.....	109.75	.....	195.75	53.50	78.25	74.25
49	.....	112.00	.....	199.50	54.50	79.50	75.75
50	.....	114.25	.....	203.25	55.00	81.00	77.00
51	.....	116.25	.....	207.00	56.25	82.25	78.50
52	.....	118.50	.....	210.25	57.25	83.75	79.75
53	.....	120.75	.....	214.25	57.75	85.25	81.00
54	.....	123.00	.....	218.00	58.75	86.50	82.50
55	.....	125.00	.....	221.75	59.50	88.00	83.75
56	.....	.....	.....	227.75	60.50	89.25	85.25
57	.....	.....	.....	231.75	61.00	90.75	86.50
58	.....	.....	.....	235.50	62.25	92.25	87.75
59	.....	.....	.....	239.25	62.75	93.50	89.25
60	.....	.....	.....	242.50	63.75	95.00	90.50
61	.....	.....	.....	246.25	64.25	96.25	92.00
62	.....	.....	.....	250.25	65.50	97.75	93.25
63	.....	.....	.....	254.00	66.00	99.25	94.50
64	.....	.....	.....	257.25	67.00	100.50	96.00
65	.....	.....	.....	261.00	.....	102.00	97.25
66	.....	.....	.....	264.75	.....	103.50	98.75

PREMIUM SERVICE RATES

Weight not over (lbs.)	Argentina	Brazil	Canada	Chile	China
1	\$11.00	\$13.50	\$10.00	\$10.50	\$14.00
2	14.50	15.50	11.00	12.75	17.00
3	17.50	18.50	12.50	15.25	20.00
4	20.25	20.50	14.25	17.50	23.00
5	23.25	23.50	15.75	20.00	29.25
6	26.00	25.50	17.50	22.00	32.25
7	29.25	28.50	19.00	24.50	35.25
8	32.00	30.50	20.75	26.75	38.25
9	34.75	33.50	22.25	29.25	41.50
10	37.25	35.50	24.00	31.50	44.50
11	41.25	37.50	25.50	33.75	47.50

PREMIUM SERVICE RATES—Continued

Weight not over (lbs.)	Argentina	Brazil	Canada	Chile	China
12	43.50	40.50	27.00	36.00	50.50
13	46.50	42.50	28.75	38.25	53.50
14	49.50	45.50	30.25	40.75	56.50
15	52.50	47.50	32.00	43.00	59.75
16	55.25	50.50	33.50	45.50	62.75
17	58.25	52.50	35.25	47.75	65.75
18	61.25	54.75	36.75	50.00	68.75
19	64.25	56.75	38.50	52.25	72.00
20	67.25	59.50	40.00	54.75	75.00
21	70.25	61.50	41.50	57.00	78.00
22	73.75	63.75	43.00	59.25	81.00
23	76.25	66.50	44.75	61.50	84.00
24	78.75	68.50	46.25	63.75	87.00
25	81.75	71.50	48.00	66.25	90.25
26	84.50	73.50	49.50	68.50	93.25
27	87.50	76.50	50.75	71.00	96.25
28	90.50	78.50	52.75	73.25	99.25
29	93.25	81.25	54.50	75.50	102.25
30	96.25	83.25	56.00	77.75	105.25
31	99.25	86.25	57.25	80.25	108.50
32	102.25	88.25	58.75	82.50	111.50
33	105.00	90.25	60.50	84.75	114.50
34	108.00	93.25	62.00	87.25	117.50
35	112.00	95.25	63.75	89.25	120.50
36	114.50	98.00	65.25	91.75	123.50
37	117.00	100.25	67.00	94.00	126.75
38	120.00	103.00	68.50	96.50	129.75
39	122.75	105.00	70.00	98.75	132.75
40	125.75	108.00	71.75	101.00	135.75
41	128.75	110.00	72.75	103.25	138.75
42	131.50	113.00	74.50	105.75	141.75
43	134.50	115.00	76.00	108.00	145.00
44	137.50	117.00	77.50	110.25	148.00
45		119.75	79.25	112.75	151.00
46		121.75	80.25	114.75	154.00
47		124.75	81.75	117.25	157.00
48		126.75	83.25	119.50	160.00
49		129.75	84.75	122.00	163.25
50		131.75	86.50	124.25	166.25
51		134.50	88.00	126.50	169.25
52		136.75	89.75	128.75	172.25
53		139.50	91.25	131.25	175.25
54		141.50	92.75	133.50	178.50
55		143.50	94.50	135.75	181.50
56		146.50	95.25	138.25	184.50
57		148.50	97.00	140.50	187.50
58		151.50	98.50	142.75	190.50
59		153.50	100.00	145.00	193.50
60		156.25	101.75	147.50	196.75
61		158.25	103.25	149.75	199.75
62		161.25	104.75	152.25	202.75
63		163.25	105.50	154.25	205.75
64		166.25	107.25	156.75	208.75
65		168.25	108.75	159.00	211.75
66		170.25	110.25	161.25	215.00
67				163.75	218.00
68				166.00	221.00
69				168.25	224.00
70				170.50	227.00

Weight not over (lbs.)	Germany	Hong Kong	Japan	Mexico	Singapore	UK
1	\$11.75	\$17.00	\$15.75	\$8.25	\$14.75	\$15.00
2	13.50	20.50	18.00	9.75	18.50	16.50
3	15.25	24.00	20.75	11.50	22.25	18.00
4	17.00	27.50	23.50	13.00	26.25	19.50
5	18.75	31.00	26.25	14.75	31.00	21.00
6	20.50	34.50	29.50	16.25	35.00	22.50
7	22.25	38.00	32.25	17.50	39.25	23.75
8	24.00	41.50	35.00	19.00	43.00	25.75
9	25.75	45.00	37.50	20.75	48.00	27.25

Weight not over (lbs.)	Germany	Hong Kong	Japan	Mexico	Singapore	UK
10	27.50	48.50	40.25	22.25	51.75	29.00
11	29.25	52.00	43.00	24.00	55.50	30.50
12	31.00	55.50	45.75	25.00	60.00	32.00
13	32.75	59.25	48.50	26.75	64.25	33.75
14	34.50	62.50	51.25	28.25	68.75	35.25
15	36.25	66.25	54.00	29.50	72.50	37.00
16	38.00	69.75	56.75	31.00	76.75	38.50
17	39.75	73.25	59.50	32.75	81.25	40.25
18	41.50	76.75	62.25	33.75	85.50	42.25
19	43.25	80.25	64.75	35.50	89.50	44.25
20	45.00	83.75	67.50	36.50	93.75	45.75
21	46.75	87.25	70.25	38.25	98.00	47.50
22	48.50	90.75	73.00	39.25	102.00	49.00
23	50.25	94.25	75.75	41.00	110.75	50.50
24	52.00	97.75	78.50	42.00	115.00	52.00
25	53.75	101.25	81.25	43.50	118.75	53.50
26	55.75	104.75	84.00	44.75	122.75	55.25
27	57.50	108.25	86.75	46.25	127.00	58.25
28	59.25	111.75	89.50	47.50	130.75	59.75
29	61.00	115.25	92.00	48.50	134.50	61.50
30	62.75	118.75	94.75	50.25	138.50	63.00
31	64.50	122.25	97.50	51.25	142.75	64.75
32	66.25	126.00	100.25	52.25	146.50	66.25
33	68.00	129.50	103.00	53.50	150.50	67.75
34	69.75	133.00	105.75	55.00	159.75	69.50
35	71.50	136.50	108.50	56.25	163.50	71.00
36	73.25	140.00	111.25	57.25	167.25	72.75
37	75.00	143.50	114.00	58.25	171.75	74.25
38	76.75	147.00	116.75	59.50	175.50	75.75
39	78.50	150.50	119.25	60.50	179.25	79.00
40	80.25	154.00	122.00	61.50	183.75	80.50
41	82.00	157.50	124.75	63.25	187.50	82.25
42	83.75	161.00	127.50	64.25	191.25	83.75
43	85.50	164.50	130.25	65.50	195.00	85.50
44	87.25	168.00	133.00	66.50	199.50	87.25
45	89.00	.....	.....	67.50	208.25	88.75
46	90.75	.....	.....	68.25	212.00	90.50
47	92.50	.....	.....	69.25	216.25	92.00
48	94.25	.....	.....	70.25	220.25	93.75
49	96.00	.....	.....	71.50	224.00	95.25
50	97.75	.....	.....	72.50	228.25	97.00
51	99.50	.....	.....	73.50	232.25	98.50
52	101.25	.....	.....	74.75	236.00	100.25
53	103.00	.....	.....	75.25	239.75	101.75
54	104.75	.....	.....	76.25	244.25	103.50
55	106.50	.....	.....	77.50	248.00	105.00
56	108.25	.....	.....	78.50	256.75	106.75
57	110.00	.....	.....	79.00	261.00	108.25
58	111.75	.....	.....	80.00	264.75	110.00
59	113.50	.....	.....	81.25	268.75	111.50
60	115.25	.....	.....	81.75	273.00	113.25
61	117.25	.....	.....	82.75	276.75	114.75
62	119.00	.....	.....	83.50	280.75	116.50
63	120.75	.....	.....	84.50	284.50	118.25
64	122.50	.....	.....	85.50	288.75	119.75
65	124.25	.....	.....	.....	292.75	121.50
66	126.00	.....	.....	.....	296.50	123.00
67	127.75					
68	129.50					
69	131.25					
70	133.00					

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[SC-36-1-9932a ; FRL-6426-8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina**AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC) for the State of South Carolina on April 12, 1999, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills. See 40 CFR part 60, subpart Cc.

DATES: This final rule is effective on October 25, 1999 unless significant, material, and adverse comments are received by September 23, 1999. If adverse comments are received, timely notice of withdrawal will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Gregory Crawford, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; and at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at (404) 562-9046 or Scott Davis at (404) 562-9127.

SUPPLEMENTARY INFORMATION:**I. Background**

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby States submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under

section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (See 61 FR 9905-9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG (by December 12, 1996).

EPA was involved in litigation over the requirements of the MSW landfill EG and NSPS beginning in the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association v. Browner, et al.*, No. 96-1152 (D.C. Cir), in accordance with section 113(g) of the Act. See 62 FR

60898. It is important to note that the settlement did not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. See 63 FR 32743-32753, 32783-32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. The State of South Carolina has amended their rules for MSW landfills in Regulation 61-62.60 (effective dates of February 26, 1999), to reflect the June 16, 1998, amendments to subparts Cc and WWW. Accordingly, the MSW landfill EG published on March 12, 1996, and amended on June 16, 1998, was used as the basis by EPA for review of this section 111(d) Plan submittal.

This action approves the section 111(d) Plan submitted by the South Carolina DHEC for the State of South Carolina to implement and enforce Subpart Cc.

II. Discussion

The South Carolina DHEC submitted to EPA on April 12, 1999, and in supplemental information submitted on July 14, 1999, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the State of South Carolina: Legal Authority; Enforceable Mechanisms; MSW Landfill Source and Emission Inventory; Emission Limits; Review and Approval Process for Collection and Control System Design Plans; Compliance Schedules; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration That the Public Had Adequate Notice and Public Hearing Record; Submittal of Progress Reports to EPA; and applicable State of South Carolina statutes and rules of the South Carolina DHEC.

The approval of the South Carolina State Plan is based on finding that: (1) the South Carolina DHEC provided adequate public notice of public hearings for the proposed rulemaking which allows the South Carolina DHEC to implement and enforce the EG for MSW landfills; and (2) the South Carolina DHEC also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek

injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In the Plan submittal, the South Carolina DHEC cites the following references for the legal authority: State of South Carolina's Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program; the South Carolina Pollution Control Act (South Carolina Code Sections 48-1-10 through 48-1-350); and Regulation 61-62.60 of the South Carolina DHEC Air Pollution Control Regulations and Standards. On the basis of the Attorney General's Opinion, the statutes, and rules of the State of South Carolina, the State Plan is approved as being at least as protective as the Federal requirements for existing MSW landfills.

In the Plan submittal, the South Carolina DHEC cites the enforceable mechanisms for implementing the EG for existing MSW landfills. The enforceable mechanisms are the state regulations adopted by the State of South Carolina in Regulation 61-62.60, "South Carolina Designated Facility Plan and New Source Performance Standards." The State's regulations meet the Federal requirements for an enforceable mechanism and are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal, the South Carolina DHEC cites all emission limitations for the major pollutant categories related to the designated sites and facilities. These limitations in Regulation 61-62.60 are approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In the Plan submittal and the supplemental information, the South Carolina DHEC submitted a source and emission inventory of all designated pollutants for each MSW landfill in the State of South Carolina. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

The Plan submittal and the supplemental information describes the process the South Carolina DHEC will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in Subpart Cc for existing MSW landfills.

In the Plan submittal and the supplemental information, the South Carolina DHEC cites the compliance schedules and increments of progress adopted in Regulation 61-62.60 for each existing MSW landfill to be in compliance within 30 months of the approval date of the State Plan. These compliance times for affected MSW landfills address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The South Carolina State Plan submittal includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities. The South Carolina DHEC also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. The South Carolina DHEC submitted regulations to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance in the Plan submittal. These South Carolina rules have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

The Plan submittal and the supplemental information outlines how the South Carolina DHEC will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the South Carolina State Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The South Carolina DHEC did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

III. Final Action

Based on the rationale discussed above, EPA is approving the State of South Carolina section 111(d) Plan, as submitted on April 12, 1999, for the control of landfill gas from existing MSW landfills, except for those existing

MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to the South Carolina State Plan or associated regulations will not be considered part of the applicable plan until submitted by the South Carolina DHEC in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective October 25, 1999 unless by September 23, 1999, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. 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 October 25, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any section 111(d) plan. Each request for revision to the section 111(d) plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 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. 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 E.O. 13084, EPA 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 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 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

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. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding South Carolina's audit privilege and penalty immunity law or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of South

Carolina's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

G. Unfunded Mandates

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

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

H. 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).

J. 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 October 25, 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: August 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart PP—South Carolina

2. Part 62.10100 is amended by adding paragraphs (b)(4) and (c)(4) to read as follows:

§ 62.10100 Identification of plan.

* * * * *

(b) * * *

(4) South Carolina Implementation Plan for Existing Municipal Solid Waste Landfills, submitted on April 12, 1999, by the South Carolina Department of Health and Environmental Control.

(c) * * *

(4) Existing municipal solid waste landfills.

Subpart PP—[Amended]

3. Subpart PP is amended by adding a new § 62.10160 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10160 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–21823 Filed 8–23–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA70

Indian Affairs Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule and request for comments.

SUMMARY: The Office of Hearings and Appeals (OHA) is amending its regulations concerning certain hearings and appeals procedures. The regulations govern who has the authority to make summary distributions in Indian trust estates, and when this authority can be exercised. Under the existing regulation, Bureau of Indian Affairs (BIA) Superintendents can make distribution determinations whenever an Indian dies intestate leaving only trust personal property or cash valued at less than \$1,000. The jurisdictional amount of \$1,000 was established in 1971. This rule clarifies the BIA Superintendents' authority to make summary distributions, and increases, from \$1,000 to \$5,000, the amount of trust personal property or cash which the BIA Superintendent has jurisdiction to distribute. In addition, this rule clarifies that a party has the right to appeal the distribution decision of the BIA Superintendent.

DATES: Final rule is effective on August 24, 1999. OHA must receive comments on or before September 23, 1999.

ADDRESSES: Comments should be mailed to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., 11th Floor, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson

Bldv, 11th Floor, Arlington, Virginia 22203. Telephone: (703) 235–3810.

SUPPLEMENTARY INFORMATION: Under 25 U.S.C. 372, the Secretary of the Interior may establish regulations to implement his authority to make heirship determinations in Indian trust estates. Under this authority, the OHA's regulations at 43 CFR 4.271 set forth the rules and procedures governing the summary distribution of trust estates, which is invoked when an Indian dies intestate leaving only trust personal property or cash. Under the current regulations, a Superintendent can assemble the heirs, hold an informal hearing and make a summary distribution of the estate when the cash or trust personal property is valued at less than \$1,000 and no real property interests are involved. The regulation also allows the Superintendent or the administrative law judge to dispose of claims of creditors during the summary distribution process. The current language is unclear about when an administrative law judge can be substituted for a Superintendent to make distribution determinations in these estates. OHA is amending the current regulation at 43 CFR 4.271 to clarify that, absent exceptional circumstances, the BIA Superintendent will assemble heirs, hold informal hearings, make distribution determinations and dispose of claims of creditors. The BIA Superintendent will request that an administrative law judge assume jurisdiction only in cases involving exceptional circumstances, real property or wills. The general authority of administrative law judges is set forth at 43 CFR 4.202.

The threshold amount of cash and trust personal property in Indian estates appropriate for summary disposition by a Superintendent must be adjusted to account for inflation and other economic changes. The current \$1,000 amount was established in December 1971 and is no longer appropriate. OHA is amending the regulation to increase the amount of trust personal property or cash which the BIA Superintendent has jurisdiction to distribute from \$1,000 to \$5,000, not including any interest which may have accrued after the death of decedent. This action is intended to further the original purpose of the rules for summary distribution.

The current regulations at 43 CFR 4.320 are unclear about an interested party's right to appeal a Superintendent's decision under 43 CFR 4.271. Under 43 CFR 4.1(b)(2)(ii), the Interior Board of Indian Appeals (IBIA) has jurisdiction to exercise the review authority of the Secretary and decide

matters referred to it by the Secretary, the Director of the OHA and the Assistant Secretary for Indian Affairs. In 1994, the Assistant Secretary for Indian Affairs issued a blanket referral to IBIA of all decisions made under § 4.271, until such time as § 4.320 is amended to clarify the right of appeal. OHA is now amending 43 CFR 4.320 to provide interested parties the right to appeal from a Superintendent's decision.

These amendments promote administrative efficiency and the timely and prompt determination of heirs in Indian estates involving only cash or personal trust property.

Determination To Issue a Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because this action relates to agency management and prior notice is not required by statute. This amendment clarifies OHA's rules of practice and procedure and updates the threshold value of estates appropriate for summary distribution, in order to reflect the changes in property values over the 28 years since the existing amount was established in 1971. These amendments do not substantively alter the original purpose of the summary distribution provisions. In addition, it is in the public interest and in the interest of Indian beneficiaries and heirs not to delay implementation of these changes pending notice and comment, particularly when no adverse comments are anticipated. However, OHA invites and will consider public comments submitted in response to this final rule. If significant adverse comments are received, OHA will amend the rule as appropriate.

Determination To Make Rule Effective Immediately

Because these amendments do not impact the substance of the regulations and in the interest of avoiding delays in the summary distribution of the estates at issue, OHA has determined it appropriate to waive the requirement of publication 30 days in advance of the effective date found at 5 U.S.C. 553(d). Accordingly, this amendment is issued as a final rule effective on the date of publication in the **Federal Register** for good cause shown under 5 U.S.C. 553(d)(3). The Department further concludes that this rule should be effective immediately, because it relieves a restriction on the efficient summary distribution of Indian trust estates. With the passage of time, the \$1,000 threshold amount has become an

unreasonable restriction on the use of the summary distribution provisions, due to inflation and the change in personal property values since the promulgation of the existing regulations in 1971. It is in the public interest and in the interest of Indian beneficiaries and their heirs not to delay implementation of these procedural amendments.

Executive Order 12866

This rule is not a significant rule as defined in Executive Order 12866, and therefore, is not subject to review by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act because the rule relates to agency procedure. 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

This rule contains no information collection or record keeping requirements subject to approval by the OMB under 44 U.S.C. 3501, *et seq.*

Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded mandate of \$100 million or more in any given year on local, tribal, and State governments in the aggregate, or on the private sector in accordance with the unfunded Mandates Reform Act. 2 U.S.C. 1501, *et seq.*

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

Federalism

In accordance with Executive Order 12630, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Drafting/Information. The primary author of this rule is Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Claims, Indians, Public Lands.

For the reasons set forth in the preamble, the Department amends Subpart D, Part 4 of Title 43 of the Code of Federal Regulations as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, *as amended*, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.271 is revised to read as follows:

§ 4.271 Summary distribution.

When an Indian dies intestate leaving only trust personal property or cash of a value of less than \$5,000, not including any interest that may have accrued after the death of the decedent, the Bureau of Indian Affairs Superintendent will assemble the apparent heirs and hold an informal hearing to determine the proper distribution of the estate, unless it appears that the decedent left a last will and testament intending to devise his estate, and/or the decedent died possessed of an interest in trust or restricted real property. A memorandum covering the hearing will be retained in the agency files showing the date of the decedent's death, the date of the hearing, the persons notified and attending the hearing, the amount on hand, and its disposition. In the disposition of such funds, the Superintendent will dispose of creditors' claims as provided in § 4.250 and § 4.251. The Superintendent will credit the balance, if any, to the legal heirs. When requested by the BIA Superintendent, an administrative law judge may assume jurisdiction to dispose of creditors' claims or to make distribution determinations if the administrative law judge finds that exceptional circumstances exist. A party in interest may appeal a distribution determination in accordance with 43 CFR 4.320.

3. Section 4.320 is amended by revising the introductory text to read as follows:

§ 4.320 Who may appeal.

A party in interest has a right to appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate, and also from a summary distribution order made by a Bureau of Indian Affairs Superintendent or an administrative law judge pursuant to § 4.271.

* * * * *

Dated: August 17, 1999.

John Berry,

Assistant Secretary, Policy, Management and Budget.

[FR Doc. 99-21893 Filed 8-23-99; 8:45 am]

BILLING CODE 4310-RK-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063-9063-01; I.D. 081899A]

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

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the critical habitat/catcher vessel operational area (CH/CVOA) of the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the B season limit of pollock total allowable catch (TAC) specified for the inshore component within the CH/CVOA will be reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 19, 1999, until 1200 hrs, A.l.t., September 15, 1999.

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

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

In accordance with § 679.20(a)(5)(i)(C)(1) and the revised emergency interim rule (64 FR 39087, July 21, 1999), the B season limit of pollock TAC specified for harvest within the CH/CVOA and processing by the inshore component is 56,648 metric tons (mt).

In accordance with § 679.22(a)(11)(iv)(A) the Administrator,

Alaska Region, NMFS, has determined that the B season limit of pollock TAC specified for harvest within the CH/CVOA and processing by the inshore component will be reached.

Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component within the CH/CVOA conservation zone, as defined at § 679.22(a)(11)(iv)(B).

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the B season limit of pollock TAC specified for harvest within the CH/CVOA and processing by the inshore component. A delay in the effective date is impracticable and contrary to the public interest. Further delay would result in noncompliance with reasonable and prudent management measures implemented to promote the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: August 19, 1999.

Gary C. Matlock,

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

[FR Doc. 99-21915 Filed 8-19-99; 3:33 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 99030463-9063-01; I.D. 072199B]

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Mortality Allowance in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Reapportionment of Pacific halibut bycatch mortality allowance

specified for the nontrawl fishery categories.

SUMMARY: NMFS issues this final rule that reapportions the 1999 halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery category to the other nontrawl fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of species constrained by the other nontrawl halibut bycatch mortality allowance, in particular Greenland turbot, while not further restricting the hook-and-line Pacific cod fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT:

Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP are at subpart H of 50 CFR part 600 and 50 CFR part 679.

The BSAI halibut prohibited species catch (PSC) limit for nontrawl gear is an amount of halibut equivalent to 900 mt of halibut mortality (§ 679.21(e)(2)(i)). The apportionment of the nontrawl halibut PSC limit to bycatch allowances for the Pacific cod hook-and-line and other nontrawl fisheries was established by the Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) as 748 mt and 84 mt respectively.

A proposed rule for this action was published in the **Federal Register** on July 29, 1999 (64 FR 41068), requesting comments through August 12, 1999. One letter of comment was received during the comment period from a hook-and-line industry representative supporting the reapportionment. Based on this comment, and in order to provide greater opportunity to harvest the BSAI Greenland turbot total allowable catch (TAC) while not jeopardizing the opportunity to harvest the amount of the Pacific cod TAC allocated to hook-and line vessels, NMFS increases the halibut bycatch mortality allowance specified for the other nontrawl fishery category by 150

mt and reduces the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery by the same amount.

The halibut bycatch mortality specifications for the 1999 BSAI nontrawl fisheries are listed in Table 7 of the Final 1999 Harvest Specifications for Groundfish (64 FR 12103, March 11, 1999). To accommodate the final action, the 1999 BSAI final harvest specifications are amended by adding the following Table 7A.

Table 7A. 1999 BSAI prohibited species bycatch allowances for the BSAI non-trawl fisheries

Non-trawl fisheries	Halibut mortality (mt)BSAI
Pacific cod - Total	598.

Table 7A. 1999 BSAI prohibited species bycatch allowances for the BSAI non-trawl fisheries—Continued

Non-trawl fisheries	Halibut mortality (mt)BSAI
Jan. 1 - April 30	457.
May 1 - Sept. 14	0.
Sept. 15 - Dec. 31	141.
Other non-trawl - Total	234.
May 1 - Aug. 31 ¹	42.
Sept.1 - Dec.31	192.
Groundfish pot & jig	Exempt.
Sablefish hook-and-line	Exempt.

¹ Consistent with § 679.21(e)(5)(iv)(A), any portion of the first seasonal allowance of the Pacific cod halibut bycatch mortality allowance that is not harvested by the end of the first season will become available on September 15, the beginning of the third season.

Classification

This action is authorized under 50 CFR 679.21(e)(4) and is exempt from OMB review under E.O. 12866. NMFS prepared an environmental assessment (EA) and final regulatory flexibility assessment (FRFA) for the 1999 harvest specifications (See ADDRESSES). The reapportionment of the BSAI nontrawl halibut PSC limit is intended to provide fuller opportunity to conduct the fishing activities considered in the EA/FRFA and is fully within the scope of these analyses.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*
Dated: August 18, 1999.

George H. Darcy,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 99-21947 Filed 8-23-99; 8:45 am]
BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 64, No. 163

Tuesday, August 24, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-99-5927; Notice No. 99-12]

RIN 2120-AG73

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to a notice of proposed rulemaking published in the **Federal Register** on July 9, 1999 (64 FR 37304). That document proposed a commercial air tour limitation in the Grand Canyon National Park Special Flight Rules Area. This correction adds the docket number reference to the **ADDRESSES** section of the NPRM. Additionally, the correction removes Las Vegas Airlines, Inc. from the list of certificate holders that are currently in business and adds them to the list of certificate holders that will receive allocations only if they notify the FAA by the comment date that they intend to conduct air tour operations in the Grand Canyon and are certificated to do so.

FOR FURTHER INFORMATION CONTACT: Alberta Brown; Telephone 202-267-8321.

Correction

In the proposed rule published on July 9, 1999, beginning on page 37304, FR Doc. 99-17319, make the following corrections:

1. On page 37304, column 1, in the **ADDRESSES** section, line 5, remove “[]” and add in its place, “FAA-99-5927”.
2. On page 37309, column 1, under the heading, “2. Certificate Holders Receiving Allocations”, beginning on line 21, remove “Las Vegas Airlines, Inc.”.

3. On page 37309, under the heading “2. Certificate Holders Receiving Allocations” in Column 3, after line 8, add “**Las Vegas Airlines, Inc.”.

Issued in Washington, DC on August 13, 1999.

Michael Chase,

Acting Assistant Chief Counsel.

[FR Doc. 99-21648 Filed 8-23-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-116733-98]

RIN 1545-AW79

Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. Changes to the applicable law were made by the Taxpayer Relief Act of 1997. These proposed regulations affect corporations and are necessary to provide them with guidance needed to comply with these changes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 5, 2000. Outlines of topics to be discussed at the public hearing scheduled for January 26, 2000, at 10 a.m. must be received by January 5, 2000.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-116733-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-116733-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the “Tax Regs” option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslst.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Brendan O'Hara, (202) 622-7530; concerning submissions of comments, delivering comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. State of the Law Before Section 355(e)

Section 355 generally provides that, if a corporation distributes to its shareholders stock of a corporation which it controls immediately before the distribution and certain other conditions are met, neither the distributing corporation nor its shareholders recognize gain or loss. A number of the conditions for tax free treatment (for example, the continuity of interest requirement of § 1.355-2(c), the “no device” requirement of section 355(a)(1)(B), the five-year active business requirement of section 355(b), and the limitation on disqualified stock under section 355(d)) operate to limit the circumstances in which the distributing or controlled corporation can undergo changes of control in conjunction with a distribution that qualifies for corporate and shareholder-level nonrecognition under section 355. Nevertheless, prior to the enactment of section 355(e), it was possible for such changes to occur, for example, in the context of tax free reorganizations, while qualifying for tax free treatment under section 355. See, e.g., *Commissioner v. Mary Archer W. Morris Trust*, 367 F.2d 794 (4th Cir. 1966).

B. Legislative Proposals Leading to Section 355(e)

As part of its Fiscal Year 1997 Budget, the Administration proposed a provision that would require a distributing corporation to recognize gain on the distribution of a controlled

corporation's stock unless the direct and indirect shareholders of the distributing corporation, as a group, controlled at least 50 percent of the vote and value of both corporations at all times during the 4-year period beginning 2 years before the distribution. See Department of the Treasury, *General Explanation of the Administration's Revenue Proposals*, p. 86 (March 1996) (hereinafter referred to as the "Administration Proposal"). Under the Administration Proposal, the retained 50-percent interest must consist of "permissible stock," which includes, in addition to stock retained over the 4-year period, stock of the distributing or controlled corporation "received by the shareholder in a transaction which is unrelated to the distribution * * *." Revenue Proposals Contained in President Clinton's Budget Plan as Released on Mar. 19, 1996, § 9522, [1996] 83 Stand. Fed. Tax Rep. (CCH) No. 15A.

The Administration Proposal described an unrelated transaction as, "[a] transaction that is not pursuant to a common plan or arrangement that includes the distribution," and cited a hostile acquisition of the distributing or controlled corporation commencing after the distribution as an example of an unrelated transaction. The Administration Proposal contrasted this with a friendly acquisition, which generally would be considered related to the distribution if the acquisition was pursuant to an arrangement negotiated prior to the distribution, even if the acquisition was subject to various conditions at the time of the distribution.

On April 17, 1997, House Ways and Means Committee Chairman Archer and Senate Finance Committee Chairman Roth and Ranking Member Moynihan introduced identical bills (H.R. 1365, 105th Cong. (1997) and S. 612, 105th Cong. (1997), hereinafter referred to as the "Bills") that provided for a new section 355(e) that is similar to the enacted version. The Bills were concerned with a "plan (or series of related transactions) pursuant to which a person acquires stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation * * *." S. 612, 105th Cong. (1997). The introductory statement to the legislation contained a reference to acquisitions "pursuant to a plan or arrangement in existence on the date of distribution * * *." The statement further explained: "Whether a corporation is acquired would be determined under rules similar to those of present-law section 355(d), except that acquisitions would not be restricted to purchase transactions. Thus an

acquisition would occur if a person—or persons acting in concert—* * * acquired * * * stock * * * pursuant to a plan or arrangement." See 143 Cong. Rec. E703 (Apr. 17, 1997) (introductory statement of Chairman Archer); 143 Cong. Rec. S3360 (Apr. 17, 1997) (introductory statement of Chairman Roth).

C. Enactment of Section 355(e)

Section 355(e) was enacted in 1997. Public Law 105–34, section 1012(a) (1997). The committee reports state that section 355 was intended to permit the tax free division of existing business arrangements among existing shareholders. The reports state that "[i]n cases in which it is intended that new shareholders will acquire ownership of a business in connection with a spin off, the transaction more closely resembles a corporate level disposition of the portion of the business that is acquired" and provide that gain is recognized "if, pursuant to a plan or arrangement in existence on the date of distribution, either the controlled or distributing corporation is acquired * * *." H.R. Rep. No. 105–148, at 462 (1997); see also S. Rep. No. 105–33, at 139–40 (1997) (slight variation in language). The Conference Report adds, "[a]s under the House bill and Senate amendment, a public offering of sufficient size can result in an acquisition that causes gain recognition under the provision." H.R. Conf. Rep. No. 105–220, at 533 (1997).

The statute as enacted contained two important changes from the Administration Proposal and Bills relevant to determining whether an acquisition is part of a plan (or series of related transactions) that includes the distribution. In the Bills, proposed sections 355(e)(2)(A)(ii) and (4)(C)(i) provided that a "person," as modified by section 355(d)(7), must acquire 50 percent or more of the distributing or controlled corporation. The term "plan or arrangement" used in section 355(d)(7)(B) treats two or more persons acting "pursuant to a plan or arrangement" with regard to a stock acquisition as one person. However, when section 355(e) was enacted, the reference in section 355(e)(2)(A)(ii) to acquisitions by a "person" was changed to "1 or more persons." In addition, the reference to section 355(d)(7)(B) (treating two or more persons acting "pursuant to a plan or arrangement" as one person) was deleted from section 355(e)(4)(C)(i). The effect of these two changes is to remove the requirement that 50 percent or more of the stock of the distributing or controlled corporation must be acquired by

acquirors acting in concert for section 355(e) to apply.

In addition, the reference in the Conference Report to public offerings as transactions that could cause gain to be recognized under section 355(e) indicates Congress did not believe negotiations between the distributing corporation and an acquiror were necessary in order for an acquisition to be pursuant to a plan that included the distribution. Thus, to determine whether a plan of acquisition exists, one must look at all parties to the transaction, including the distributing and controlled corporations and their shareholders, not just the potential acquirors.

As enacted, section 355(e)(1) provides that the stock of a controlled corporation will not be qualified property under section 355(c)(2) or section 361(c)(2) if, under section 355(e)(2)(A), the stock is distributed as "part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation." Thus, if section 355(e)(1) applies to a distribution, the distributing corporation is taxed on the amount by which the distributed stock's fair market value exceeds its basis. Distributee shareholders receive the controlled corporation stock tax free, but do not increase their bases to reflect the corporate level gain recognized by the distributing corporation on the distribution.

Explanation of Provisions

The proposed regulations under section 355(e) provide guidance concerning the interpretation of the phrase "plan (or series of related transactions)." The proposed regulations also address the determination of the distributing corporation's gain when multiple controlled corporations are distributed and the distributions are part of a plan (or series of related transactions) pursuant to which a 50-percent or greater interest in one or more, but not all, of the distributed controlled corporations is acquired. The Department of the Treasury and the IRS plan to issue regulations addressing other issues arising under section 355(e), including aggregation and attribution rules (including provisions for public trading) and the administration of the statute of limitations provision of section 355(e)(4)(E). Comments concerning the proposed regulations and additional

issues that should be addressed in regulations are welcome.

A. Plan or Series of Related Transactions

Whether two transactions are part of the same “plan (or series of related transactions)” under section 355(e)(2)(A) is a subjective test, depending ultimately on the intentions and expectations of the relevant parties. As discussed above, indications are that Congress intended “plan (or series of related transactions)” to be interpreted broadly. Unlike the Administration Proposal and the Bills, which utilized the section 355(d) concept of “a person” (with aggregation) as the reference for relevant acquirors, the statute, as enacted, expanded the universe of transactions to which section 355(e) potentially applies by providing that the relevant acquirors could be “1 or more persons.” Also, the guidance in the Conference Report that public offerings of a sufficient size could trigger section 355(e) suggests that there does not necessarily have to be an identified acquiror on the date of the distribution for section 355(e) to apply, nor is the intent of the acquiror at the time of the distribution necessarily relevant in determining whether there is a plan.

The proposed regulations rely on a variety of factors to determine the existence of a plan (or series of related transactions) (hereinafter referred to as a “plan”). These factors include the business purpose or purposes for the distribution; the intentions of the parties; the existence of agreements, understandings, arrangements, or substantial negotiations; the timing of the transactions; the likelihood of an acquisition; and the causal connection between the distribution and the acquisition.

Congress specified one factor, temporal proximity, as affecting the determination of whether a plan exists. Specifically, section 355(e)(2)(B) provides a presumption that a plan exists if “1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution.” Accordingly, the proposed regulations provide that distributions within 2 years of an acquisition of the distributing corporation or a controlled corporation are presumed to be part of a plan. The proposed regulations outline the elements the distributing corporation must establish to rebut the statutory presumption.

1. Acquisitions On or After a Distribution

General Rebuttal

In the case of an acquisition occurring within 2 years after a distribution, the proposed regulations allow the distributing corporation to rebut the presumption by establishing by clear and convincing evidence that (i) the distribution was motivated in whole or substantial part by a corporate business purpose (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired) and (ii) the acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter. Decreasing “the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired” generally refers to transactions in which one business, a perceived takeover target, is separated from another via a stock distribution in an attempt to spare the other business from acquisition. Distributions intended to “decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired” are often difficult to differentiate from those intended to “facilitate an acquisition.” Both relate to a perceived possibility of acquisition and should receive similar treatment.

In this general rebuttal, the proposed regulations rely on corporate business purpose as a key factor indicating whether a distribution and an acquisition are part of a plan. Corporate business purpose is an important concept in the overall administration of section 355. The existence of a nonacquisition related corporate business purpose that prompted, in whole or substantial part, the distributing corporation to make the stock distribution suggests there is not a significant causal connection between the distribution and acquisition. The intent of the distributing corporation, the controlled corporation, or the controlling shareholders of either the distributing or controlled corporation to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired is relevant in determining the extent to which the distribution was motivated in whole or substantial part

by another corporate business purpose within the meaning of § 1.355–2. Analyzing whether there is another substantial corporate business purpose for the distribution in light of an acquisition-related purpose is similar to analyzing whether there is a corporate business purpose for a distribution in light of the potential avoidance of federal taxes. See § 1.355–2(b)(1) and (5), *Example 8*. Thus, another business purpose must be real and substantial even in light of the acquisition business purpose.

The reliance on business purpose in the general rebuttal is consistent with the suggestions of many commentators writing about section 355(e), who identified corporate business purpose as an important factor in determining whether an acquisition and distribution are part of a plan.

Alternative Rebuttal

Reliance on a substantial nonacquisition business purpose as proof of no “plan” is appropriate when the distribution and acquisition are separated by a sufficient amount of time. Thus, the general rebuttal is not satisfied in certain cases, including where an acquisition occurs within 6 months after a distribution or where a distribution was not substantially motivated by a corporate business purpose other than an intention to facilitate (or decrease the likelihood of) an acquisition. These acquisitions occur in circumstances more likely to indicate the existence of a plan at the time of the distribution. Thus, these acquisitions are subject to heightened scrutiny and will be considered part of a plan unless taxpayers satisfy a more stringent alternative rebuttal.

Unlike the general rebuttal, a nonacquisition business purpose alone is not sufficient under the alternative rebuttal. Rather, taxpayers must satisfy all prongs of a three-prong test.

The first prong of the alternative rebuttal may be satisfied in either of two ways. The distributing corporation must establish by clear and convincing evidence either that (i) at the time of the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders did not intend that one or more persons would acquire a 50-percent or greater interest in the distributing or any controlled corporation during the statutory presumption period (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) or (ii) the distribution was not motivated in whole or substantial part by an intention to

facilitate an acquisition of an interest in the distributing or controlled corporation. Clause (i) may be satisfied even in situations where one or more of the relevant parties intend that the distribution will facilitate an acquisition or acquisitions, so long as the parties do not intend that there be a 50-percent or greater change in ownership during the statutory presumption period. Alternatively, clause (ii) may be satisfied where the parties intend a 50-percent or greater change in ownership during the presumption period, provided that the parties do not intend that the distribution will facilitate any part of the acquisitions.

Under the second prong of the alternative rebuttal, the distributing corporation must establish by clear and convincing evidence that, at the time of the distribution, neither the distributing corporation, the controlled corporation, nor their controlling shareholders reasonably would have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in the distributing corporation or the controlled corporation within 2 years after the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests if the distribution had not occurred.

This prong of the alternative rebuttal (hereinafter referred to as the "reasonable anticipation" test) incorporates two important concepts. First, it identifies reasonably anticipated acquisitions of the distributing or controlled corporation that would not have occurred but for the distribution and, because a causal connection exists between the two transactions, treats them as part of a plan. Second, it reflects the idea that reasonable anticipation, not just the presence of negotiations, is important in determining whether a plan exists. Considering reasonable anticipation of certain acquisitions is consistent with the legislative history. Though descriptions of the Administration Proposal included references to negotiations and distinctions between hostile and friendly acquisitions, the focus of section 355(e), as enacted, is whether a relationship exists between the distribution and the fact that persons other than the existing shareholders became owners of the distributing or controlled corporation.

A reasonable anticipation standard is necessary to implement section 355(e). Otherwise, a distributing corporation could attempt to avoid section 355(e) by

distributing a controlled corporation under circumstances that virtually assure an acquisition of the distributing or controlled corporation, but arguing that, despite the imminence of the acquisition, effectuating the acquisition was not a motive for the distribution. A part of planning any transaction includes attempting to foresee actions others might take in response. Consistent with this business practice, it is appropriate, especially for acquisitions subject to heightened scrutiny, to require the distributing corporation to take into account the reasonably anticipated, likely actions of others to demonstrate that a distribution and acquisition are not part of a plan.

The second prong of the alternative rebuttal is not satisfied if, at the time of the distribution, the relevant parties would reasonably anticipate that the distribution would give rise to all of an acquisition of a 50 percent interest in the distributing or controlled corporation. (The rebuttal is satisfied if the distributing corporation establishes by clear and convincing evidence that the relevant parties would not reasonably anticipate an acquisition of a 50 percent or greater interest by persons who would not acquire such interests absent the distribution.) This standard is to be contrasted with the first prong of the rebuttal, which is not satisfied if one or more of the relevant parties intended that there be a 50 percent or greater acquisition of distributing or controlled during the applicable time period, and the distribution is intended to facilitate all or any part of that acquisition. Because some acquisitions might be reasonably anticipated to occur without regard to whether the distribution takes place, the Department of the Treasury and the IRS believe that the distribution must be directly linked to all 50 percent of the acquisition to fail the "reasonable anticipation" test. However, a different result is called for where the relevant parties intend a 50 percent acquisition. In that case, it would appear that the aggregation of the various acquisitions comprising the 50 percent acquisition are themselves part of a single plan, so a distribution intended to facilitate only some of those acquisitions would be part of a plan also involving those other acquisitions not directly facilitated by the acquisition.

In developing the reasonable anticipation test, the Department of the Treasury and the IRS rejected suggestions by some commentators that serious negotiations or agreement with an acquiror need to have taken place at the time of distribution for a plan to exist. Requiring mutual agreement or negotiation is inappropriate because

Congress intended the statute to apply in situations beyond those in which a distribution is made prior to and as part of an acquisition by a specifically identified acquiror. Section 355(e)(2)(B) makes clear that the section is intended to apply to acquisitions before and after a distribution. The legislative history also clarifies that a public offering after a distribution can trigger section 355(e) even though presumably no public buyer would have been negotiated with or even identified at the time of the distribution. Because Congress intended distributions designed to facilitate public offerings to be covered, other transactions that are economically similar also should be covered. These transactions include a private placement of the distributing or controlled corporation's stock or an auction of such stock by an investment banker. Like public offerings, these transactions do not necessarily involve predistribution negotiations or agreements regarding subsequent acquisitions and yet may still be part of the distributing or controlled corporation's plan.

Thus, we believe that section 355(e) was intended to apply to a range of transactions, not limited to those in which a mutual agreement or negotiations relating to the acquisition occurred prior to the distribution. To require negotiations or agreements to be present prior to a distribution either would inappropriately exclude certain transactions from the coverage of the statute or would create a higher threshold for the existence of a plan in certain acquisitions than in other acquisitions.

The third prong of the alternative rebuttal reiterates a requirement in the general rebuttal. The distributing corporation must establish by clear and convincing evidence that the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired.

For purposes of applying the alternative rebuttal, the consequences of the application of section 355(e), directly or by indemnity, are disregarded in determining the intentions, motivations, and reasonable anticipations of the relevant parties. To do otherwise might give rise to a circularity in the application of the rules. If the consequences of the application of section 355(e) were relevant in determining such intentions, motivations, and reasonable anticipations, the distributing corporation could argue that objective evidence indicated that it would satisfy

the alternative rebuttal, since arguably it would not be reasonable for an acquiror to act in a manner that would cause liability for tax under section 355(e). Conversely, the IRS could argue that the presence of an indemnity agreement indicated that the parties anticipated liability for tax under section 355(e).

Acquisitions More Than 2 Years After a Distribution

To prevent taxpayers from attempting to avoid the presumption period by delaying a planned acquisition beyond 2 years from the date of distribution, the proposed regulations provide that an acquisition occurring more than 2 years after the distribution is presumed part of a plan if there was an agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter. The distributing corporation may rebut the presumption using the general or alternative rebuttal discussed above. To provide certainty for transactions that, because of their separation in time, are unlikely to be part of a plan, the proposed regulations provide that, if there was no agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter, a distribution and an acquisition occurring more than 2 years afterwards are not part of a plan.

2. Acquisitions Before a Distribution

Acquisitions Within 2 Years Before a Distribution

Section 355(e) also applies to transactions in which an acquisition of the distributing or controlled corporation's stock precedes a distribution of the controlled corporation. When the transactions being tested as part of a plan occur in this order, the most reliable indicators that a plan exists are an intent to make the distribution at the time of the acquisition and a causal connection between the acquisition and the distribution. In particular, if a person becomes a controlling shareholder by acquisition, that person's intention becomes the single best indicator of whether a later distribution was part of a plan. The proposed regulations allow a distributing corporation to rebut the presumption by establishing by clear and convincing evidence that, at the time of the acquisition, the distributing corporation and its controlling shareholders (determined immediately after the acquisition) did not intend to effectuate a distribution. Alternatively, the distributing corporation can rebut the presumption by establishing by clear and convincing evidence that the

distribution would have occurred at approximately the same time and under substantially the same terms regardless of the acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance), unless a person acquiring an interest becomes a controlling shareholder by reason of the acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter).

Acquisitions More Than 2 Years Before a Distribution

If an acquisition of an interest in the distributing corporation or the controlled corporation occurs more than 2 years before a distribution, the presumption shifts in favor of the taxpayer. The acquisition and the distribution are presumed not to be part of a plan unless the Commissioner can establish by clear and convincing evidence that, at the time of the acquisition, (i) the distributing corporation or its controlling shareholders intended to effectuate the distribution and (ii) that the distribution would not have occurred at approximately the same time and under substantially the same terms regardless of that acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance) or that a person acquiring an interest in that acquisition becomes a controlling shareholder by reason of that acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within six months thereafter). Because the passage of time makes it less likely that an acquisition and distribution are part of a plan, after two years the proposed regulations shift the burden of proof to the IRS to prove the existence of a plan. However, the proposed regulations do not allow a taxpayer to avoid section 355(e) by delaying the distribution when the distribution clearly was intended at the time of the acquisition.

3. Agreement, Understanding, Arrangement, or Substantial Negotiations

The proposed regulations do not define with precision the terms *agreement*, *understanding*, *arrangement*, or *substantial negotiations*. A binding contract is clearly included as an agreement, but, depending on all relevant facts and circumstances, parties can have an

agreement, understanding, or arrangement even though they have not reached agreement on all terms. Under certain circumstances, such as in public offerings or auctions of the distributing or controlled corporation's stock by an investment banker, an agreement, understanding, arrangement, or substantial negotiations can take place regarding an acquisition even if the acquiror has not been specifically identified. The Department of the Treasury and the IRS are particularly interested in receiving comments regarding transactions that involve an investment banker and when contacts by the distributing corporation or the controlled corporation with an investment banker or contacts with potential acquirors by an investment banker on behalf of the distributing corporation or the controlled corporation should or should not be considered an agreement, understanding, arrangement, or substantial negotiations.

4. Options

The proposed regulations also treat certain options as agreements. If stock of the distributing or controlled corporation is acquired pursuant to an option, the option is treated as an agreement unless the distributing corporation establishes by clear and convincing evidence that, on the later of the date of distribution or issuance, the option was not more likely than not to be exercised. Generally, call options, warrants, convertible obligations, the conversion feature of convertible stock, put options, redemption agreements, restricted stock, and any other instruments that provide for the right or possibility to issue, redeem, or transfer stock, cash settlement options, and other similar interests are treated as options. An option on an option is treated as an option under the proposed regulations. If there is an agreement, understanding, or arrangement to issue an option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement. If an agreement, understanding, or arrangement to issue an option is reached, or an option is issued, more than 6 months but not more than 2 years after the distribution, and there were substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued 6 months after the

distribution. If there is an agreement, understanding, or an arrangement to issue an option more than 6 months but not more than 2 years after the distribution, and there were no substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement. The proposed regulations exempt certain options from treatment as options unless they are issued, transferred, or listed with a principal purpose of avoiding the application of section 355(e) or the proposed regulations. The enumerated exceptions cover certain commercially customary options unlikely to be used to avoid section 355(e) or the proposed regulations.

5. Aggregating Acquisitions That are Pursuant to a Plan

Under the proposed regulations, each acquisition of stock of a distributing or controlled corporation must be tested to determine whether the acquisition is pursuant to a plan involving a distribution. Each acquisition of stock of a corporation acquired pursuant to a plan involving a distribution is aggregated with all acquisitions of stock of that corporation acquired pursuant to a plan involving that distribution to determine whether an acquisition of a 50-percent or greater interest as proscribed in section 355(e)(2)(A)(ii) has occurred.

B. Any Controlled Corporation

Section 355(e)(2)(A)(ii) provides that section 355(e)(1), which causes the distributing corporation to recognize its gain in the controlled corporation stock as if the distributing corporation had sold the stock for its fair market value, applies to any distribution to which section 355 applies and "which is part of a plan * * * pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation" (emphasis added). A question has arisen concerning the measure of gain to the distributing corporation if, pursuant to a plan, the stock of more than one controlled corporation is distributed and stock representing a 50-percent or greater interest is acquired in some, but not all, of the distributed controlled corporations. The proposed regulations clarify that under those circumstances, the distributing corporation only recognizes gain on the stock of the

distributed controlled corporations that were subject to 50-percent or greater acquisitions. If the distributing corporation is the acquired corporation, it must recognize gain on all of the distributed controlled corporations.

Proposed Effective Date

The regulations in this section are proposed to apply to distributions occurring after the regulations in this section are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) and comments sent via the Internet that are submitted timely to the IRS. The IRS and the Department of the Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 26, 2000, beginning at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER**

INFORMATION CONTACT section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by January 5, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these proposed regulations is Brendan O'Hara, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.355-7 also issued under 26 U.S.C. 355(e)(5). * * *

Par. 2. Section 1.355-0 is amended by revising the section heading and adding introductory text and an entry for § 1.355-7 to read as follows:

§ 1.355-0 Outline of sections.

In order to facilitate the use of §§ 1.355-1 through 1.355-7, this section lists the major paragraphs in those sections as follows:

* * * * *

§ 1.355-7 *Recognition of gain on certain distributions of stock or securities in connection with an acquisition.*

(a) Plan or series of related transactions.

(1) In general.

(2) Distributions within 2 years of an acquisition.

(i) Presumption.

(ii) Rebuttal for acquisitions after a distribution.

(iii) Alternative rebuttal for acquisitions on or after a distribution.

(iv) Operating rules for paragraph (a)(2)(iii) of this section.

(v) Rebuttals for acquisitions before a distribution.

(A) General rebuttal.

(B) Alternative rebuttal.

(3) Distributions more than 2 years from an acquisition.

(i) Acquisitions after a distribution.

(ii) Acquisitions before a distribution.

(4) Controlling shareholder.

(5) Agreement, understanding, or arrangement.

(6) Multiple acquisitions.

(7) Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests.

(i) Treatment of options.

(A) General rule.

(B) Agreement, understanding, arrangement, or substantial negotiations to issue an option.

(ii) Instruments treated as options.

(iii) Instruments generally not treated as options.

(A) Escrow, pledge, or other security agreements.

(B) Compensatory options.

(C) Options exercisable only upon death, disability, mental incompetency, or retirement.

(D) Rights of first refusal.

(E) Other enumerated instruments.

(8) Examples.

(b) Multiple controlled corporations.

(c) Valuation.

(d) Effective date.

Par. 3. Section 1.355-7 is added to read as follows:

§ 1.355-7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) *Plan or series of related transactions*—(1) *In general.* (i) Except as provided in section 355(e) and this section, section 355(e) applies to any distribution—

(A) To which section 355 (or so much of section 356 as relates to section 355) applies; and

(B) Which is part of a plan (or series of related transactions) pursuant to which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.

(ii) For purposes of this section, a controlled corporation is a corporation the stock of which is distributed in a distribution to which section 355 applies.

(iii) The existence of a plan (or series of related transactions) does not depend on whether or not more than one person acts in concert.

(2) *Distributions within 2 years of an acquisition*—(i) *Presumption.* If a distribution occurs within 2 years of an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation, the distribution and that acquisition are

presumed to be part of a plan (or series of related transactions).

(ii) *Rebuttal for acquisitions after a distribution.* (A) In the case of an acquisition occurring after a distribution, the distributing corporation may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that—

(1) The distribution was motivated in whole or substantial part by a corporate business purpose within the meaning of § 1.355-2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired); and

(2) The acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter.

(B) The intent of the distributing corporation, the controlled corporation, or the controlling shareholders of either the distributing or controlled corporation to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired is relevant in determining the extent to which the distribution was motivated by a corporate business purpose within the meaning of § 1.355-2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired).

(iii) *Alternative rebuttal for acquisitions on or after a distribution.* In the case of an acquisition occurring on or after a distribution, the distributing corporation also may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that—

(A)(1) At the time of the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders did not intend that one or more persons would acquire a 50-percent or greater interest in the distributing or any controlled corporation during the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter); or

(2) The distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in the

distributing or controlled corporation; and

(B) At the time of the distribution, neither the distributing corporation, the controlled corporation, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in the distributing corporation or the controlled corporation within 2 years after the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests if the distribution had not occurred; and

(C) The distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired.

(iv) *Operating rules for paragraph (a)(2)(iii) of this section.* (A) For purposes of paragraph (a)(2)(iii)(A)(1) of this section, if an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation before the distribution is part of a plan (or series of related transactions) involving the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders must include the amount of stock acquired in that acquisition as an amount they intended at the time of the distribution to be acquired during the 2-year period beginning on the date of the distribution.

(B) For purposes of paragraph (a)(2)(iii)(B) of this section, persons who more likely than not would have acquired interests in the distributing corporation if the distribution had not occurred are also treated as persons who more likely than not would have acquired proportionate interests in the controlled corporation if the distribution had not occurred. No other persons are treated as persons who would have acquired interests in the controlled corporation if the distribution had not occurred.

(C) For purposes of paragraph (a)(2)(iii)(B) of this section, if an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation before the distribution is part of a plan (or series of related transactions) involving the distribution, the distributing corporation, the controlled corporation, and their controlling shareholders must treat the amount of stock acquired in

that acquisition as an amount they would reasonably have anticipated was more likely than not to be acquired within 2 years after the distribution that would not have been acquired if the distribution had not occurred.

(D) For purposes of determining the intentions, motivations, and reasonable anticipations of the relevant parties under paragraph (a)(2)(iii) of this section, the consequences of the application of section 355(e), directly or by indemnity, are disregarded.

(v) *Rebuttals for acquisitions before a distribution*—(A) *General rebuttal*. In the case of an acquisition occurring before a distribution, the distributing corporation may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that, at the time of the acquisition, the distributing corporation and its controlling shareholders (determined immediately after the acquisition) did not intend to effectuate a distribution.

(B) *Alternative rebuttal*. In the case of an acquisition occurring before a distribution, the distributing corporation may rebut the presumption of paragraph (a)(2)(i) of this section by establishing by clear and convincing evidence that the distribution would have occurred at approximately the same time and under substantially the same terms regardless of that acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance), provided no person acquiring an interest in that acquisition becomes a controlling shareholder by reason of that acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter).

(3) *Distributions more than 2 years from an acquisition*—(i) *Acquisitions after a distribution*. (A) If an acquisition by one or more persons of an interest in the distributing corporation or any controlled corporation occurs more than 2 years after a distribution, the distribution and that acquisition are presumed part of a plan (or series of related transactions) only if there was an agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter. The distributing corporation may rebut the presumption under paragraph (a)(2)(ii) or (a)(2)(iii) of this section.

(B) If an acquisition by one or more persons of an interest in the distributing corporation or any controlled

corporation occurs more than 2 years after a distribution, and there was no agreement, understanding, or arrangement concerning the acquisition at the time of the distribution or within 2 years thereafter, the acquisition and the distribution are not part of a plan (or series of related transactions).

(ii) *Acquisitions before a distribution*. If an acquisition by one or more persons of an interest in the distributing corporation or the controlled corporation occurs more than 2 years before a distribution, the acquisition and the distribution are not part of a plan (or series of related transactions) unless the Commissioner can establish by clear and convincing evidence that—

(A) At the time of the acquisition, the distributing corporation or its controlling shareholders (determined immediately after the acquisition) intended to effectuate the distribution; and

(B)(1) The distribution would not have occurred at approximately the same time and under substantially the same terms regardless of that acquisition (and, in the case of an issuance of stock, all acquisitions that are part of such issuance); or

(2) A person acquiring an interest in that acquisition becomes a controlling shareholder by reason of that acquisition or at any point thereafter and before the end of the 2-year period beginning on the date of the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter).

(4) *Controlling shareholder*. For purposes of paragraphs (a) (2) and (3) of this section, a controlling shareholder is any person who, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)), possesses voting power in the distributing or controlled corporation representing a meaningful voice in the governance of the corporation. A controlling shareholder of a publicly traded corporation is any person who, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)), owns 5 percent or more of any class of stock of the distributing or controlled corporation and who actively participates in the management or operation of the corporation. If a distribution precedes an acquisition, the controlled corporation's controlling shareholders immediately after the distribution are considered the controlled corporation's controlling shareholders at the time of the distribution.

(5) *Agreement, understanding, or arrangement*. For purposes of this

section, the parties do not necessarily have to have entered into a binding contract or have reached agreement on all terms to have an "agreement, understanding, or arrangement."

(6) *Multiple acquisitions*. Each acquisition of stock of a corporation acquired pursuant to a plan (or series of related transactions) involving a distribution will be aggregated with all acquisitions of stock of that corporation acquired pursuant to a plan (or series of related transactions) involving that distribution to determine whether an acquisition described in section 355(e)(2)(A)(ii) occurred. The appropriate presumption and rules for rebuttal will be applied to each acquisition depending on when the acquisition occurred.

(7) *Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests*—(i) *Treatment of options*—(A) *General rule*. For purposes of this section, if stock of the distributing or controlled corporation is acquired pursuant to an option, the option will be treated as an agreement on the date of issuance unless the distributing corporation establishes by clear and convincing evidence that, on the later of the date of distribution or date of issuance, the option was not more likely than not to be exercised. The determination of whether an option was more likely than not to be exercised is based on all the facts and circumstances. In applying the previous sentence, the fair market value of stock underlying an option is determined by taking into account control premiums and minority and blockage discounts.

(B) *Agreement, understanding, arrangement, or substantial negotiations to issue an option*. If there is an agreement, understanding, or arrangement to issue an option before the end of the 6-month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement. If an agreement, understanding, or arrangement to issue an option is reached, or an option is issued, more than 6 months but not more than 2 years after the distribution, and there were substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6-month period beginning on the date of the distribution, the option will be treated as issued 6 months after the distribution. If there is an agreement, understanding, or arrangement to issue an option more than 6 months but not more than 2 years after the distribution, and there were no

substantial negotiations regarding the issuance of the option or the acquisition of the stock underlying the option before the end of the 6 month period beginning on the date of the distribution, the option will be treated as issued on the date of the agreement, understanding, or arrangement.

(ii) *Instruments treated as options.* For purposes of this paragraph (a)(7), except to the extent provided in paragraph (a)(7)(iii) of this section, call options, warrants, convertible obligations, the conversion feature of convertible stock, put options, redemption agreements (including rights to cause the redemption of stock), restricted stock, any other instruments that provide for the right or possibility to issue, redeem, or transfer stock (including an option on an option), cash settlement options, or any other similar interests are treated as options.

(iii) *Instruments generally not treated as options.* For purposes of this paragraph (a)(7), the following are not treated as options unless issued, transferred (directly or indirectly), or listed with a principal purpose of avoiding the application of section 355(e) or this section:

(A) *Escrow, pledge, or other security agreements.* An option that is part of a security arrangement in a typical lending transaction (including a purchase money loan), if the arrangement is subject to customary commercial conditions. For this purpose, a security arrangement includes, for example, an agreement for holding stock in escrow or under a pledge or other security agreement, or an option to acquire stock contingent upon a default under a loan.

(B) *Compensatory options.* An option to acquire stock in the distributing or controlled corporation with customary terms and conditions provided to an employee or director in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) and that immediately after the distribution and within 6 months thereafter—

(1) Is nontransferable within the meaning of § 1.83-3(d); and

(2) Does not have a readily ascertainable fair market value as defined in § 1.83-7(b).

(C) *Options exercisable only upon death, disability, mental incompetency, or retirement.* Any option entered into between stockholders of a corporation (or a stockholder and the corporation) that is exercisable only upon the death, disability, or mental incompetency of the stockholder, or, in the case of stock

acquired in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed), the stockholder's retirement.

(D) *Rights of first refusal.* A bona fide right of first refusal regarding the corporation's stock with customary terms, entered into between stockholders of a corporation (or between the corporation and a stockholder).

(E) *Other enumerated instruments.* Any other instruments specified in regulations, a revenue ruling, or a revenue procedure. See § 601.601(d)(2) of this chapter.

(8) *Examples.* The following examples illustrate this paragraph (a). Throughout these examples, assume that the distributing corporation (D) owns all of the stock of the controlled corporation (C). Assume further that D distributes the stock of C in a distribution to which section 355 applies and to which section 355(d) does not apply. For purposes of these examples, unless otherwise stated, assume that all transactions described are respected under applicable general tax principles. No inference should be drawn from any example concerning whether any requirements of section 355 other than those of section 355(e) are satisfied. The examples are as follows:

Example 1. To facilitate a stock offering by D of 50 percent of its stock, D distributes C pro rata to its shareholders. D issues new shares amounting to 50 percent of its stock to the public in a public offering within 6 months of the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because the acquisition occurred within 6 months after the distribution, D must rely on the rules of paragraph (a)(2)(iii) of this section to rebut the presumption. D will not be able to rebut the presumption because D cannot establish either that D did not intend that one or more persons would acquire a 50-percent or greater interest in D during the relevant period under paragraph (a)(2)(iii)(A)(1) of this section or that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D under paragraph (a)(2)(iii)(A)(2) of this section. Because the presumption of paragraph (a)(2)(i) of this section cannot be rebutted regarding the acquisition of a 50-percent or greater interest in D, section 355(e) applies to the distribution of C.

Example 2. (i) X corporation announces an intention to acquire D, principally to acquire C's business. Due to market conditions, X's available capital, and X's success in acquiring other corporations, D would reasonably anticipate that an acquisition of a

50-percent or greater interest in D is more likely than not to occur within 2 years. To lower its financing costs and, in substantial part, to deter the acquisition of D (by separating it from the more attractive C), D distributes C pro rata to the D shareholders. X acquires C within 6 months of the distribution.

(ii) Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because the acquisition occurred within 6 months after the distribution, D must rely on the rules of paragraph (a)(2)(iii) of this section to rebut the presumption. Under paragraph (a)(2)(iii)(A)(2) of this section, D will be able to establish that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D or C. Under paragraph (a)(2)(iv)(B) of this section, for purposes of paragraph (a)(2)(iii)(B) of this section, persons who more likely than not would have acquired interests in D if the distribution had not occurred are also treated as persons who more likely than not would have acquired proportionate interests in C if the distribution had not occurred. Therefore, under paragraph (a)(2)(iii)(B) of this section, D will be able to establish that, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D or C within 2 years after the distribution who would not have acquired such interests if the distribution had not occurred.

(iii) Under paragraph (a)(2)(iii)(C) of this section, D will not be able to establish that the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of D's business by separating it from the C business that was likely to be acquired. Because the presumption of paragraph (a)(2)(i) of this section cannot be rebutted regarding the acquisition by X of a 50-percent or greater interest in C, section 355(e) applies to the distribution of C.

Example 3. The facts are the same as *Example 2* except the acquisition takes place 1 year after the distribution. The parties had not reached an agreement, understanding, or arrangement concerning, and had not substantially negotiated, the acquisition of C stock within 6 months after the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Under paragraph (a)(2)(ii)(B) of this section, D's intent to deter an acquisition of D is a factor tending to disprove that the distribution was motivated in substantial part by the desire to lower its financing costs. If D can establish by clear and convincing evidence that the distribution was nonetheless motivated in substantial part by the need to lower its financing costs, D can rebut the presumption using paragraph (a)(2)(ii) of this section. D will not be able to rebut the presumption by using the

alternative rebuttal under paragraph (a)(2)(iii) of this section for the same reason as in *Example 2*.

Example 4. D is a widely held, publicly traded corporation. D distributes C pro rata to D's shareholders. By contract, C agrees to indemnify D for any imposition of tax under section 355(e). The distribution is motivated solely by a corporate business purpose within the meaning of § 1.355-2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired). At the time of the distribution, although D has not been approached by any potential acquirors of C, D would reasonably anticipate that, under current market conditions, if C is separated from D, an acquisition of a 50-percent or greater interest in C is more likely than not to occur within 2 years by persons who would not have acquired a proportionate interest in D if the distribution of C had not occurred. C is acquired within 6 months after the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because the acquisition occurred within 6 months after the distribution, D must rely on the rules of paragraph (a)(2)(iii) of this section to rebut the presumption. D will be able to establish that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D or C under paragraph (a)(2)(iii)(A)(2) of this section. However, D will not be able to establish the requirements of paragraph (a)(2)(iii)(B) of this section. Under paragraph (a)(2)(iv)(B) of this section, for purposes of paragraph (a)(2)(iii)(B) of this section, only persons who more likely than not would have acquired interests in D if the distribution had not occurred are treated as persons who more likely than not would have acquired proportionate interests in C if the distribution had not occurred. Therefore, under paragraph (a)(2)(iii)(B) of this section, D will not be able to establish that, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D or C within 2 years after the distribution who would not have acquired such interests if the distribution had not occurred. Under paragraph (a)(2)(iv)(D) of this section, the consequences of the indemnity agreement are disregarded for purposes of applying paragraph (a)(2)(iii)(B) of this section. Because the presumption of paragraph (a)(2)(i) of this section cannot be rebutted regarding the acquisition of a 50-percent or greater interest in C, section 355(e) applies to the distribution of C.

Example 5. (i) D believes it would be a more attractive acquisition candidate if it did not own C. To achieve significant nontax cost savings and, in substantial part, to maximize the possibility of D's acquisition, D distributes C pro rata. At the time of the distribution, D has not, directly or indirectly, solicited or received any indication of

interest from potential acquirors. At the end of 6 months after the distribution, no agreement, arrangement, understanding, or substantial negotiations regarding the acquisition of D have taken place. Seven months after the distribution, D engages an investment banker to conduct an auction of D. One of the bidders acquires D 1 year after the distribution. Under paragraph (a)(2)(i) of this section, the distribution and acquisition are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. Because there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter, D can use the rebuttal under paragraph (a)(2)(ii) of this section if D can establish that the distribution was motivated in whole or substantial part by the corporate business purpose of achieving significant nontax cost savings. Under paragraph (a)(2)(ii)(B) of this section, D's intent to facilitate an acquisition of D is a factor tending to disprove that the distribution was motivated in substantial part by the desire to achieve nontax cost savings. If D can establish by clear and convincing evidence that the distribution was nonetheless motivated in substantial part by the need to achieve nontax cost savings for D and C, D can rebut the presumption using paragraph (a)(2)(ii) of this section.

(ii) D cannot rebut the presumption using the rules of paragraph (a)(2)(iii) of this section because D cannot establish either that D did not intend that one or more persons would acquire a 50-percent or greater interest in D during the relevant period under paragraph (a)(2)(iii)(A)(1) of this section or that the distribution was not motivated in whole or substantial part by an intention to facilitate an acquisition of an interest in D under paragraph (a)(2)(iii)(A)(2) of this section.

Example 6. D announces that it will distribute C pro rata to D's shareholders. The distribution is motivated solely by a corporate business purpose within the meaning of § 1.355-2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired). After the announcement but before the distribution, D acquires X, a widely held corporation. The X shareholders receive D stock in exchange for their X stock. No person who acquired D stock in the X acquisition became a controlling shareholder of D, as defined in paragraph (a)(4) of this section, within the time period described in paragraph (a)(2)(v)(B) of this section. Under paragraph (a)(2)(i) of this section, the distribution and the acquisition of D stock by the X shareholders are presumed to be part of a plan (or series of related transactions) because the acquisition occurred within 2 years of the distribution. If D can establish by clear and convincing evidence that the distribution of C would have occurred at approximately the same time and under substantially the same terms regardless of the acquisition of X, D may rebut the presumption under paragraph (a)(2)(v)(B) of this section.

Example 7. (i) D engages in business 1. C engages in business 2. D is interested in expanding business 1 through acquisitions, but D's ownership of C has been an impediment to acquisitions using D stock. On the advice of its investment banker, D plans to distribute its C stock to its shareholders solely to facilitate acquisitions by D. D has no specific goals regarding how much D stock will be acquired after the distribution. D and its investment banker have identified X and Y as potential acquisition targets. After D decides to distribute its C stock, but before the distribution date, D negotiates with and acquires X, but has no contact with Y. A, X's sole shareholder, receives 30 percent of D's stock, becoming a controlling shareholder of D within the meaning of paragraph (a)(4) of this section. One year after the distribution, D acquires Y. Y's shareholders receive 19 percent of D's stock. After the distribution, D and its investment banker identify Z as another desirable target. Eighteen months after the distribution, D acquires Z. Z's shareholders receive 17 percent of D's stock.

(ii) Under paragraph (a)(2)(i) of this section, the distribution and each acquisition are presumed to be part of a plan (or series of related transactions) because each acquisition occurred within 2 years of the distribution. In addition, under paragraph (a)(6) of this section, all acquisitions for which the presumption is not rebutted are aggregated to determine whether an acquisition described in section 355(e)(2)(A)(ii) has occurred.

(iii) Regarding the acquisition of X, D will not be able to rebut the presumption under paragraph (a)(2)(v)(A) of this section because D cannot establish that at the time A acquired D stock, D did not intend to effectuate a distribution. In addition, D cannot rebut the presumption under paragraph (a)(2)(v)(B) of this section because that paragraph does not apply to an acquisition in which a person becomes a controlling shareholder.

(iv) Regarding the acquisitions of Y and Z, D will not be able to rebut the presumption under paragraph (a)(2)(ii)(A) of this section because D cannot establish that the distribution was motivated in whole or substantial part by a corporate business purpose within the meaning of § 1.355-2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired).

(v) To rebut the presumption with regard to each acquisition of Y and Z using the alternative rebuttal of paragraph (a)(2)(iii) of this section, D must establish three facts. First, under paragraph (a)(2)(iii)(A)(1) of this section, D must establish that, at the time of the distribution, D and its controlling shareholders did not intend that one or more persons would acquire a 50-percent or greater interest in D or C during the presumption period described in that paragraph. For that purpose, the interests intended to be acquired in D or C will include A's acquisition of D stock under paragraph (a)(2)(iv)(A) of this section. Second, under paragraph (a)(2)(iii)(B) of this section, D must establish that, at the time of the distribution, neither D, C, nor their controlling

shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D or C within 2 years after the distribution (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests if the distribution had not occurred. Under paragraph (a)(2)(iv)(C) of this section, D, C, and their controlling shareholders must treat the amount of D stock acquired by A as an amount they would reasonably have anticipated was more likely than not to be acquired within 2 years after the distribution that would not have been acquired if the distribution had not occurred. Third, under paragraph (a)(2)(iii)(C) of this section, D will be able to establish that the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired.

Example 8. D plans to distribute C pro rata to its shareholders. The distribution is substantially motivated by a corporate business purpose within the meaning of § 1.355-2(b) (other than an intent to facilitate an acquisition or decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be acquired). After the announcement date, D's investment banker informs D's management that there is a lot of interest in new investment in D now that it will no longer own C. At the time of the distribution, D would reasonably anticipate that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D within 2 years (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not acquire such interests absent the distribution. Three months after the distribution, D issues an option to X to purchase 50 percent of the D stock. At the time of issuance, the facts and circumstances indicate that the option is more likely than not to be exercised. Two years after issuance, X exercises the option and purchases 50 percent of the D stock. Under paragraph (a)(7)(i)(A) of this section, the option is treated as an agreement on the date it is issued. Under paragraph (a)(3)(i)(A) of this section, the distribution and the acquisition are presumed to be part of a plan (or series of related transactions) because there was an agreement concerning the acquisition within 2 years of the distribution. D will not be able to rebut the presumption using the rebuttals of paragraphs (a)(2)(ii) or (a)(2)(iii) of this section. The rebuttal of paragraph (a)(2)(ii) of this section is unavailable because there was an agreement concerning the acquisition within 6 months of the distribution. The rebuttal of paragraph (a)(2)(iii) of this section is unavailable because D cannot establish that, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in D within 2 years (or later pursuant

to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests absent the distribution. Because the presumption relating to the acquisition of a 50-percent interest in D cannot be rebutted, section 355(e) applies to the distribution of C.

Example 9. (i) D distributes C pro rata to its shareholders solely to facilitate a stock offering by C. To take advantage of favorable market conditions, C issues new shares amounting to 20 percent of its stock in a public offering followed 1 month later by the distribution. The public offering documents disclosed the intended distribution of C. Neither D, C, nor their controlling shareholders intended any further transactions involving D or C stock. In addition, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably anticipate that it was more likely than not that one or more persons would acquire a 50-percent interest in D or C within 2 years (or later pursuant to an agreement, understanding, or arrangement existing at the time of the distribution or within 6 months thereafter) who would not have acquired such interests absent the distribution. Two months after the distribution, C is approached unexpectedly regarding an opportunity to acquire X. Five months after the distribution, C acquires X in exchange for 40 percent of the C stock. Under paragraph (a)(2)(i) of this section, the distribution and each acquisition are presumed to be part of a plan (or series of related transactions) because each acquisition occurred within 2 years of the distribution.

(ii) Regarding the public offering, D cannot rebut the presumption using paragraph (a)(2)(v) of this section. At the time of the acquisition, D and its controlling shareholders intended to effectuate the distribution. Also, the distribution would not have occurred at approximately the same time and under substantially the same terms regardless of the public offering.

(iii) Regarding C's acquisition of X, D will not be able to rebut the presumption using paragraph (a)(2)(ii) of this section because the acquisition occurred within 6 months after the distribution. However, D will be able to rebut the presumption regarding the acquisition of X using paragraph (a)(2)(iii) of this section. Neither D, C, nor their controlling shareholders intended that one or more persons would acquire a 50-percent or greater interest in D or C during the relevant period under paragraph (a)(2)(iii)(A)(I) of this section. Under paragraph (a)(2)(iii)(B) of this section, at the time of the distribution, neither D, C, nor their controlling shareholders would reasonably have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in C within 2 years who would not have acquired such interests if the distribution had not occurred. Under paragraph (a)(2)(iii)(C) of this section, the distribution was not motivated in whole or substantial part by an intention to decrease the likelihood of the acquisition of one or more businesses by separating those businesses from others that are likely to be

acquired. Because only the 20-percent acquisition by public offering is part of a plan (or series of related transactions) involving the distribution, section 355(e) does not apply.

(b) **Multiple controlled corporations.** Only the stock or securities of a controlled corporation in which one or more persons acquire directly or indirectly stock representing a 50-percent or greater interest as part of a plan (or series of related transactions) involving the distribution of that corporation will be treated as not qualified property under section 355(e)(1) if—

(1) The stock or securities of more than one controlled corporation are distributed in distributions to which section 355 applies; and

(2) One or more persons do not acquire, directly or indirectly, stock representing a 50-percent or greater interest in the distributing corporation pursuant to a plan (or series of related transactions) involving any of those distributions.

(c) **Valuation.** Except as provided in paragraph (a)(7)(i)(A) of this section, for purposes of section 355(e) and this section, all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not taken into account.

(d) **Effective date.** The regulations in this section apply to distributions occurring after the regulations in this section are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99-21876 Filed 8-19-99; 1:37 pm]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC-36-9932b; FRL-6426-9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d) Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC) for the State of South Carolina on April 12, 1999, for implementing and enforcing the Emissions Guidelines applicable to

existing Municipal Solid Waste Landfills. The Plan was submitted by the South Carolina DHEC to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the South Carolina State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed 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. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by September 23, 1999.

ADDRESSES: Written comments should be addressed to Gregory Crawford at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency,
Region 4, Air Planning Branch, 61
Forsyth Street, SW, Atlanta, Georgia
30303-8960

South Carolina Department of Health
and Environmental Control, Bureau of
Air Quality Control, 2600 Bull Street,
Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT:
Gregory Crawford at (404) 562-9046 or
Scott Davis at (404) 562-9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register** and incorporated by reference herein.

Dated: August 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.
[FR Doc. 99-21824 Filed 8-23-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-6426-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Chaparral Steel Midlothian, L.P. (Chaparral) to exclude (or delist) certain solid wastes generated by its Midlothian, Texas, facility from the lists of hazardous wastes.

Any person may petition the Administrator to modify or revoke any provision of the solid waste regulations. Generators are specifically provided the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Chaparral's petitioned waste is nonhazardous with respect to the original listing criteria and that the waste process Chaparral uses will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 8, 1999. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

ADDRESSES: Please send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resources Conservation Commission (TNRCC), P.O. Box 13087, Austin, Texas, 78711-3087. Identify

your comments at the top with this regulatory docket number: "F-99-TXDEL-CHAPARRAL."

You should address requests for a hearing to the Acting Director, Robert Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Your requests for a hearing must reach EPA by September 8, 1999. The request must contain the information prescribed in section 260.20(d).

FOR FURTHER INFORMATION CONTACT:
William Gallagher at (214) 665-6775.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

- I. Overview Information
 - A. What action is EPA proposing?
 - B. Why is EPA proposing to approve this delisting?
 - C. How will Chaparral manage the waste if it is delisted?
 - D. When would the proposed exclusion be finalized?
 - E. How would this action affect states?
- II. Background
 - A. What is the history of the delisting program?
 - B. What is a delisting petition, and what does it require of a petitioner?
 - C. What factors must EPA consider in deciding whether to grant a delisting petition?
- III. EPA's Evaluation of the Waste Information and Data
 - A. What wastes did Chaparral petition EPA to delist?
 - B. What information and analysis did Chaparral submit to support this petition?
 - C. Who is Chaparral and what process do they use to generate the petition waste?
 - D. How did Chaparral sample and analyze the data in this petition?
 - E. What were the results of Chaparral's analysis?
 - F. How did EPA evaluate the risk of delisting this waste?
 - G. What did EPA conclude about Chaparral's analysis?
 - H. What other factors did EPA consider in its evaluation?
 - I. What is EPA's final evaluation of this delisting petition?
- IV. Next Steps
 - A. With what conditions must the petitioner comply?
 - B. What happens if Chaparral violates the terms and conditions?
- V. Public Comments
 - A. How may I as an interested party submit comments?
 - B. How may I review the docket or obtain copies of the proposed exclusions?

I. Overview Information

A. What Action is EPA Proposing?

The EPA is proposing:
(1) To grant Chaparral's petition to have their Landfill No. 3 leachate, baghouse storm water, and other

wastewater that may have been in contact with the K061 waste excluded, or delisted, from the definition of a hazardous waste; and

(2) To use a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency uses this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

B. Why is EPA Proposing to Approve This Delisting?

Chaparral petitioned the Agency to exclude, or delist, the landfill leachate, baghouse storm water, and other wastewaters that may have potentially come in contact with K061 waste because they do not believe that the petitioned waste meets the criteria for which EPA listed it. Chaparral also believes no additional constituents or factors could cause the wastes to be hazardous.

Based on our review, described below, EPA has determined that the waste is nonhazardous with respect to the original listing criteria. (If our review had found that the waste remained hazardous based on the factors for which EPA listed the waste, we would have proposed to deny the petition.)

In reviewing this petition, we considered the original listing criteria and the additional factors required by RCRA section 3001(f), 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3).

We also evaluated the waste for other factors or criteria to assess whether these additional factors could cause the waste to be hazardous. These factors included: (1) whether the waste is considered acutely toxic, (2) the toxicity of the constituents, (3) the concentration of the constituents in the waste, (4) the waste constituent's tendency to migrate and to bioaccumulate, (5) its persistence in the environment once released from the waste, (6) plausible and specific types of management of the petitioned waste, (7) the quantity of waste produced, and (8) waste variability.

The EPA believes that the petitioned waste does not meet the criteria for which it listed the waste and does meet the criteria for delisting. The EPA's proposed decision to delist waste from Chaparral's facility is based on the description of the proposed treatment system and analytical data from the Midlothian facility submitted to support today's rule.

C. How Will Chaparral Manage the Waste if it is Delisted?

The facility would like to manage the waste in their onsite cooling system of which cooling ponds are a part. The wastewater would be substituted for some of the well water presently used for cooling purposes which would help conserve that natural resource. In this case, the requested change in waste management is subject to delisting by EPA and subsequent waste management practices in accordance with TNRCC rules and regulations.

D. When Would the Proposed Delisting Exclusion be Finalized?

The Hazardous and Solid Waste Act specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on today's proposal.

This rule, if finalized, will become effective immediately upon final publication. Section 3010(b) at 42 United States Code Annotated 6930(b) of RCRA allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect states?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received authorization from EPA to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent

requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Chaparral transports the petitioned waste to or manages the waste in any State with delisting authorization, Chaparral must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What is the history of the delisting program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, sections 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because they do not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for the listed wastes. The criteria for which EPA lists a waste are in part 261 and in the background documents for the listed wastes.

In addition, under section 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See part 261 and the background documents for the listed wastes.

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in section 260.22(a), in 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous. See 3010(b) of the Solid Waste Disposal Act.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded.

The "mixture" and "derived-from" rules are now final, after having been vacated, remanded, and reinstated. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to EPA on procedural grounds. See *Shell Oil Co. v. EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues. See (57 FR 7628) These rules became final on October 30, 1992. See (57 FR 49278) Consult these references for more information about mixtures derived from wastes.

III. EPA's Evaluation of the Waste Information and Data

A. What wastes did Chaparral petition EPA to delist?

On February 23, 1999, Chaparral Steel petitioned EPA for a conditional exclusion for 500,000 gallons (about 2,500 cubic yards) per year of leachate from its Landfill No. 3 single RCRA landfill unit containing electric arc furnace dust. The furnace dust is captured in the baghouse during the steelmaking process and is a listed hazardous waste classified as K061. The petitioned wastes are largely leachate generated in the landfill's leachate collection system and minor amounts of K061 wastewater from various plant operations including storm water from the baghouse floor areas and the pelletizer sump. These liquid wastes are presently pumped to an onsite storage tank. The resulting waste is also listed under § 261.3(c)(2)(i) (the "derived from" rule), as EPA Hazardous Waste No. K061. The listed constituents of concern for this waste code are hexavalent chromium, lead, and cadmium.

B. What information and analysis did Chaparral submit to support this petition?

To support its petition, Chaparral submitted:

(1) historical analytical data for the Electric Arc Furnace Dust (K061), and leachate analytical data from their Landfill No. 3 containing the Electric Arc Furnace Dust, and analytical data for the liquid from the K061 waste water storage tank;

(2) analytical results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, metals (including hexavalent chromium), pesticides, herbicides, polychlorinated biphenyls, furans, and dioxins;

(3) analytical results of the constituent list derived from appendix IX for identified constituents;

(4) analytical results for reactive sulfide;

(5) analytical results for reactive cyanide;

(6) test results for corrosivity by pH;

(7) analytical results of samples from bench tests of treated leachate/K061 wastewater; and

(8) test results for oil and grease.

C. Who is Chaparral and what process do they use to generate the petitioned waste?

Chaparral Steel operates a steel plant which manufactures primary steel from scrap steel utilizing an electric arc furnace process with continuous casting

of billets, and then rolling to finished goods. Electric arc furnace dust, which is captured in the baghouse during the steelmaking process, is a listed hazardous waste (K061). In the past, K061 was landfilled on-site. The on-site landfills have been closed. The baghouse K061 wastes are currently shipped off-site for metals recovery or are reused on site by reintroduction to the electric arc furnace.

Leachate from Landfill No. 3 which also bears the K061 waste classification, is collected from the landfill's leachate collection system and stored in an on-site tank. Small amounts of water from various locations within the facility including storm water from the palletizer sump and storm water from the baghouse floor (which is potentially mixed with electric arc furnace dust and therefore would also be designated as K061) is also placed in the tank occasionally. Also minor amounts of water that has potentially contacted K061 is occasionally added to the tank. However, the amounts of storm water and other potentially contaminated wastewaters are very minor as compared to the leachate. The contents of the leachate tank are presently transported to an offsite injection facility for disposal.

D. How did Chaparral sample and analyze the data in this petition?

Chaparral developed a list of constituents of concern from prior analytical data and by analyzing the first sample for the entire appendix IX list of hazardous constituents found in 40 CFR part 264. More specifically, Chaparral analyzed one treated and one raw leachate composite sample for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, metals, herbicides, pesticides, PCBs, and furans from appendix IX. These two samples were analyzed for the comprehensive list in order to confirm that there were no other constituents of concern in the petitioned waste.

Chaparral collected four composite samples from the storage tank over a twenty-five week period. They collected these samples in this manner to ensure that the samples represented the potential time and space variability of the petitioned waste. All samples were analyzed for constituents of concern and were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR 261.21, 261.22, and 261.23, including analysis for reactive constituent concentrations of cyanide and sulfide. These samples were not analyzed for TCLP

concentrations (i.e., mass of a particular constituent per unit volume of extract) since the leachate is a liquid and the total analysis concentration is considered to be the TCLP concentration.

Chaparral used these methods	To quantify
SW-846 Method 8260, and 8270.	The total constituent concentrations of 40 CFR, part § 264 Appendix IX Volatiles and Appendix IX Semivolatiles including PCBs, Pesticides, and Herbicides.
SW-846 Methods 6010, 7041, and 7740, and 7196.	Appendix IX Metals.
SW-846 Methods 7470.	Mercury.
9071	Total oil and grease.
9045	pH
9030	Reactive Sulfide.
9010	Reactive Cyanide.

Chaparral used these methods	To quantify
1010	Ignitability.

E. What were the results of Chaparral's analysis?

Tables 1 and 2 present the maximum total constituent leachate concentrations for the raw waste and for the treated waste samples from bench test studies. The bench test study simulated a typical wastewater treatment process. If the raw (untreated) waste does not meet delisting criteria, then Chaparral intends to treat the waste in a wastewater treatment plant to meet the delisting criteria.

The wastewater treatment process would add a coagulant such as ferric chloride to precipitate the metal constituents and then add a cationic polymer to flocculate the metal constituents. A filter unit would remove the precipitated metal constituents which would yield a wastewater with concentrations of constituents of

concern well below the delisting criteria concentrations.

Chaparral calculated, based on historical information and the worst case scenario, the maximum petitioned waste to be excluded on a yearly basis will be 500,000 gallons (or about 2500 cubic yards) of petitioned waste. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Chaparral's certified estimates. The EPA does not generally verify submitted test data before proposing delisting decisions. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

TABLE 1.—MAXIMUM ORGANIC TOTAL CONSTITUENT CONCENTRATIONS ¹ For Raw Leachate/K061 Wastewater and Treated Leachate/K061 Wastewater from the Storage Tank

Constituents	Total Constituent Analyses for Raw Leachate ¹ (mg/l)	Total Constituent Analyses for Treated Leachate ¹ (mg/l)
1,2-Dichloroethane	0.004	<0.005
2-Butanone	0.003	0.005
4-Methyl-2-pentanone	0.008	0.005
Acetone	0.08	0.1
Carbon Disulfide	0.003	0.005
Chloromethane	<0.01	0.001
Ethylbenzene	0.004	<0.005
Methyl Iodide	<0.01	0.002
Methylene Chloride	0.001	<0.005
Toluene	0.001	0.004
Xylene	0.03	0.006

< Denotes that the constituent was not detected at the detection limit specified in the table.

¹ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

F. How did EPA evaluate the risk of delisting this waste?

Chaparral Steel's petition requests a conditional delisting for listed hazardous wastes. In making the initial delisting determination, EPA evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(1), 261.11(a)(2) and 261.11(a)(3). Based on this review, EPA has determined that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have

proposed to deny the petition.) The EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The EPA considered whether the wastes are acutely toxic, the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and waste variability.

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water and air) for hazardous constituents present in the petitioned wastes. The EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Chaparral's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a particular fate and transport model, EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous

constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the disposal of Chaparral's petitioned wastes on human health and the environment. You can find a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting in 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991) and the RCRA public docket. This model includes both unsaturated and saturated zone transport modules. It uses the reasonable worst-case contaminant levels in ground water at a compliance point (that is, a receptor well serving as a drinking-water supply.)

Specifically, EPA used the maximum estimated waste volumes and the maximum reported concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from a theoretical disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act or health-based levels derived from verified Reference Doses. The values used for lead and copper are action levels for treatment of a water supply in lieu of an MCL (40 CFR 141.80).

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and gives a high degree of confidence that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. In most cases, because a delisted waste is no longer subject to hazardous waste control (unless conditionally delisted), EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA normally believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. If however, conditions contained in a delisting indicate that it is necessary to consider site specific factors or otherwise indicate that the model is inappropriate,

EPA may consider these factors in applying the model.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. The evaluation of the information submitted indicated that the waste is managed in a tank with secondary containment. Therefore ground water data is not applicable to this petition.

From the evaluation of Chaparral's delisting petition, one of the constituents evaluated, lead, is being proposed as a verification testing condition. Proposed maximum allowable leachable concentrations for this constituent was derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a surface impoundment management scenario and by comparing results with the Land Disposal Restrictions (LDRs) maximum allowable concentration. The lowest of these two concentrations (i.e., delisting levels) are part of the verification testing conditions of the proposed exclusion. Therefore, delisting levels are less than LDR concentrations and thus the LDRs are met. Details of the evaluation of lead and other constituents of concern is explained in more detail later in this section.

Chaparral's exclusion (if granted) would be contingent upon the facility conducting sampling and analysis of the waste to insure that the delisting conditions are met (i.e., wastes meet EPA's verification testing conditions).

The EPA's proposed decision is based on the information submitted in support of today's rule, i.e., historical data from the Landfill No. 3 leachate, analytical data from recent samples from the leachate storage tank containing leachate and K061 wastewaters, and analytical data from bench tests of the leachate/K061 wastewaters after treatment in a simulated wastewater treatment system.

Finally, RCRA (7004(b)(1)) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

The EPA's evaluation of the raw leachate using a Dilution Attenuation Factor of 68, a maximum waste volume annually of 2500 cubic yards (or 500,000 gallons per calendar year), and the maximum reported constituent concentrations (see Tables 1 and 2), yielded compliance point concentrations (see Tables 3 and 4) that

are below the current health-based levels except for the constituent lead which is discussed below.

In Table 3, the calculated compliance point concentrations derived from the maximum reported leachate concentrations (see Table 1) of the organic constituents detected in the waste are compared with the levels of concern. The organic constituents are believed to be artifacts from sampling or analysis errors because: (1) the arc furnace process should have destroyed the organic chemicals, (2) the organic constituents are not detected consistently, (3) most detections are near the detection limits, and (4) several of the compounds are common laboratory contaminants. However, in spite of this reasoning, EPA completed the evaluation conservatively using the highest concentration found for each organic constituent in the petitioned waste. As shown in Table 3, the maximum reported leachate concentrations of 1,2-dichloroethane, 2-butanone, 4-methyl-2-pentanone, acetone, carbon disulfide, ethylbenzene, methylene chloride, toluene, and xylene yielded compliance point concentrations below the health-based levels used in delisting decision-making. It should also be noted that the concentrations of the organic constituents found in the raw leachate are below LDR concentration values and therefore the LDRs are met. See Table 1.

The EPA also evaluated the mobility of the two remaining organic constituents chloromethane and methyl iodide which were not detected in the leachate but were found in the treated leachate at concentrations of 0.001 and 0.002 mg/l yielding compliance concentrations of 0.00001 and 0.00003 mg/l, in respective order. These concentrations are well below the levels of concern of 0.007 and 0.03 mg/l, respectively. The 0.001 and 0.002 mg/l values are below the LDR concentration values and therefore the LDRs are met.

In Table 4, the calculated compliance point concentrations derived from the maximum reported leachate/K061 wastewater concentrations of the inorganic constituents (see Table 2) detected in the petitioned raw waste are compared with the levels of regulatory concern. The maximum reported or calculated concentrations of arsenic, barium, cadmium, total chromium, copper, mercury, nickel, vanadium, and zinc yielded compliance point concentrations below Levels of Concern.

The EPA did not evaluate the mobility of the constituents beryllium, hexavalent chromium, cobalt, selenium, silver, thallium and cyanide from Chaparral's petitioned waste because

these constituents were not detected in the leachate using the appropriate analytical test methods. See Table 2. The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its delisting modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), EPA, for delisting purposes, assumes that the constituent is not present and therefore does not present a threat to human health or the environment. In the delisting program EPA believes it is inappropriate to evaluate constituents undetected in the waste samples.

The maximum reported raw leachate concentration for a single sample of lead (2.0 mg/l) yielded a calculated

compliance point concentration (0.029 mg/l) slightly above the health-based level (0.015 mg/l) used in the delisting decision-making process.

The lead value (0.029 mg/l) represents the calculated leachate concentrations of lead at a theoretical downgradient ground water monitoring well using the EPACML model and a concentration value of 2.0 mg/l from one raw waste sample. This value was the highest concentration identified for the four analysis completed for lead. The four concentration values for lead as identified in the raw waste were 2.0, 1.3, 0.5 and 0.55 mg/l and the values for the treated waste were 0.081, 0.06, 0.026, and <0.0011 mg/l. Two of the raw waste lead values (0.5 and 0.55 mg/l) and all of the treated samples yield calculated compliance point concentrations below the concentration of concern. For this reason, verification

testing for one waste constituent, lead, will be a condition of the delisting.

Lead was the only constituent that did not consistently have calculated compliance point concentrations below the concentrations of concern. As shown in Tables 3 and 4, all other constituents were always below the concentrations of concern at the calculated compliance point. It should also be noted that the concentration values as measured in the raw waste for all other constituents of concern were below the LDR concentration values. Therefore, with the exception of the constituent lead, the petitioned waste meets LDR concentration values even before the compliance point concentrations are calculated. Seven years of historical leachate data also supported the decision that lead was the only Constituent of Concern which should require verification testing.

TABLE 2.—MAXIMUM INORGANIC TOTAL CONSTITUENT CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER AND TREATED LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK

Constituents	Total Constituent Analyses for Raw Leachate ¹ (mg/l)	Total Constituent Analyses for Treated Leachate ¹ (mg/l)
Antimony	<0.0066	0.008
Arsenic	0.081	0.068
Barium	0.26	0.007
Beryllium	<0.0017	<0.0017
Cadmium	0.019	0.0020
Chromium (Total)	0.17	0.013
Chromium (Hexavalent)	<0.1	<0.02
Cobalt	<0.0016	<0.0016
Copper	0.096	0.029
Lead	2	0.081
Mercury	0.00031	0.00016
Nickel	0.019	0.014
Selenium	<0.01	0.044
Silver	<0.0012	<0.0012
Thallium	<0.0096	<0.0096
Tin	0.025	0.017
Vanadium	0.042	0.038
Zinc	5.6	0.08
Sulfide (Total)	1.3	<1.0
Cyanide (Total)	<0.0018	<0.0018

< Denotes that the constituent was not detected at the noted detection limit.

¹ These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.

Organic Constituents	Compliance Point Concentrations ¹ (mg/l)	Levels of Concern ² (mg/l)
1,2-Dichloroethane	0.00006	0.005
2-Butanone	0.00004	20.
4-Methyl-2-pentanone	0.0001	2.
Acetone	0.001	4.
Carbon Disulfide	0.00004	4.
Ethylbenzene	0.00006	70.
Methylene Chloride	0.00001	0.005
Toluene	0.00001	1.

TABLE 3.—EPACML: CALCULATED COMPLIANCE POINT ORGANIC CONCENTRATIONS FOR RAW LEACHATE AND K061 WASTEWATER FROM THE K061 STORAGE TANK.—Continued

Organic Constituents	Compliance Point Concentrations ¹ (mg/l)	Levels of Concern ² (mg/l)
Xylene	0.0004	10.

<Denotes that the constituent was not detected at the detection limit specified in the table.

¹ Using the maximum leachate level from Table 1 and based on a DAF of 68 calculated using the EPACML for a yearly volume of 2500 cu. yards (or 500,000 gal.).

² See Docket Report on Health-Based Levels and Solubilities Used in the evaluation of Delisting Petitions, December 1994 located in the RCRA public docket for today's document.

TABLE 4.—EPACML: CALCULATED COMPLIANCE POINT INORGANIC CONCENTRATIONS FOR RAW LEACHATE/K061 WASTEWATER FROM THE K061 STORAGE TANK.

Inorganic Constituents	Compliance Point Concentrations ¹ (mg/l)	Levels of Concern ² (mg/l) ¹
Arsenic	0.0012	0.05
Barium	0.0038	2.
Cadmium	0.00028	0.005
Chromium (Total)	0.0025	0.1
Copper	0.0014	1.3
Lead	0.03	0.015
Mercury	0.000005	0.002
Nickel	0.00028	0.1
Tin	0.00037	21.
Vanadium	0.00062	0.3
Zinc	0.082	5.

¹ Using the maximum concentration level from Table 2 and based on a DAF of 68 calculated using the EPACML for yearly volume of 2500 cu. yards (or 500,000 gal.).

² See Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, December 1994 located in the RCRA public docket for today's document.

G. What did EPA conclude about Chaparral's analysis?

The EPA concluded, after reviewing Chaparral Steel's processes and analytical data that:

(1) no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in Chaparral's wastes, and

(2) the petitioned wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

H. What other factors did EPA consider in its evaluation?

During the evaluation of Chaparral's petition, EPA also considered the potential impact of the petitioned wastes via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned wastes is unlikely as the constituents of concern are not volatile organics which would readily transfer to the ambient air; no appreciable air releases are likely from the petitioned wastes under any likely disposal

conditions. Nor does EPA believe that the petitioned waste presents a threat to surface water. Calculations indicate that the concentrations of the constituents of concern would be below drinking water criteria and surface water criteria before reaching the nearest surface water. See docket.

I. What is EPA's final evaluation of this delisting petition?

The descriptions of the Chaparral Steel's process and analytical characterization, in conjunction with the proposed verification testing requirement (as discussed later in this document), provide a reasonable basis to grant Chaparral Steel's petition for a conditional exclusion of the petitioned waste. The EPA believes the data submitted in support of the petition show Chaparral Steel's proposed wastewater treatment process can render the raw leachate wastes non-hazardous if the raw leachate does not meet delisting conditions. Treatment is an option if the untreated waste does not meet the delisting criteria. The EPA has reviewed the sampling procedures used by Chaparral Steel and has determined they satisfy EPA criteria for collecting representative samples of the

variations in constituent concentrations in the petitioned waste. The data submitted in support of the petition show that constituents, with the exception of lead in two samples, in Chaparral Steel's raw leachate waste are presently below health-based levels used in the delisting decision-making. The EPA believes that the facility's information has successfully shown that the petitioned waste is non-hazardous or can be rendered non-hazardous through treatment. The EPA, therefore, proposes to grant a conditional exclusion to Chaparral Steel Midlothian, L.P., located in Midlothian, Texas, for the leachate from their Landfill No. 3, the storm water from their baghouse, and other wastewater that may have come in contact with K061. The EPA's decision to conditionally exclude this waste is based on the historical analytical data associated with the petitioned waste and characterization of the raw and treated waste. If the proposed rule is finalized, the petitioned wastes will no longer be subject to regulation under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, Chaparral, must comply with the requirements in 40 CFR part 261, appendix IX, Table 2. The text below gives the rationale and details of those requirements.

(1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calendar year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (parts per million). Constituents must be measured in the waste by the method specified in SW-846.

This paragraph provides the level of lead for which Chaparral Steel must test the raw leachate, baghouse storm water, and other K061 wastewaters combined in the storage tank. This is the level below which this waste would be considered non-hazardous and for which the Agency is proposing to grant an annual conditional exclusion. The EPA selected the lead constituent specified after reviewing information about the composition of the waste, descriptions of Chaparral's treatment process, previous test data provided for the waste, the respective health-based levels used in delisting decision-making, and LDR levels. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAF of 68. See, previous discussions in Section III.F, i.e., $MAL = HBL \times DAF$ or $1.02 \text{ mg/l} = 0.015 \text{ mg/l} \times 68$. The EPA selected the more conservative concentration level in considering the calculated health-based value of 1.02 mg/l and the technology based LDR value of 0.69 mg/l. This delisting level corresponds to the allowable levels measured in the waste.

(2) *Waste Holding and Handling:* Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or

returned to the original storage tank. Treatment is designated as precipitation, flocculation, and filtering in a wastewater treatment system to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA.

The purpose of this paragraph is to ensure that any waste located in the storage tank which might contain hazardous levels of lead are managed and disposed of in accordance with subtitle C of RCRA. Holding the leachate waste from Landfill No. 3, the storm water from the baghouse area, and other K061 wastewaters until characterization is complete will protect against improper handling of hazardous material. If EPA determines that the data collected under this condition do not support the data provided for the petition or Chaparral Steel is not meeting the terms of its exclusion, the exclusion will not cover the petitioned wastes.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodologies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2).

If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B).

(A) *Initial Verification Testing:* Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/wastewater storage tank must be analyzed for the constituent lead as listed in Condition (1). Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treatment batches within 90 days of the eighth treatment batch.

(B) *Subsequent Verification Testing:* Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As

stated in Condition (3) Chaparral must continue to test all untreated batches to determine if delisting criteria are met before managing the wastewater from the K061 tank as nonhazardous.

(4) *Changes in Operating Conditions:* If Chaparral Steel significantly changes the treatment process established under Condition (3) (e.g., use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).

(5) *Data Submittals:* Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and Comprehensive Environmental Response, Compensation, and Liability Act obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Chaparral Steel's facility is properly managing the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed conditional exclusion will apply to 2500 cubic yards (500,000 gallons) per calendar year of petitioned waste. Although management of the wastes covered by this petition would not be subject to subtitle C jurisdiction upon final promulgation of an exclusion, Chaparral must ensure that the onsite management of the delisted waste is in accordance with TNRCC rules and regulations or the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) *Reopener Language*

(A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data.

(B) If Chaparral fails to submit or maintain the data requested in paragraphs (5), or (6)(A) or if any information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information.

(D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or

the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.

The purpose of paragraph (6) is to require Chaparral Steel to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This paragraph will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency from any source which indicates that information which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Chaparral to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language is similar to these provisions found in RCRA regulations governing no-migration petitions located at section 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978), *et seq.*, to reopen a delisting decision if new information is received that calls into question the assumptions underlying the delisting and believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. See, e.g., Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting. In the meantime, in the event that an immediate threat to human health and the environment presents itself, EPA will continue to address such situations on a case-by-case basis and where necessary, will make a good cause finding to justify emergency rulemaking. See APA section 553(b).

(7) *Notification Requirements:* Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the

delisting petition and a possible revocation of the decision.

B. What happens if Chaparral violates the terms and conditions?

If Chaparral violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will continue to evaluate these events on a case-by-case basis. The Agency expects Chaparral to conduct the appropriate waste analysis and comply with the criteria explained above in terms and conditions of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

Please send three copies of your comments: Send two copies to William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD-O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Send the third copy to the Texas Natural Resource Conservation Commission (TNRCC), 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: F-99-TXDEL-CHAPARRAL.

You should address requests for a hearing to the Acting Director, Robert E. Hanneschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order (E.O.) 12866, EPA must conduct an "assessment" of the potential costs and benefits for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of E.O. 12866.

VII. Children's Health Protection

Under E.O. 13045, for all "significant" regulatory actions as defined by E.O. 12866, EPA must provide a evaluation of the environmental health or safety affect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposal is not a significant regulatory action and is exempt from E.O. 13045.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on

any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

X. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory

requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

XI. Intergovernmental Partnership

Under E.O. 12875, EPA may not promulgate any regulation which creates an unfunded mandate upon State, local or tribal governments. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments (see Section X. UMRA above) and accordingly, this action is exempt from the requirements of E.O. 12875.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: August 6, 1999.

Robert Hanneschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to part 261—Wastes Excluded Under sections 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* Chaparral Steel Midlothian, L.P.	* Midlothian, Texas	* Leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters which have been pumped to tank storage (at a maximum genera- tion of 2500 cubic yards or 500,000 gallons per calendar year) (EPA Hazardous Waste No. K061) generated at Chaparral Steel Midlothian, L.P., Midlothian, Texas, and is managed as nonhazardous solid waste after [publication date of final rule]. Chaparral Steel must implement a testing program that meets the following con- ditions for the exclusion to be valid: (1) <i>Delisting Levels:</i> All concentrations for the constituent total lead in the approxi- mately 2,500 cubic yards (500,000 gallons) per calendar year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous manage- ment must not exceed 0.69 mg/l (ppm). Constituents must be measured in the waste by the method specified in SW-846. (2) <i>Waste Holding and Handling:</i> Chaparral Steel must store as hazardous all leachate waste from Landfill No. 3, storm water from the bag house area, and other K061 wastewaters until verification testing as specified in Condition (3), is completed and valid analyses demonstrate that condition (1) is satisfied. If the levels of constituents measured in the samples of the waste do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regula- tions. If constituent levels in a sample exceed the delisting levels set in Condition (1), the waste volume corresponding to this sample must be treated until delisting levels are met or returned to the original storage tank. Treatment is des- ignated as precipitation, flocculation, and filtering in a wastewater treatment sys- tem to remove metals from the wastewater. If the delisting level cannot be met, then the waste must be managed and disposed of in accordance with subtitle C of RCRA. (3) <i>Verification Testing Requirements:</i> Sample collection and analyses, including quality control procedures, must be performed according to SW-846 methodolo- gies. Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sam- ple, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating condi- tions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless no- tified by EPA or designated authority that testing in Condition (3)(A) may be re- placed with by Condition (3)(B). (A) <i>Initial Verification Testing:</i> Representative composite samples from the first eight (8) full-scale treated batches of wastewater from the K061 leachate/waste- water storage tank must be analyzed for the constituent lead as listed in Condi- tion (1), Chaparral must report to EPA the operational and analytical test data, including quality control information, obtained from these initial full scale treat- ment batches within 90 days of the eighth treatment batch. (B) <i>Subsequent Verification Testing:</i> Following notification by EPA, Chaparral Steel may substitute the testing conditions in (3)(B) for (3)(A). Chaparral Steel must analyze representative composite samples from the treated full scale batches on an annual basis. If delisting levels for any constituent listed in Condition (1) are exceeded in the annual sample, Chaparral must reinstitute complete testing as required in Condition (3)(A). As stated in Condition (3) Chaparral must continue to test all batches of untreated waste to determine if delisting criteria are met be- fore managing the wastewater from the K061 tank as nonhazardous. (4) <i>Changes in Operating Conditions:</i> If Chaparral Steel significantly changes the treatment process established under Condition (3) (e.g., use of new treatment agents), Chaparral Steel must notify the Agency in writing. After written approval by EPA, Chaparral Steel may handle the wastes generated as non-hazardous, if the wastes meet the delisting levels set in Condition (1).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) <i>Data Submittals</i>: Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, or both, and be made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) <i>Reopener Language</i> (A) If, anytime after disposal of the delisted waste, Chaparral Steel possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraphs (5), or (6)(A) and any other information received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or delegate's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (6)(C) or (if no information is presented under paragraph (6)(C)) the initial receipt of information described in paragraph (5) or (6)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) <i>Notification Requirements</i>: Chaparral Steel must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activity. The one-time written notification must be updated if the delisted waste is shipped to a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.
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[FR Doc. 99-21941 Filed 8-23-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL 6427-3]

North Carolina; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on application of State of North Carolina for final approval, public hearing and public comment period—correction.

SUMMARY: The State of North Carolina has applied for approval of its underground storage tank program for petroleum and hazardous substances under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed the North Carolina application and has made the tentative decision that the North Carolina underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. The **Federal Register** document announcing EPA's tentative decision and requesting public comment was published in August 10, 1999 (64 FR 43336-43338). In that **Federal Register** document the date for EPA to determine if there is sufficient interest to hold a public hearing, and for the public to contact EPA to find out if a public hearing would be held, was incorrectly listed. The correct information should read: EPA will determine by September 10, 1999, whether there is sufficient interest to hold the public hearing. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone the contact listed under the heading **FOR FURTHER FURTHER INFORMATION CONTACT.**

DATES: Written comments on the North Carolina program approval application, as well as requests to present oral testimony, must be received by the close of business September 9, 1999. A public hearing is scheduled for September 13, 1999, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by September 9, 1999. EPA will determine by September 10, 1999, whether there is significant interest to hold the public hearing. The State of North Carolina

will participate in the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, telephone (404) 562-9277. Copies of the North Carolina approval application are available for inspection and copying during the hours of 9:00 am to 5:00 pm at the following addresses: North Carolina Department of Environment and Natural Resources, Underground Storage Tank Section, 2728 Capital Boulevard, Parker-Lincoln Building, Raleigh, North Carolina 27604, Phone: (919) 733-8486; U.S. EPA Docket Clerk, Office of Underground Storage Tanks, 1235 Jefferson Davis Highway-1st Floor, Arlington, Virginia 22202, Phone: (703) 603-9231; and, U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562-9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of North Carolina's application for program approval on September 13, 1999, at 7:00 pm at the North Carolina Department of Environment and Natural Resources Archedale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina 27604-1148. Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts on or after September 10, 1999: Mr. John K. Mason, Chief, Underground Storage Tank Section, US EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, Phone: (404) 562-9277; or Mr. Burrie Boshoff, Chief, Underground Storage Tank Section, North Carolina Department of Environment and Natural Resources, Post Office Box 29578, Raleigh, North Carolina 27626-0578, Phone: (919) 733-8486.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303, phone: (404) 562-9277.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This document is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99-21940 Filed 8-23-99; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 84

National Institute for Occupational Safety and Health; Approval of Respiratory Devices Used to Protect Workers in Hazardous Environments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of priorities for rulemaking.

SUMMARY: NIOSH is announcing a change in priority order and projected dates for publication of proposed rule amendments (modules) for respiratory devices used to protect workers in hazardous environments. The priority order of the planned modules is provided to help the respirator community plan for potential changes.

FOR FURTHER INFORMATION CONTACT: Roland Berry Ann, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505-2888, telephone (304) 285-5907.

Availability and access of copies: Additional copies of this notice can be obtained by calling the NIOSH toll-free information number (1-800-35-NIOSH, option 5, 9 a.m.-4 p.m. ET); the electronic bulletin board of the Government Printing Office, (202) 512-1387; and the NIOSH Home Page on the World-Wide Web (<http://www.cdc.gov/niosh/homepage.html>).

SUPPLEMENTARY INFORMATION: NIOSH is currently in the process of developing modules to be proposed in the priority order below:

1. Administrative/Quality Assurance Module

Areas for potential modification in this module are: Upgrade of Quality Assurance requirements; Ability to use private sector quality auditors and private sector testing laboratories in the approval program; Revised approval label requirements; Validated approval fit tests; Updated and restructured fee schedule; and Fee retention in the Respirator program.

2. Self Contained Self Rescuer (SCSR)

Areas for potential modification in this module are: Metabolic simulator performance tests; Environmental tests (shock, vibration, temperature); Hypoxia tests; Reliability assessment; and Minimum performance requirements.

3. Powered Air Purifying Respirator (PAPR)

Areas for potential modification in this module are: Establishment of N, R, and P series filters; Use of active low flow or low pressure warning devices; Addition of new duration ratings; and Development of new types, such as pressure-demand PAPRs.

I. Background

On May 16, 1996, NIOSH published a document in the **Federal Register** (61 FR 24740) to request public comments on what the agency's priorities should be in the area of respirator certification. NIOSH sought public comments on issues of privatization and fees related to possible changes in its administration of respirator approval, and comments on establishing priorities for future rulemaking. NIOSH held three public meetings in June 1996 to discuss these issues. All comments provided in response to the notice were considered in developing rulemaking priorities.

NIOSH published a Notice for priority rulemaking in the **Federal Register** on October 17, 1997 (62 FR 53998) based on the comments received in response to its May 16, 1996 request. That Notice listed four technical and three

Administrative/Quality Assurance topic areas for priority rulemaking. In establishing the priorities for rulemaking, NIOSH acknowledged that those priorities may change to respond to emerging hazards and developing technologies or unforeseen delays encountered with research efforts. As established with that Notice, the NIOSH Docket remains open for additional public input on priority needs and module content.

Since that time, NIOSH has reconsidered those priorities due to recent serious field problems with deployed Self Contained Self Rescuers (SCSRs). Investigation of the problems with these respirators has revealed reliability issues resulting in product recalls and withdrawal of one product approval. NIOSH considers these recent experiences and the resultant concerns raised about the use of SCSRs to represent an emerging hazard requiring immediate attention. As a result, NIOSH has reevaluated its previously-published regulatory priority assessment to include an SCSR module as a priority. The Institute has formed a committee to review SCSR issues to be addressed in a module. Except for the addition of the SCSR module as the highest priority in the technical area, the originally prioritized topic areas remain unchanged.

To aid stakeholders in the respirator community in planning for possible regulatory changes, the schedule below provides general guidance for anticipating regulatory announcements.

PROJECTED 42 CFR PART 84 MODULE SCHEDULES

Module	Publication of NPRM	Publication of final rule
Administrative/QA ..	10/2000	06/2002
SCSR	12/2001	06/2003
PAPR	12/2001	09/2003

II. Continued Comments

As stated previously, the NIOSH docket remains open for receipt of additional comments and information on content for the modules announced in this notice. Comments for the need to re-prioritize other module topics also are welcome. NIOSH will periodically review the information in the docket to assist in determining if a priority reassessment is needed. Comments should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533-8450, fax (513) 533-8285. Comments may also be submitted by e-mail to: NIOCINDOCKET@CDC.GOV. E-mail attachments should be formatted as WordPerfect 4.2, 5.0, 5.1/5.2, 6.0/7.0/8.0, or ASCII files.

Dated: August 18, 1999.

Bryan Hardin,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 99-21890 Filed 8-23-99; 8:45 am]

BILLING CODE 4163-19-P

Notices

Federal Register

Vol. 64, No. 163

Tuesday, August 24, 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 COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Customer Satisfaction Data Collection.

Agency Form Number: None.

OMB Approval Number: None.

Burden Hours: 6,267.

Number of Respondents: Approximately 50,000.

Average Hours Per Response: Varies depending on survey.

Needs and Uses: NIST is requesting a generic clearance of various customer satisfaction surveys in the areas of Measurement and Standards Laboratories, Advanced Technology Program, Manufacturing Extension Partnership and the Baldrige National Quality Program. The surveys are designed to determine the kind and quality of products, services, and information key customers want and expect, satisfaction with and awareness of existing products, services, and information.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, Federal, state, local or tribal government.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, 395-6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482-3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at Lengelme@doc.gov).

Written comments and recommendation for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20530.

Dated: August 19, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-21897 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Firearms Convention.

Agency Form Number: BXA-748P.

OMB Approval Number: 0694-0114.

Type of Request: Renewal of an existing collection of information.

Burden: 176 hours.

Average Time Per Response: Ranges between 5 to 90 minutes per response.

Number of Respondents: 833 respondents.

Needs and Uses: BXA maintains a licensing system for the export of firearms to all Organization of American States' (OAS) members. The BXA regulations are based on the model regulation established by OAS for the purpose of controlling international movement of firearms. The purpose of the requirements is to combat illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials in North and South America. To support the license application, an "import certificate" or its equivalent must be obtained covering the quantities and types of items that the license applicant intends to export. The information is used in making a decision on the license application.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482-3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: August 16, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-21898 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1045]

Grant of Authority; Establishment of a Foreign-Trade Zone, Santa Maria, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "... the establishment ... of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Santa Maria Public Airport District (the Grantee), has made application to the Board (FTZ Docket 34-98, filed 06/30/98), requesting the establishment of a foreign-trade zone at sites in the Santa Maria, California area, adjacent to the Port San Luis Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 36875, 7/8/98); and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 237, at the sites described in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Foreign-Trade Zones Board.

Signed at Washington, DC, this 4th day of August, 1999.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-21949 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1049]

Expansion of Foreign-Trade Zone 171, Liberty County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Liberty County Economic Development Corporation, grantee of Foreign-Trade Zone 171, submitted an application to the Board for authority to expand FTZ 171 to include a new site at the Sjolander Plastics Storage Railyard facility (Site 5), in Dayton, Texas, within the Houston, Texas, Customs port of entry (FTZ Docket 43-98; filed 9/9/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 52241, 9/30/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 171 is approved, subject to the Act and the

Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of August, 1999.

Robert LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-21951 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1047]

Grant of Authority; Establishment of a Foreign-Trade Zone Dublin (Pulaski County), Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "... the establishment ... of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the New River Valley Economic Development Alliance, Inc. (the Grantee), a Virginia not-for-profit corporation, has made application to the Board (FTZ Docket 74-97, filed 10/8/97), requesting the establishment of a foreign-trade zone in the Dublin (Pulaski County), Virginia area, at the New River Valley Airport, a Customs user fee airport; and,

Whereas, notice inviting public comment has been given in the **Federal Register** (62 FR 53807, 10/16/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 238, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of August 1999.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-21950 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Postponement of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of new shipper antidumping duty review.

EFFECTIVE DATE: August 24, 1999.

FOR FURTHER INFORMATION CONTACT:

Laurel LaCivita or Andrew Nulman, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4236 or (202) 482-4052, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1998).

Background

On September 30, 1998, the Department of Commerce (the Department) received a request from Yancheng Baolong Biochemical Products Co., Ltd. (YBBP) for a new shipper review of the antidumping order on freshwater crawfish tail meat from the People's Republic of China (PRC). See *Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review*, 63 FR 59762 (published November 5, 1998). The Department extended the deadline for completion of this new

shipper review on July 16, 1999. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of New Shipper Antidumping Administrative Review*, 64 FR 38408 (July 16, 1999).

On September 16, 1998, in accordance with 19 CFR 351.213(b)(1), the Department received a request from respondent, Ningbo Nanlian Frozen Foods Company, Ltd., and on September 30, 1998, the Department received a request from petitioner, the Crawfish Processors Alliance ("CPA") and the Louisiana Department of Agriculture and Forestry ("LDAF"), to conduct an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. That administrative review covers the period of March 26, 1997 through August 31, 1998 (63 FR 58010, published October 29, 1998).

Due to extraordinarily complicated issues, the Department extended the deadline for completion of the administrative review on March 18, 1999. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review*, 64 FR 13398 (March 18, 1999). The Department published a second extension notice on July 16, 1999, which extended the deadline of preliminary results of the administrative review until September 30, 1999. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 64 FR 38409 (July 16, 1999).

Postponement of New Shipper Review

On August 6, 1999, we received a request from YBBP to conduct the current new shipper review concurrently with the antidumping administrative review, in accordance with 19 CFR 351.214(j)(3). Therefore, pursuant to respondents' request and the Department's regulations, we are conducting these reviews concurrently. As a result, the date of preliminary antidumping duty results in this new shipper review is September 30, 1999.

This notice is published in accordance with Section 751(a)(2)(B) of the Act and 19 CFR 351.214(j)(3).

Dated: August 16, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-21948 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823-806]

Pure Magnesium From Ukraine: Notice of Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its revocation of the antidumping duty order on pure magnesium from Ukraine following court litigation concluding that the U.S. industry was not being materially injured, or being threatened with material injury, by reason of imports of the subject merchandise.

EFFECTIVE DATE: August 24, 1999.

FOR FURTHER INFORMATION CONTACT:

Brian Smith or Brian Ledgerwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-3836, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department of Commerce's ("the Department's") regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of these orders. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction

industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);

(2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2 mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section

XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (i.e., length or diameter) of 1 inch or less.

The product subject to this order is classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Background

On March 30, 1995, the Department published notice of its final affirmative less-than-fair-value determination covering imports of pure magnesium from Ukraine (see *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Ukraine*, 60 FR 16432). On May 8, 1995, the International Trade Commission ("ITC") made its final affirmative determination that a U.S. industry was being materially injured by reason of imports of pure magnesium from Ukraine as well as China and Russia (see *Magnesium from China, Russia, and Ukraine*, 60 FR 26456, May 17, 1995). On May 12, 1995, the Department published an antidumping order covering imports of pure magnesium from China, Russia and Ukraine (see *Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine*, 60 FR 25691).

Following publication of the antidumping duty order, Gerald Metals, Inc. ("Gerald Metals") filed a lawsuit with the U.S. Court of International Trade ("CIT") challenging the ITC's final affirmative determination of material injury with regard to the Ukrainian imports. In its first decision, the CIT affirmed the ITC's final affirmative determination of material injury with regard to the Ukrainian imports. However, the U.S. Court of Appeals for the Federal Circuit ("Federal Court") subsequently directed the CIT to vacate its decision affirming the ITC's final affirmative determination of material injury with regard to the Ukrainian imports and to remand the case to the ITC. See *Gerald Metals, Inc. v. United States*, 132 F.3d 716 (Fed. Cir. 1997). On remand, the ITC determined that the U.S. industry was not being materially injured by reason of the Ukrainian imports and that there was no threat of material injury. The issue of material retardation of the establishment of a U.S. industry was not raised before the ITC. The CIT affirmed the ITC's remand determination on October 20,

1998. See *Gerald Metals, Inc. v. United States*, Court No. 95-06-00782, Slip Op. 98-148 (CIT).

In the *Notice of Court Decision and Suspension of Liquidation* (63 FR 67854, December 9, 1998) issued following the CIT's decision affirming the ITC's remand determination, the Department indicated that it would continue to order the suspension of liquidation of imports of pure magnesium from Ukraine until there is a "conclusive" decision in this case and that, if the case was not appealed, or if it was affirmed on appeal, the Department would revoke the antidumping order covering imports of pure magnesium from Ukraine.

Magnesium Corporation of America, International Union of Operating Engineers, Local 564, and United Steelworkers of America, Local 8319 ("appellant") later appealed the CIT's decision regarding the Ukrainian imports to the Federal Circuit. On April 16, 1999, however, the Federal Circuit dismissed this appeal because the appellant failed to file its brief within the specified deadline. See *Gerald Metals, Inc. v. United States*, Court No. 99-1166, Order issued April 16, 1999 (Fed. Cir.).

As a result, the CIT's decision affirming the ITC's remand determination is now the "conclusive" decision in this case.

Revocation of Antidumping Duty Order

Because the ITC found no material injury or threat of material injury in its remand determination, and the CIT's decision affirming the ITC's remand determination is now the conclusive decision in this case, the Department is revoking the antidumping duty order on pure magnesium from Ukraine. This revocation applies to all entries of pure magnesium from the Ukraine entered, or withdrawn from warehouse, for consumption on or after October 30, 1998, which was ten days after the final CIT decision not in harmony with the original agency determination. The Department will instruct the Customs Service to proceed with liquidation of all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 30, 1998, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 351.222.

Dated: August 17, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-21953 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Exempted Fishing Permit; Correction

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

ACTION: Issuance of an exempted fishing permit; correction.

SUMMARY: This document corrects the notification of issuance of exempted fishing permit (EFP) 99-03 to Groundfish Forum, Inc. This EFP authorizes Groundfish Forum to conduct an experiment in the Bering Sea and Aleutian Islands management area that would test the accuracy of at-sea observer basket sampling practices, the design and use of automated species composition sampling, and the effect of fish stratification in trawls on size composition sampling. This notification was published in the **Federal Register** on August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION: The announcement of the issuance of EFP 99-03 in the **Federal Register** on August 12, 1999 (64 FR 43986), contained an oversight. When the Groundfish Forum requested that fishing under the EFP take place in Bycatch Zone 2 (areas 513, 517, and 521), it thought that Statistical Area 519 was included in Zone 2. To correct this error, this document adds Statistical Area 519.

Need for Correction

In FR Doc. 99-20902, published August 12, 1999 (64 FR 43986), on page 43986, in the second column, second line from the bottom, after "Bycatch Zone 2" add "and Statistical Area 519."

Authority: 15 U.S.C. 1801 *et seq.*

Dated: August 19, 1999.

Gary C. Matlock,

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

[FR Doc. 99-21946 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080499D]

Marine Mammals; File No. 368D

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, has been issued an amendment to scientific research Permit No. 938.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On March 29, 1999, notice was published in the **Federal Register** (63 FR 14886) that an amendment of Permit No. 938, issued (60 FR 7753), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The amendment authorizes the Holder to place implantable and surface VHF tags and TDRs on up to 20 killer whales (*Orcinus orca*) off the California coast.

Dated: August 16, 1999.

Gene Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99-21945 Filed 8-23-99; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit and Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

August 18, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of 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 reopenings, 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 338/339/638/639 and sublimit for Categories 338-S/339-S/638-S/639-S are being increased for 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 54451, published on October 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 18, 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 2, 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 Fiji and exported during the twelve-month period which began on January

1, 1999 and extends through December 31, 1999.

Effective on August 25, 1999, you are directed to increase the limit and sublimit for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
338/339/638/639	1,485,947 dozen of which not more than 1,174,295 dozen shall be in Categories 338-S/339-S/638-S/639-S ² .

¹The limit has not been adjusted to account for any imports exported after December 31, 1998.

²Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638-S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639-S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

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. 99-0000 Filed 0-00-99; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Analysis of Recruitment Incentives; OMB Number 0703-[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Annual Responses: 5,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 2,500.

Needs and Uses: This collection of information will be a survey administered to potential recruits and used by the Navy Recruiting Command to compare different recruiting incentives in order to allocate increases in funding for enlistment bonuses and college incentives. Individuals are high school seniors or students attending community college.

Affected Public: Individuals or Households.

Frequency: One-time.

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: August 18, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99-21861 Filed 8-23-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Air Force 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 amendment will be effective on September 23, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330-1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588-6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force'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 proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF DP B

SYSTEM NAME:

Substance Abuse Reorientation and Treatment Case Files (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F044 AF SG B'.

SYSTEM NAME:

Delete entry and replace with 'Alcohol and Drug Abuse Prevention and Treatment Program.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'As a minimum, the file contains federal information, evaluative materials, diagnostic assessment, treatment plan, counseling case notes, treatment summary, and automated data base, documenting entry and participation in the Air Force ADAPT Program, to include: date and means of identification and substance of abuse.'

* * * * *

SAFEGUARDS:

Add to entry 'Those in computer storage devices are protected by computer system software.'

* * * * *

F044 AF SG B

SYSTEM NAME:

Alcohol and Drug Abuse Prevention and Treatment Program.

SYSTEM LOCATION:

At servicing Air Force installation Alcohol and Drug Abuse Prevention and Treatment Program (ADAPT) office. Official mailing addresses are published as an appendix to the Air Force's

compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel and dependents, Air Force civilian employees, and Air Force Reserve personnel, who are enrolled in the Alcohol and Drug Abuse Prevention and Treatment Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

As a minimum, the file contains referral information, evaluative materials, diagnostic assessment, treatment plan, counseling case notes, treatment summary, and automated data base, documenting entry and participation in the Air Force ADAPT Program, to include date and means of identification and substance of abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd-2, Confidentiality of Patient Records; Air Force Instruction 44-121, Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program; Air Force Instruction 36-810, Substance Abuse Prevention and Control; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used to process members in the ADAPT Program; to develop a treatment plan; to assist medical providers in decisions for program disposition; to document progress for individuals enrolled in the ADAPT program; and to prepare recurring reports.

Disclosure within the Air Force is limited to those individuals who need the records in connection with programs relating to abuse treatment, rehabilitation, research, health, and assignment to duty. Only persons authorized by 42 U.S.C. 290dd-2 may review, handle or have access to the file.

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 specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans' claims and in providing medical care to Air Force members.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection

with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Air Force's 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and computer and on computer output products.

RETRIEVABILITY:

Retrieved by name, by Social Security Number, by other identification number or system identifier.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Recorded are stored and secured in lockable receptacles and are controlled by personnel screening. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

For single diagnosis (substance abuse/dependence only) alcohol and drug abuse case files maintained at outpatient ADAPT clinics, case files are destroyed 3 years after completion of rehabilitation/last contact. Records of psychiatric treatment, including multi-diagnosis/substance abuse cases (substance abuse and psychiatric treatment), of military personnel will be retired to National Personnel Records Center, Military Personnel Records, 2 years after year of last treatment. Psychiatric treatment records, including multi-diagnosis substance abuse cases (substance abuse and psychiatric treatment), of non-military personnel will be retired to the NPRC, Civilian Personnel Records 2 years after year of last treatment. (Exception: All 1982 and 1983 drug case files will be maintained until 30 Sep. 99 in accordance with current guidance).

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Alcohol and Drug Abuse Prevention and Treatment (ADAPT)

Program Manager, Air Force Medical Operations Agency, (AFMOA/SGOC), 110 Luke Avenue, Room 405, Bolling Air Force Base, DC 20332-7050; and ADAPT Program Managers in the office of the command surgeon at major command headquarters; and ADAPT Program Managers at Air Force installations. Official mailing addresses are published as appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether this system of records contains information on themselves should address inquiries to the ADAPT Program Manager at the servicing Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests to determine existence of a file should include full name, grade, and unit of assignment. Personal visit proof of identity requires full name and possession of Department of Defense Armed Forces Identification Card; or driver's license and personal recognition of ADAPT staff member.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address requests to the ADAPT Program Manager servicing AF installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, personnel records, individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-21863 Filed 8-23-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of Records.

SUMMARY: The Department of the Army is amending a system of records notice 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 September 23, 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: TAPC-PDD-RP Stop C55, 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 records 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: August 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0060-20 DAMO

SYSTEM NAME:

Ration Control/Blackmarket Monitoring Files (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0060-20 USFK'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Forces Korea/Eighth U.S. Army, ATTN: J1 Data Management, APO AP 96205-0010. Beer sale control logs are maintained by Office of Provost Marshal, U.S. Forces Korea/Eighth U.S. Army.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All members of the U.S. Army in the Republic of Korea, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army; who make purchases of controlled items from authorized resale activities in Korea; Those authorized duty-free privileges at Class VI stores, commissaries, retail outlets, shoppettes, car care centers, and gas stations located on U.S. facilities and installations within the Republic of Korea.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry ' , and beer sale control logs.'

* * * * *

PURPOSE(S):

Add to end of entry ' , and Status of Forces Agreement with the Republic of Korea.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroy when no longer needed for current operations or when no longer needed to meet host country laws and regulations.'

* * * * *

A0060-20 USFK**SYSTEM NAME:**

Ration Control/Blackmarket Monitoring Files

SYSTEM LOCATION:

U.S. Forces Korea/Eighth U.S. Army, ATTN: J1 Data Management APO AP 96205-0010. Beer sale control logs are maintained by Office of Provost Marshal, U.S. Forces Korea/Eighth U.S. Army.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the U.S. Army in the Republic of Korea, their dependents, civilian employees, U.S. Embassy personnel, contract personnel, technical representatives, and individuals who are assigned to or under the judicial or administrative control of the U.S. Army; who make purchases of controlled items from authorized resale activities in Korea; those authorized duty-free privileges at Class VI stores, commissaries, retail outlets, shoppettes, car care centers, and gas stations located on U.S. facilities and installations within the Republic of Korea.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, passport number, citizenship, service component, dependency status, local address; sales slips and control sheets used in sale of controlled items by U.S. Forces; over spending/over purchase printouts produced by central computer facilities, and beer sale control logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, Status of Forces Agreement between the United States of America and the Republic of Korea; and E.O. 9397 (SSN).

PURPOSE(S)

To assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled item purchases at retail facilities and suspected violators of the system; and to comply with Joint Service black-market monitoring control policy, and Status of Forces Agreement with the Republic of Korea.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

An addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To provide information to the host country, required by the Status of Forces Agreement between the United States of America and the host country.

The 'Blanket Routine Uses' set forth at the beginning of the Army compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records, magnetic tapes, microfiche, and floppy diskettes.

RETRIEVABILITY:

By name and/or Social Security Number.

SAFEGUARDS:

Records are accessed only by authorized personnel having official need therefor. During off duty hours, the facility housing the records is secured by sound activated alarm.

RETENTION AND DISPOSAL:

Destroy when no longer needed for current operations or when no longer

needed to meet host country laws and regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Forces, Korea, ATTN: FKJ1-DM, Unit 15237, APO AP 96205-0010 and Provost Marshal, U.S. Forces, Korea, Unit 15237, APO AP 96205-0010.

NOTIFICATION PROCEDURE:

Individual's seeking access to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Forces, Korea. ATTN: FKJ1-DM, Unit 15237, APO AP 96205-0010.

Individual's should provide their full name, Social Security Number, address, details concerning the expulsion or embar action, and signature.

RECORD ACCESS PROCEDURES:

Individual's seeking access to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Forces, Korea ATTN: FKJ1-DM, Unit 15237, APO AP 96205-0010.

Individual's should provide their full name, Social Security Number, address, details concerning the expulsion or embar action, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21, 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individual's application for ration control privileges, recorded sales at retail outlets, and orders made through exchange catalog sales at U.S. facilities and installations within the Republic of Korea.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-21862 Filed 8-23-99; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF EDUCATION**Submission for OMB Review; Comment Request**

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 23, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 18, 1999.

William E. Burrow,

Team Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Grants Under the Developing Hispanic-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 100

Burden Hours: 850

Abstract: This information is required of institutions of higher education designated eligible to apply for grants as Hispanic-Serving Institutions under

Title V, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities, and to determine the dollar share of the Congressional appropriation.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202-708-9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program: Repayment Plan.

Frequency: On Occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:

Responses: 2,650,000

Burden Hours: 874,500

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to select a repayment plan for their loan(s).

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202-708-9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-21875 Filed 8-23-99; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-287-036]

El Paso Natural Gas Company; Notice of Compliance Filing

August 18, 1999.

Take notice that on August 13, 1999, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) a Letter Agreement between El Paso and Dynegy Marketing and Trade, formerly Natural Gas Clearinghouse.

El Paso states that the Letter Agreement is being filed to comply with the Commission's order issued July 29, 1999 at Docket No. RP97-287-019, *et al.*, and is proposed to become effective on June 11, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99-21872 Filed 8-23-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-3322-000]

Electric Clearinghouse, Inc., Illinois Power Company; Notice of Filing

August 18, 1999.

Take notice that on August 12, 1999, Electric Clearinghouse, Inc. (ECI) and Illinois Power Company (Illinois Power), tendered for filing an amendment to its June 21, 1999, filing in the above-referenced docket.

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 and protests should be filed on or before August 27, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99-21874 Filed 8-23-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-145-003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 18, 1999.

Take notice that on August 13, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing its Activity Report for Rate Schedule PALS Service for the period July 1, 1998 through June, 1999.

Natural states that it has submitted this filing in compliance with Ordering Paragraph (B) of the Federal Energy Regulatory Commission's order issued June 30, 1998 in Docket No. RP98-145-001, which authorized Natural to provide Rate Schedule PALS service effective July 1, 1999.

Natural states that copies of the filing have been mailed to all parties set out on the official service list in Docket No. RP98-145.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99-21873 Filed 8-23-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93-5-034 and RP93-96-013]

Northwest Pipeline Corporation; Notice of Compliance Filing

August 18, 1999.

Take notice that on August 13, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing a group of pro forma tariff sheets, workpapers and other materials applicable to the period from April 1, 1993 through October 31, 1994 during which Northwest's rates as established in Docket Nos. RP93-5 and RP93-96 were applicable.

Northwest states that the purpose of this filing is to comply with the Commission's July 14, 1999 Order on Remand and Setting Issue for Hearing Before An ALJ in Docket Nos. RP93-5-031 and RP93-96-006. Northwest states that it has submitted (1) A recalculation of its rates in this proceeding to give a two-thirds weight to the IBES five-year projections and a one-third weight to the long-term growth factor in the DCF analysis; (2) a plan to impose surcharges to recover the excess refunds made for the April 1, 1993 through October 31, 1994 period, together with interest; and (3) pro forma tariff sheets that set forth the appropriate surcharges.

Northwest states that a copy of this filing has been served upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 99-21871 Filed 8-23-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board

[FRL-6427-7]

Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that several Committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating US Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will meet on Thursday and Friday, September 23 and 24, 1999 in Room 6013 at the US Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, North Lobby, Washington, DC 20004 (Federal Triangle Metro Stop). The meeting will begin at 8:30 am and end no later than 5:30 pm each day.

Purpose of the Meeting: The purpose of this meeting is to be: briefed on the planning for the EPA's FY 2001 Science & Technology Budget submission; to be briefed on the Agency's Science Strategic Plan; to plan the upcoming joint RSAC/ORD Board of Scientific Counselors (BOSC) review of the Science To Achieve Results (STAR) Program; and to conduct a peer review of the Agency's peer review process.

Proposed Charge Questions: Committee will offer its advice on: How is the peer review process working? What works best? What needs improvement?

For Further Information Concerning the Meeting: Members of the public desiring additional information about the meeting should contact Dr. John R. Fowle III, Designated Federal Officer (DFO), Research Strategies Advisory Committee, Science Advisory Board (1400A), US EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 564-4547; fax at (202) 501-0323; or via e-mail at <fowle.jack@epa.gov>. A copy of the draft agenda and copies of the background material will be available approximately two weeks prior to the meeting on the SAB website (www.epa.gov/sab) or from Ms. Betty Fortune at the address and fax noted above or by phone at (202) 564-4533.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Dr. Fowle in writing (by email, by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, September 16, 1999 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

2. Executive Committee (EC)

The Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public teleconference meeting on Thursday, September 30, 1999, between the hours of 11 am and 1 pm, Eastern Time.

The meeting will be coordinated through a conference call connection in Room 6013 at the US Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, North Lobby, Washington, DC 20004 (Federal Triangle Metro Stop). The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 564-4633, or via e-mail at: <tillery.priscilla@epa.gov> by September 23, 1999.

During this meeting the Executive Committee plans to review draft reports from its Committees. Anticipated drafts include: a) Environmental Economics Advisory Committee's (EEAC) "Review of the Economic Analysis Guidelines"; b) Environmental Processes and Effects

Committee's (EPEC) "Advisory on the Eco Soils Screening Level"; and c) Environmental Engineering Committee's (EEC) "Review of the Utility of Proactive Technical Advice: The EEC' Experience." Please check with Ms. Tillery-Gadson prior to the meeting to confirm any changes in the planned review schedule.

For Further Information: Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer (DFO) for the Executive Committee, Science Advisory Board (1400A), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564-4533; FAX (202) 501-0323; and via e-mail at: <barnes.don@epa.gov>. Copies of the draft reports are available from the same source, or from the SAB Website (<http://www.epa.gov/sab>) at least one week prior to the meeting.

3. Advisory Council on Clean Air Compliance Analysis

The Advisory Council on Clean Air Compliance Analysis of the Science Advisory Board (SAB) will hold a public teleconference on Friday, October 1, 1999 from 11 am–1:00 pm, Eastern time. The meeting will be coordinated through a conference call connection in room 6013 at the US Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, North Lobby, Washington, DC 20004 (Federal Triangle Metro Stop). The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (see below).

At this public teleconference the Council will complete its review of the draft The Benefits and Costs of the Clean Air Act, 1990 to 2010; EPA Report to Congress (U.S. EPA, Office of Air and Radiation and Office of Policy, August 1999), prepared by the Agency as part of implementing section 812 of the Clean Air Act Amendments (CAAA) of 1990. It will also review a draft Letter Advisory developed by the Health and Ecological Effects Subcommittee (HEES) of the Council after its public meeting on June 28 and 29, 1999. The draft is entitled The Clean Air Act Amendments (CAAA) Section 812 Prospective Study of Costs and Benefits (1999): Advisory by the Health and Ecological Effects Subcommittee on Initial Assessments of Health and Ecological Effects; Part 2. The draft Letter Advisory will be posted

on the SAB website at <http://www.epa.gov/sab>.

The public can find background on the Prospective Study and previous meetings this year of the Council and its subcommittees in the **Federal Register** [See 64 FR, 15160, March 30, 1999; 64 FR 30516–30517, June 8, 1999; 64 FR 31572–31575, June 11, 1999]. For further information concerning the teleconference described in this section, please contact the individuals listed below.

For Further Information: (a) Contacting Program Office Staff and Obtaining Review Materials—To obtain copies of the final draft CAA section 812 Prospective Study, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260-5580; FAX (202) 260-9766, or via e-mail at <jefferson.catrice@epa.gov>. To discuss technical aspects of the final draft document, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 260-8980; FAX (202) 260-9766, or via e-mail at: <democker.jim@epa.gov>.

(b) Contacting SAB Staff and Obtaining Meeting Information—To obtain copies of the meeting agenda, the draft Letter Advisory, or Council roster, please contact Ms. Diana L. Pozun, Management Assistant to the Council, Science Advisory Board (1400A), US Environmental Protection Agency, Washington DC 20460; at Tel. (202) 564-4544; FAX (202) 501-0582; or via e-mail: <pozun.diana@epa.gov>. To discuss technical or logistical aspects of the Council review process, please contact Dr. Angela Nugent at Tel. (202) 564-4562; or via e-mail: <nugent.angela@epa.gov>, Designated Federal Officer (DFO) to the Council, Science Advisory Board (1400A), US Environmental Protection Agency, Washington DC 20460. To obtain information concerning the teleconference and how to participate in the Conference Room location or to call in, please contact Ms. Pozun.

(c) Providing Public Comments to the SAB—To request time to provide brief oral comments at the meeting, please contact Ms. Diana L. Pozun in writing by mail, FAX or E-Mail at the addresses given above no later than 12 noon by Thursday, September 24, 1999. Please be sure to provide a summary of the issue you intend to present, your name and address (incl. phone, fax and e-

mail) and the organization (if any) you will represent. Written comments should be submitted to Ms. Pozun at the above address prior to the meeting date.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (<http://www.epa.gov/sab>) and in *The Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564-4533 or via fax at (202) 501-0323.

Meeting Access: Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 18, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99-21942 Filed 8-23-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[PF-868; FRL-6069-6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF-868, must be received on or before September 23, 1999.

ADDRESSES: By mail submit written comments to: Public Information and

Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Kathryn Boyle	Rm. Q616, CM #2, 703-305-6304, e-mail:boyle.kathryn@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA Do.
Cynthia Giles-Parker (PM 22).	Rm. 229, CM #2, 703-305-7740, e-mail:giles-parker.cynthia@epamail.epa.gov.	

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF-868] (including comments and data

submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in

electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required

by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Centre Internationale d'Etudes du Lindane (C.I.E.L.) and its member company Inquinoso S.A.

PP 9F5057

EPA has received a pesticide petition (9F5057) from Centre Internationale d'Etudes du lindane (C.I.E.L.) and its member company Inquinoso S.A., c/o Charles A. O'Conner III, Esq., McKenna & Cuneo, L.L.P., 1900 K Street, NW., Washington, DC 20006-1108, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of lindane in or on the raw agricultural commodities (RAC) broccoli, brussels sprouts, cabbage, cauliflower, celery, collards, kale, kohlrabi, lettuce, mustard greens, spinach, and Swiss chard at 0.05 parts per million (ppm), corn (grain) at 0.01 ppm, and corn (forage and fodder) and radish at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Use of lindane as a seed treatment results in uptake of lindane and extensive metabolism within the plant. The primary residue in RAC was parent lindane. Lindane metabolizes in plants through the same processes found in mammalian animals, i.e. dehydrogenation, dehydrochlorination, hydroxylation, and conjugation. Thus, the terminal metabolites for plants and animals are the same chorophenols, chlorobenzenes, etc. and conjugates of these classes of compounds.

2. *Analytical method.* A multi-residue method is currently being used by the United States food and drug administration (FDA) to determine lindane residues in raw and processed

agricultural commodities, in order to monitor for tolerance compliance. The pesticide analytical manual (PAM) method for non-fatty foods by GLC, PAM 212.1, has also been validated for determination of lindane residues.

3. *Magnitude of residues.* Lindane residues were determined in mustard, radish, field corn, sweet corn, and spinach, using radio-labeled lindane applied as a seed treatment. Residues of parent lindane were: Radish roots; 0.030 ppm; mustard leaves, 0.017 ppm; field corn foliage, 0.008 ppm; sweet corn foliage 0.012 ppm; field corn grain, < 0.01 ppm; sweet corn grain, < 0.01 ppm; and spinach, < 0.02 ppm. Residues in animal tissues, milk, and eggs will be negligible, based on transfer factors determined in animal feeding studies, the low residue levels in animal feed items, and the limited market share.

B. Toxicological Profile

1. *Acute toxicity*—i. A rat acute oral study with an LD₅₀s of 88 to 150 milligram kilogram (mg/kg) (Toxicity Category II).

ii. A rabbit acute dermal study with an LD₅₀ of 500 to 1,000 mg/kg (Toxicity Category II).

iii. A primary eye irritation study in the rabbit showing moderate eye irritation, (EPA Category II).

iv. A primary dermal irritation study in the rabbit showing moderate irritation, (EPA Category II).

2. *Genotoxicity.* Lindane has been subject to a large number of genotoxicity assays using many different test systems. *In vitro* Ames/Salmonella mutagenicity assays were negative for mutagenic potential. Other point mutations assays in bacteria were also negative. The induction of chromosomal aberrations was not observed *in vivo* assays and *in vitro* assays were either negative or equivocal. Sister chromatid exchange and micronucleus assays were negative. Dominant lethal assays gave variable results.

3. *Reproductive and developmental toxicity.* Lindane is not considered to be a reproductive or a developmental toxin. In a 2-generation reproduction study, the no-observed adverse effect level (NOAEL) for reproductive and developmental toxicity was 20 ppm. In a developmental toxicity study, the rat maternal NOAEL and the developmental NOAEL were 5 mg/kg/day. The developmental NOAEL for the rabbit was 10 mg/kg/day while the maternal NOAEL was less than 5 mg/kg/day based on reduced food consumption, reduced weight gain, slight tachypnea and lethargy.

4. *Subchronic toxicity.* Ninety-day feeding studies were conducted in mice

and rats with lindane. The NOAEL for the mouse study was greater than 10 ppm highest dose tested (HDT), for the rat study, the NOAEL was 10 ppm (0.75 mg/kg/day). Renal effects observed were related to a_{2u}-globulin and are not relevant to human safety. Hepatocellular hypertrophy and neurotoxicity were observed at the higher dose levels. A 14 week inhalation study in mice had a NOAEL 0.3 mg/cubic meter. In a 90-day inhalation study in rats, the NOAEL was 0.6 mg/cubic meter. Ninety-day dermal toxicity studies have been conducted in rats and rabbits. In both species, the NOAELs were 10 milligrams per kilograms bodyweight per day (mg/kg bw/day).

5. *Chronic toxicity.* A 2-year feeding study was conducted in dogs with lindane. The NOAEL was for this study 50 ppm. In a 2-year feeding study in rats, hepatocellular hypertrophy and renal effects related to a_{2u}-globulin were observed above the NOAEL of 0.7 (males) and 0.8 (females) mg/kg bw/day. Carcinogenicity - Lindane is not carcinogenic to rats. A 2-year combined chronic toxicity/oncogenicity study in the rat was negative for carcinogenicity and had a chronic toxicity NOAEL of 10 ppm (0.47 mg/kg bw/day) based on a slight increase in mortality and effects on the liver. A total of 8 mouse oncogenicity studies have been conducted in several strains of mice. The results of these studies have been variable and none of the studies are considered by the Agency to be adequate for a cancer risk assessment. A ninth study is in progress.

6. *Animal metabolism.* The metabolism of lindane has been thoroughly investigated. Lindane does not appear to bioaccumulate in tissues. Lindane is rapidly absorbed and metabolized. The metabolism of lindane occurs via several different pathways. Major routes of metabolism include stepwise elimination of chlorines and conjugations with sulfates and glucuronides. Another pathway is via the formation of mercapturates.

7. *Metabolite toxicology.* Dietary residues are comprised of lindane and a variety of metabolites. The dietary residues are qualitatively the same as those formed in the rat and have thus been bioassayed in the available toxicity studies. These metabolites are not considered to present a significant toxicological risk.

8. *Endocrine disruption.* There was no evidence that exposure to lindane had any effect on reproduction, fertility or mating indices, development or maturation of embryos, or development, growth and survival of offspring in the battery of short-term, chronic,

reproductive and, developmental mammalian, avian and aquatic studies conducted. There were no gross or microscopic pathologic effects in endocrine organs or endocrine-sensitive tissues, or in any reproductive organs, tissues or endpoints that were considered related to exposure to lindane. There is negligible risk of endocrine disruption in humans or wildlife as a result of these proposed uses.

C. Aggregate Exposure

1. Dietary exposure—i. Food.

Estimates of dietary exposure to residues of lindane from the proposed uses are extremely low. A reference dose (RfD) of 0.0047 was established by EPA based upon a 100-fold uncertainty factor and the NOAEL in the chronic rat study. Maximum dietary residues from the requested uses result in an exposure that is less than 2% of the reference dose (RfD) for children 1-6 years, the most sensitive sub-population.

ii. *Drinking water.* Given the use pattern (seed treatment) strong soil binding characteristics and low soil mobility of lindane, the risk of significant ground and surface water contamination and exposure via drinking water is considered to be negligible.

2. *Non-dietary exposure.* There are no currently registered pesticidal uses of lindane that would result in non-dietary exposure.

D. Cumulative Effects

Lindane falls into the common category of chlorinated hydrocarbon insecticides however, there is no information to suggest that lindane has a common mechanism of mammalian toxicity with any other pesticide. It is not appropriate to combine exposures in this case.

E. Safety Determination

1. *U.S. population.* As presented above, the exposure of the U.S. general population to lindane is low, and the risks, based on comparisons to the reference dose, are negligible. Margins of safety are very large.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of lindane, CIEL considered data from developmental toxicity studies in the rat, and rabbit and a 2-generation reproduction study in rats. No developmental or reproductive effects were observed up in the absence of parental toxicity in any of the three studies. Using the same conservative assumptions that were made previously for the dietary exposure analysis for the

U.S. general population, the percent of the RfD utilized by pre-adult sub-populations is less than 2%. CIEL concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to lindane residues.

F. International Tolerances

International maximum residue levels (MRLs) have been established for approximately 30 commodities. The MRL values for commodities represented in this petition include; 2 ppm on head lettuce and spinach, 1 ppm on kohlrabi and radish, and 0.5 ppm on brussels sprouts, cabbage, cauliflower, and cereal grain.

2. K-I Chemical U.S.A. Inc.

PP 8F4941

EPA has received a pesticide petition (8F4941) from K-I Chemical U.S.A. Inc., Westchester Financial Center, 11 Martine Avenue, 9th Floor, White Plains, NY, 10606 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of prohexadione calcium (cyclohexanecarboxylic acid, 3, 5-dioxo-4-(1-oxopropyl)-, ion(1-), calcium, calcium salt) in or on the raw agricultural commodity peanut nutmeat at 1.0, peanut hay at 0.6, pome fruit at 3.0, and cattle meat byproduct (kidney) at 0.1 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

In the **Federal Register** of August 5, 1998 (63 FR 41828) (FRL-5799-6) EPA issued a notice of filing of pesticide petition 8F4941 from K-I Chemical U.S.A. Inc. at the above address proposing to amend 40 CFR part 180 by establishing tolerances for residues of prohexadione calcium in or on the raw agricultural commodities (RAC) peanut nutmeat and hay at 0.8 and 0.4 ppm respectively. EPA has received an amendment to PP 8F4941 from K-I Chemical U.S.A. Inc., proposing to amend the earlier petition by increasing the tolerances for residues on peanut nutmeat and hay, and by proposing to amend 40 CFR part 180 by establishing tolerances on pome fruit and cattle meat byproducts. This notice contains information submitted in addition to

that contained in the August 5, 1998 notice.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism in plants (peanuts and apples) and animals (goats and poultry) is adequately understood.

2. *Analytical method.* The proposed analytical method involves homogenization, extraction, filtration, partition and cleanup, methylation and analysis by a gas chromatography system with a mass selective detector. The limit of quantitation (LOQ) is 0.05 ppm.

3. *Magnitude of residues.* Twelve peanut trials were conducted with prohexadione calcium in the principle peanut growing regions of the country (NC, SC, GA, AL, FL, OK, TX). Prohexadione calcium was applied to peanuts three times at the rate of 0.125 lbs active ingredient acre (ai/A). Peanut hay and nutmeat were analyzed for residues of prohexadione (free acid). Prohexadione residues in the nutmeat ranged from < 0.05 to 0.30 ppm. Residues in hay ranged from < 0.05 to 0.26 ppm. The residue values in this study were reported as prohexadione free acid. The highest residue values for peanut nutmeat and hay were converted to prohexadione calcium equivalents for the tolerance expression. Therefore, the proposed tolerance for prohexadione calcium in/on peanut nutmeat is 1.0 ppm based on the conversion of the highest peanut nutmeat raw agricultural commodities (RAC) ppm for prohexadione (0.795 ppm) to prohexadione calcium equivalents (0.895 ppm). The proposed tolerance for prohexadione calcium in/on peanut hay is 0.6 ppm and it is based on the conversion the highest peanut hay RAC ppm for prohexadione (0.457 ppm) to prohexadione calcium equivalents (0.539 ppm).

A study was conducted to determine the level of prohexadione calcium derived residues in or on processed commodities. Peanut samples treated at an exaggerated rate were processed into peanut meal and refined oil. Peanut nutmeat and processed commodities were analyzed for prohexadione. Residues in the meal were less than in the nuts, and no residues were detected in the refined oil. Therefore, there was no concentration of prohexadione residues in processed commodities.

Twenty apple trials were conducted with prohexadione calcium in the principle apple growing regions of the country (NY, PA, NC, VA, MI, WI, CO, UT, CA, WA, ID, and OR) in order to determine the magnitude of prohexadione residues in/on apples.

Apple trees received two foliar applications of prohexadione calcium with a 21 day interval between each application and the second application was made 45 days prior to harvest (45 day PHI). The target rate for each application was 0.85 lbs a.i./A and a maximum seasonal application rate of 1.7 lbs a.i./A. Prohexadione residues in apples ranged from < 0.05 ppm to 2.23 ppm. The residue values in this study were reported as prohexadione free acid. The highest apple RAC ppm for prohexadione (2.23 ppm) when converted to prohexadione calcium equivalents is 2.63 ppm.

Apple samples treated with prohexadione calcium at an exaggerated rate were processed according to commercial practices into washed apples, wet pomace, and fresh juice. Samples of unwashed apples, washed apples, wet pomace, and juice were analyzed for residues of prohexadione. Residues of prohexadione in the washed apples, pomace and juice were less than in the unwashed whole fruit. Therefore, there is no concentration of prohexadione residues in the processed commodities and separate tolerances for processed fractions are not necessary.

Eight pear trials were conducted with prohexadione calcium in the principle pear growing regions of the United States (NY, CA, WA, ID, and OR) to determine the magnitude of prohexadione calcium residues in/on pear raw agricultural commodity. Pear trees received one foliar application of prohexadione calcium at an application rate of 1.7 lbs a.i./A. Pears were harvested 45 days after the application (45 day PHI). Prohexadione calcium residues in pears ranged from 0.220 ppm to 0.985 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Based on available acute toxicity data prohexadione calcium does not pose any acute toxicity risks. The acute toxicity studies place technical prohexadione calcium and its formulated end-use products in acute toxicity category III for acute dermal; and in acute toxicity category IV for acute oral, acute inhalation, eye irritation, and skin irritation and the technical material is not a skin sensitizer.

2. *Genotoxicity.* Ames Test (1 Study; point mutation): Negative; *In Vitro* V79 Cells CH/HGPRT Locus Mammalian Cell Mutation Assay (1 Study; point mutation): Negative; *In Vitro* CHO Cytogenetic Assay (1 Study; Chromosome Damage): Negative; *In Vivo* Mouse Micronucleus (1 Study; Chromosome Damage): Negative; *In Vivo* Rat Bone Marrow Cytogenetic

Assay (1 Study; Chromosomal Damage): Negative; Rec Assay (1 Study; DNA damage and repair): Negative; *In Vitro* Rat Hepatocyte (1 Study; DNA damage and repair): Negative.

Prohexadione calcium has been tested in a total of 7 genetic toxicology assays consisting of *in vitro* and *in vivo* studies. Based on the results described above, it can be stated in summary that prohexadione calcium did not show any mutagenic activity when tested under the conditions of the studies mentioned above. Therefore, prohexadione calcium does not pose a mutagenic hazard to humans.

3. *Reproductive and developmental toxicity.* The reproductive and developmental toxicity of prohexadione calcium was investigated in a 2-generation rat reproduction study as well as in rat and rabbit teratology studies. The 2-generation rat reproduction study was conducted at dose levels of 0, 500, 5,000, and 50,000 ppm. There were no adverse effects on reproduction parameters seen even at the dose level of 50,000 ppm (5164 milligram kilogram bodyweight (mg/kg bw) for males and 5,600 mg/kg bw for females). The no-observed adverse effect level (NOAEL) for parental systemic toxicity was 500 ppm (48 mg/kg bw for males and 51 mg/kg bw for females) and the NOAEL for developmental toxicity was 5,000 ppm (270 mg/kg bw for females). Stomach lesions were observed at 5,000 ppm. Two mid-dose males and two males and one female of the high-dose from the Fo died. Body weight and food consumption changes and slight transient reduction in offspring growth were noted at 50,000 ppm. No impairment of reproductive function was observed at any of the dose levels tested.

Prohexadione calcium had no teratogenic potential at dose levels as high as 1,000 mg/kg bw in the rat and 350 mg/kg bw in the rabbit. The NOAEL for maternal toxicity in the teratogenicity studies is 100 mg/kg bw (rabbit) and 1000 mg/kg bw (rat), and the NOAEL for fetotoxicity in the teratogenicity studies is 350 mg/kg bw (rabbit) and 1,000 mg/kg bw (rat). The reproductive and developmental studies are summarized below.

A developmental study was conducted via oral gavage in rats at dose levels of 0, 100, 300, and 1,000 highest dose tested (HDT) mg/kg bw. The NOAEL for developmental and maternal toxicity was 1,000 mg/kg bw, the HDT. This was based on the fact that there were no signs of maternal toxicity, fetotoxicity or teratogenic effects.

A developmental study was conducted via oral gavage in rabbits at

dose levels of 0, 40, 200, and 750 HDT mg/kg bw. The NOAEL for development toxicity was 40 mg/kg bw and the NOAEL for maternal toxicity was 40 mg/kg bw based on the following findings. Toxicity in the form of maternal mortality with values 16/20 and 4/20 was excessive in the mid- and high-dose group, respectively. Fetal deaths also occurred. Dose levels believed to exceed maximum tolerance dose (MTD); NOAELs for maternal and developmental effects are not considered reliable and useful for risk characterization. No teratogenic effects were noted in this study.

An additional teratology study in the same strain of rabbits was conducted at dose levels of 0, 30, 75, and 150 mg/kg bw. The NOAEL for development toxicity was 150 mg/kg bw and the NOAEL for maternal toxicity was 30 mg/kg bw based on the following findings. One low-, two mid-, and three high-dose animals died prior to day 29, however, at the high dose group one died of gavage error and another pneumonia, and the reason for the other deaths could not be determined. No teratogenic or fetotoxic effects were noted in this study.

An oral range-finding gavage teratology study in the same strain of rabbits (5 animals/dose level) was conducted in another independent laboratory. The dose levels selected were 0, 20, 100, 250, 500, and 1,000 mg/kg bw. This range finding study was conducted with a limited number of animals and a limited scope of examination. Based on these results the dose levels selected for the main study at this independent laboratory were 0, 30, 100, and 350 mg/kg bw. The NOAEL for development toxicity was 350 mg/kg bw and the NOAEL for maternal toxicity was 100 mg/kg bw based on the following findings. At the 350 mg/kg bw dose group transient bw decreases and two abortions were observed. No teratogenic or fetotoxic effects were noted in this study.

Conclusions from teratology studies. More than one definitive rabbit teratology study was conducted because issues associated with exceeding the MTD in the first study and spurious deaths, apparently not compound-related, in the second study confounded the determination of a NOAEL for maternal toxicity. There were no signs of teratogenic or fetotoxic effects in any study other than the first definitive study in which maternal deaths above the MTD apparently occurred. It is BASF's and K-1 Chemicals' opinion based on a thorough review of the teratology studies that the following overall NOAELs can be derived for the

teratology studies: - NOAEL maternal toxicity: 100 mg/kg bw (rabbit) and, 1,000 mg/kg bw (rat). - NOAEL prenatal toxicity: 350 mg/kg bw (rabbit) and, 1,000 mg/kg bw (rat).

The overall NOAEL of 100 mg/kg bw for maternal toxicity in rabbits is based on the last rabbit study, and is based on reduction of bw gain and food intake at dose levels of 250 mg/kg bw onwards. The NOAEL of 350 mg/kg bw for fetotoxic effects in the rabbit is also based on a reduction in bw gain. Based on the overall study results, it is concluded that there are no developmental effects of concern.

Based on preliminary discussions with EPA concerning the rabbit teratology studies, EPA concluded that the definitive NOAEL for maternal toxicity considering all of the studies ranges from 30 to 100 mg/kg bw. Agency scientists further stated that they needed to review the studies in detail to ultimately determine the definitive NOAEL for maternal toxicity. This uncertainty associated with maternal toxicity in the rabbit teratology studies does not impact risk considerations since the risk assessment is based on a lower NOAEL (20 mg/kg bw) in the chronic dog study.

4. *Subchronic toxicity.* The subchronic toxicity of prohexadione calcium was investigated in 90-day feeding studies with rats, mice, and dogs. In all these studies, prohexadione calcium displayed low toxicity. Prohexadione calcium showed no signs of neurotoxicity in a 90-day neurotoxicity rat study. Additionally, the results seen in four week feeding range-finding studies for rats and dogs were similar to the findings observed in the 90-day studies in the same animals.

5. *Chronic toxicity.* Based on review of the available data, the reference dose (RfD) for prohexadione calcium will be based on a 1-year feeding study in dogs with a threshold NOAEL of 20 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.2 mg/kg/day. The following are summaries of studies submitted to EPA. Prohexadione calcium was administered to Beagle dogs at dietary concentrations of 0, 20, 200, and 1,000 mg/kg bw for 12 months. Slight changes were observed for hematological and clinical chemical parameters and dilated basophilic renal tubules (without histopathological concurrence) at dose levels greater than 200 mg/kg bw. The NOAEL was 20 mg/kg bw for the males and female dogs.

The 24-month Fisher 344 rat chronic/carcinogenic feeding study was conducted at dose levels of 0, 400, 2,000, 10,000, and 20,000 ppm with 80 male and 80 female animals per dose

group. After 26, 52, and 78 weeks, 10 animals were sacrificed (satellite groups). The remaining animals were autopsied after 104 weeks of diet administration. The NOAEL for chronic toxicity was 2,000 ppm for males (93.9 mg/kg bw) and, 2,000 ppm for females (114 mg/kg bw). The following effects were observed in the 10,000, and 20,000 ppm groups: (1) Decreased bws were observed in both male and female rats at the 20,000 ppm dose level; (2) clinical chemical effects (i.e., lower potassium, bilirubin, and glucose levels) were observed in male and female rats at the 20,000 ppm dose level, in the 10,000 ppm dose level, reduced glucose levels were only seen in the males, and increased albumin/globulin ratios, sodium, chloride and calcium levels were observed only in the females; (3) increased urine volumes and lower specific gravity were observed in the mid-high and high-dose groups for both male and female rats; (4) minor changes in organ weights were noted for animals of the high dose group only, which consisted of increased relative liver, adrenal and kidney weights, the latter also absolute in females only, at week 26; at the end of the study decreased liver weights and increased relative brain and testis weights were noted and these changes were considered to be associated with the decreased bws; (5) macroscopic findings revealed an increase of pituitary nodules in the high dose group for both male and female rats which was not confirmed histopathologically and submucosal ectopic tissue in the glandular stomach was found in both male and female rats in the highest dose levels that was confirmed by histopathology which showed an increase of squamous cell hyperplasia in males and of basal cell hyperplasia in the forestomach; (6) a higher incidence of cellular hyperplasia was observed in the thyroid in the mid-high and high dose levels for male and female rats; and (7) no increased incidence of neoplasms occurred at any dose levels tested in this study.

In the 24-month B6C3F1 mouse feeding study, conducted at dose levels of 0, 400, 2,000, 20,000, and 40,000 ppm with interim sacrifices at 52 and 78 weeks, prohexadione calcium was negative for oncogenicity. The NOAEL for chronic toxicity was 2,000 ppm for males (279 mg/kg bw) and 2,000 ppm for females (351 mg/kg bw). The following effects were observed in the 20,000 and 40,000 ppm groups: (1) Statistically significant decreases in body weights were observed in male mice at the 20,000 ppm dose level and in female mice at the 40,000 ppm dose

level; (2) a variety of changes in hematological parameters were noted in the respective investigations at weeks 52, 78, and 104, however, most of the changes were not dose related or consistent over time; (3) increased absolute and/or relative heart, brain, testes, liver, ovary, and kidney weights were observed in the mid-high and highest dose groups with a slight progression of severity to the highest dose group; (4) a higher incidence of splenomegaly was observed only in the male mice of the highest dose group; (5) histopathological examinations revealed an ectopic proliferation of the mucosal and glandular epithelium in the submucosal layer of the glandular stomach in male and female mice in the highest dose group tested, these changes were assessed to represent heteroplastic, ectopic proliferative changes accompanied by lumen dilatation and cytological degeneration; (6) a higher incidence of hyperkeratosis of the forestomach was observed in both male and female mice and hyperplasia of the squamous epithelium of the forestomach of female male mice was observed in the highest dose group tested; (7) vacuolic changes in the exocrine pancreas of the high dose female were observed; and (8) no increased incidence of neoplasms occurred at any dose levels tested in this study.

6. *Endocrine disruption.* No specific tests have been conducted with prohexadione calcium to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that prohexadione calcium produces endocrine related effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For purposes of assessing the potential dietary exposure, K-I Chemical has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the proposed tolerances for prohexadione calcium in/on peanut nutmeat at 1.0 ppm and apples (pome fruit) at 3.0 ppm. A maximum residue level of 1.0 ppm was used for pears. The TMRC is a “worse case” estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are always found at the tolerance levels. The TMRC from the proposed use of

prohexadione calcium on peanuts, pears and apples is 0.002570 mg/kg bw/day and utilizes 1.3% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, non-nursing infants (< 1 year old), is 0.025758 mg/kg bw/day and utilizes 12.9% of the RfD.

Dietary exposure to residues of prohexadione calcium in or on food will be limited to residues on peanuts, apples and pears. Apple pomace, peanut

meal and hay are fed to animals; thus exposure of humans to residues in feed items might result if such residues carry through to meat, milk, poultry, or eggs. However, K-I Chemical has concluded that there is no reasonable expectation that measurable residues of prohexadione calcium will occur in meat, milk, poultry, or eggs from this use but residues can be expected to be slightly above the limit of quantitation for cow kidney. Therefore, K-I Chemical

is proposing a tolerance in/on cattle meat byproduct (kidney) at 0.1 ppm. There are no currently registered uses for prohexadione calcium on food or feed crops in the U.S. and thus, there are no established U.S. tolerances.

The following table summarizes the mean dietary exposures and the percents of RfD occupied by these exposures.

SUMMARY OF CHRONIC DIETARY EXPOSURE TO PROHEXADIONE CALCIUM

Group	DRES (Dietary Risk Evaluation System)	
	mg/kg bw/day	% RfD
U.S. Population	2.6	1.3
Nursing Infants (< 1 Year Old)	19.3	9.7
Non-Nursing Infants (< 1 Year Old)	25.8	12.9
Children 1-6 Years Old	8.7	4.4
Children 7-12 Years Old	3.5	1.8

ii. *Drinking water.* Based on studies submitted to EPA for assessment of environmental risk, K-I Chemical does not anticipate exposure to residues of prohexadione calcium in drinking water. There is no established Maximum Concentration Level (MCL) or Health Advisory Level (HAL) for prohexadione calcium under the Safe Drinking Water Act (SDWA).

2. *Non-dietary exposure.* K-I Chemical has not estimated non-occupational exposure to prohexadione calcium since the only pending registration is limited to commercial crop production. Prohexadione calcium products are not labeled for any residential uses, therefore eliminating the potential for residential exposure. Thus, potential for non-occupational exposure of the general population to prohexadione calcium is not present.

D. Cumulative Effects

K-I Chemical is aware of only one other registered compound, trinexapac-ethyl [4-(cyclopropyl-a-hydroxymethylene)-3,5-dioxo-cyclohexanecarboxylic acid ethylester], that has a structure similar to prohexadione calcium. However, K-I Chemical has no information that would indicate that the two compounds have a common mechanism of toxicity. Furthermore, trinexapac is registered for use only on turf. Therefore, even if the compounds were considered similar there would be no cumulative dietary exposure issue because of the differences in use patterns. In summary, dietary exposure to prohexadione calcium should not result in cumulative toxicity with other known chemical compounds.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, K-I Chemical has estimated that aggregate exposure to prohexadione calcium will utilize 1.3% of the RfD for the U.S. population. K-I Chemical concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of prohexadione calcium, including anticipated dietary exposure and non-occupational exposures.

2. *Infants and children—i. Developmental toxicity in the rat.* A developmental study was conducted via oral gavage in rats with dosages of 0, 100, 300, and 1,000 HDT mg/kg/day with a NOAEL of 1,000 mg/kg/day the HDT for developmental and maternal toxicity based on the fact that no effects were observed for any test parameter measured in this study. Therefore, these NOAEL values are significantly higher than the NOAEL from the 1-year feeding study in dogs used to establish the RfD.

ii. *Developmental toxicity in the rabbit.* A series of developmental studies were conducted via oral gavage in rabbits with dosages ranging from 0 to 750 mg/kg/day with a development toxicity NOAEL of 350 mg/kg/day and a maternal toxicity NOAEL of 100 mg/kg/day based on bw gain reductions. These NOAEL values are higher than the NOAEL from the 1-year feeding study in dogs used to establish the RfD.

iii. *Reproductive toxicity.* A 2-generation reproduction study with rats fed dosages of 0, 500, 5,000, and 50,000 mg/kg/day resulted in a reproductive

NOAEL of 50,000 ppm (5,300 mg/kg bw/day), a developmental NOAEL of 5,000 ppm (270 mg/kg bw/day), and a maternal toxicity NOAEL of 500 ppm (50 mg/kg bw/day). The developmental NOAEL was based on a slight, transient reduction in offspring growth. The maternal NOAEL is similar and the reproductive NOAEL is significantly higher (above the limit dose of 1,000 mg/kg/day) than the NOAEL from the 1-year feeding study in dogs used to establish the RfD.

3. *Reference dose.* Since developmental and reproductive toxicity occurs at levels above the levels shown to exhibit parental toxicity and since these levels are significantly higher than those used to calculate the RfD, K-I Chemical believes the RfD of 0.20 mg/kg/day (20 mg/kg/day and an Uncertainty Factor of 100) is an appropriate measure of safety for infants and children.

Dietary exposure of the most highly exposed subgroup in the population, non-nursing infants (< 1 year old) is 0.025758 mg/kg bw/day. This accounts for 12.9% of the RfD. There are no residential uses of prohexadione calcium and contamination of drinking water is extremely unlikely. In addition, there were no significant findings in relevant toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that prohexadione calcium produces endocrine related effects. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, K-I Chemical concludes that there is a

reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of prohexadione calcium, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level (MRL) has not been established for prohexadione calcium in peanuts, apples or pears by the Codex Alimentarius Commission.

[FR Doc. 99-21944 Filed 8-23-99; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 18, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 25, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room

1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form Number: FCC 601.

Type of Review: Revision of an existing collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 240,320.

Estimated Time Per Response: 1.25 hours.

Total Annual Burden: 210,280 hours.

Needs and Uses: FCC 601 is used as the general application (long form) for market based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to make the necessary changes to convert the Private Operational and Fixed Microwave Services to ULS. We sought emergency clearance and received approval on these changes and are now seeking a 3 year clearance. The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

Respondent costs are estimated to be \$48,364,000, which includes application filing fees.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-21900 Filed 8-23-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 17, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 25, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0855

Title: Telecommunications Reporting Worksheet and Associated Requirements—CC Docket No. 98-171

Form Number: FCC Forms 499-A and FCC 499-S

Type of Review: Extension.

Respondents: Business or other for-profit entities.

Number of Respondents: 5500 respondents

Estimated Time Per Response: 7.27 hours per response (avg.)

Total Annual Burden: 40,000 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$9,200.00.

Frequency of Response: Annually, Semi-Annually, On occasion, Third party disclosure.

Needs and Uses: In a Report and Order issued in CC Docket No. 98-171, released July 14, 1999, the Commission simplified and consolidated four Commission reporting requirements so that carriers need only file one worksheet to satisfy the contributor reporting requirements associated with: the universal service support

mechanisms; telecommunications relay services; cost recovery mechanism for numbering administration; and cost recovery mechanism for shared costs of long-term number portability. Reporting Requirement: All contributors to the Federal telecommunications relay service, numbering administration, long-term portability, and universal service support mechanisms (except certain non-common carrier telecommunications service providers meeting the universal service de minimis exemption) must file the April version of the Telecommunications Reporting Worksheet, FCC Form 499-A on April 1 of each year. (No. of respondents: 3500; hours per response: 8 hours; total annual burden: 28,000 hours). All contributors to the universal service support mechanisms, except those that fall within the Commission's de minimis exemption, must file a streamlined version of the Telecommunications Reporting Worksheet (FCC Form 499-S) on September 1 of each year. (No. of respondents: 2000; hours per response: 5.5 hours; total annual burden: 11,000 hours). Recordkeeping Requirements: Small common carriers and small pay telephone providers must complete the table contained in Figure 2 of FCC Form 499 to determine whether they meet the de minimis standard and need not file the form on September 1. Small shared tenant service providers and small private carriers should complete the table in Figure 2 to determine whether they meet the de minimis standard and need not file the worksheet on either September 1 or April 1. Telecommunications providers that do not file because they are de minimis should retain figure 2 and documentation of their contribution base revenues for 3 calendar years after the date each worksheet is due. Carriers that provide carriers' carrier services must have documented procedures to ensure that it reports as revenues from resellers only revenues from entities that reasonably would be expected to contribute to support universal service. These procedures include, but are not limited to, maintaining the following information on resellers: Legal name; address; name of a contact person; and phone number of the contact person. (No. of respondents: 2000; annual burden per respondent: .25 hours; total annual burden: 500 hours). Third Party Disclosure: If a reseller qualified for the de minimis exemption, it must notify its underlying carriers that it is not contributing directly to universal service. (Number of respondents: 2000; annual burden per respondent: .25

hours; total annual burden: 500 hours). The information will be used by the Commission and the administrators to calculate contributions to the universal service support mechanisms, the telecommunications relay services support mechanism, the cost recovery for numbering administration, and the cost recovery for the shared costs of long-term local number portability. The information collection will be used by carriers to satisfy their obligation under section 413 of the Act of file information concerning their designated agent for service of process. In addition to requests for comment on the areas identified above, interested parties are also asked to comment on the Commission's request not to print the OMB expiration date on the forms and instructions.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-21903 Filed 8-23-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval.

August 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0126.

Title: Application for Antenna Structure Registration and Antenna Structure.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 13,956.

Estimated Time per Response: 0.017 hours to 0.5 hours.

Total Annual Burden: 14,507.

Total Annual Cost: None.

Needs and Uses: Section 73.1820 requires that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Alert System (EAS) for commercial stations.

The data are used by FCC staff in field investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the EAS is operating properly.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-21901 Filed 8-23-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 16, 1999

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0636
Title: Equipment Authorization—Declaration of Compliance, Amendment of Parts 2 and 15.

Form Number: N/A.

Type of Review: Reinstatement without change of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,000.

Estimate Time Per Response: 19 hours (avg.).

Frequency of Response: Recordkeeping; Single reporting requirement.

Total Annual Burden: 76,000 hours.

Total Annual Costs: \$1,200,000.

Needs and Uses: The new equipment authorization procedure requires that a manufacturer or equipment supplier test a product to ensure compliance with technical standards for limiting radio frequency emissions and include a declaration of compliance (DoC) with the standards in the literature furnished with the equipment. This statement of compliance and supporting technical data would be made available to the FCC by the responsible party, at the request of the FCC. Further, the FCC will permit personal computers to be authorized based on tests and approval of their individual components, without further testing of the completed assembly. Testing and documentation of compliance aids in controlling potential interference to radio communications. The data may be used for investigating complaints of harmful interference; to determine that the equipment marketed complies with the applicable Commission Rules; and to insure that the operation of the equipment is consistent with the initially documented test results.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-21902 Filed 8-23-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not

display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0621.

Title: Rules and Requirements for Broadband PCS Licenses.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,000.

Estimate Time Per Response: 4.7 hrs. (avg.).

Frequency of Response:

Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 14,044 hours.

Total Annual Costs: None.

Needs and Uses: The information requested provides the FCC with the data to determine the legal, technical, and other qualifications of applicants to obtain a broadband Personal Communications Service license. The information is also used to determine whether grant of an application will serve the public interest, convenience, and necessity. The staff uses the information to ensure that licensees who acquire their licenses through competitive bidding are not unjustly enriched by premature transfer of their licenses.

This revision reflects an amendment to our construction rules to include 15

MHz C Block licenses resulting from a disaggregation. Our current construction rules address only 10 MHz and 30 MHz blocks. This revision does not affect the number of respondents or the total burden hours. Statutory authority for this collection of information is contained in 47 U.S.C. 309(j), as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-21904 Filed 8-23-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2353]

Petitions For Reconsideration of Action in Rulemaking Proceeding

August 19, 1999.

Petitions For Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY-A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857-3800. Oppositions to these petitions must be filed by September 8, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System (CC Docket No. 94-102, RM-8143).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-21899 Filed 8-23-99; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1282-DR]

Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa,

(FEMA-1282-DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: August 9, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1999:

Buchanan and Jones Counties for Public Assistance (already designated for Individual Assistance).

Story County for Public Assistance and Individual Assistance.

Linn and Pottawattamie Counties for Individual Assistance.

(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. 99-21931 Filed 8-23-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1283-DR]

Minnesota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA-1283-DR), dated July 28, 1999, and related determinations.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely

affected by the catastrophe declared a major disaster by the President in his declaration of July 28, 1999:

Cass County for Individual Assistance (already designated for Public Assistance). (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.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99-21932 Filed 8-23-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-20819) published on page 44017 of the issue for Thursday, August 12, 1999. Under the Federal Reserve Bank of New York heading, the entry for Popular, Inc., Popular International Bank Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mount Laurel, Pennsylvania is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Popular, Inc., and Popular International Bank Inc.*, both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mount Laurel, New Jersey; to acquire 100 percent of the voting shares of Aurora National Bank, Aurora, Illinois.

Comments on this application must be received by September 7, 1999.

Board of Governors of the Federal Reserve System, August 18, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-21857 Filed 8-23-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1999.

A. Federal Reserve Bank of

Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Traders Bankshares, Inc.*, Spencer, West Virginia; to acquire 4.8 percent of the voting shares, and thereby control 8.16 percent of the voting shares of Rock Branch Community Bank, Inc., Nitro, West Virginia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Capitol Bancorp, Ltd.*, Lansing, Michigan; Sun Community Bancorp Limited, Phoenix, Arizona; and Nevada Community Bancorp Limited, Las Vegas, Nevada; to acquire 51 percent of the voting shares of Red Rock Community Bank, Las Vegas, Nevada (in organization).

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *DFC Acquisition Corporation Number Two, and Dickinson Financial Corporation*, both of Kansas City, Missouri; to acquire 100 percent of the voting shares of Armed Forces Bank of California, N.A., San Diego, California.

2. *Gideon Enterprises, L.P.*, Topeka, Kansas; to become a bank holding

company by acquiring 95.66 percent of the voting shares of Silver Lake Bank, Topeka, Kansas.

Board of Governors of the Federal Reserve System, August 18, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-21858 Filed 8-23-99; 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 September 7, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *First Schaumburg Bancorporation, Inc.*, Schaumburg, Illinois; to engage *de novo* through its subsidiary, Heritage Mortgage Services of Florida, Inc., Naples, Florida, in originating mortgage loans for ultimate sale in the secondary market, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-21856 Filed 8-23-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, August 30, 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 items 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: August 20, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-22092 Filed 8-20-99; 3:46 pm]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 991 0038]

Pools By Ike, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 25, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Thomas Dahdouh or David Newman, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 356-5294 or 356-5280.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 18, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Order") from fourteen swimming pool contractors in Bakersfield, California, a city of 224,000 people in Kern County in the Central Valley of California. As alleged in the Commission's proposed complaint, these swimming pool contractors were part of an unlawful price-fixing and group boycott combination that began in the Spring of 1998. The proposed Order is designed to

prevent the recurrence of these anticompetitive practices engaged in by these swimming pool contractors.

The Proposed Complaint

The proposed complaint alleges that, in the Spring of 1998, fourteen swimming pool contractors formed an informal group, known as the Southern Valley Pool Association (the "Association"). The complaint alleges that, through the Association meetings and other communications, some of these swimming pool contractors agreed to increase prices substantially to homeowners for swimming pool construction. The proposed complaint also alleges that, as a result of this combination, some of these contractors thereafter significantly increased their prices to homeowners.

The proposed complaint also alleges that some of these swimming pool contractors engaged in a group boycott designed to prevent homeowners from escaping this collective price increase by turning to alternative means for the construction of swimming pools. According to the Commission's proposed complaint, homeowners usually hire a swimming pool contractor to handle all aspects of constructing a swimming pool. Some homeowners, however, may choose to enter into an arrangement, known in the industry as an "owner-builder" arrangement, by which they hire subcontractors directly or use swimming pool contractors as consultants only in arranging for subcontractors. In this way, homeowners who act as owner-builders are able to save substantial amounts of money.¹ Similarly, home construction developers and contractors may hire swimming pool contractors to handle all aspects of constructing a swimming pool, or they may hire subcontractors directly for that purpose.

According to the Commission's proposed complaint, owner-builders were viewed as a major threat to the success of the collective efforts by some swimming pool contractors to raise prices to homeowners. Homeowners acting as owner-builders could work directly with subcontractors or use pool contractors only as consultants and thereby defeat the price increase. Similarly, home construction developers and contractors could also work directly with subcontractors (rather than with pool contractors) and similarly defeat the price increase. To effectuate this group boycott, the

¹ In owner-builder arrangements, liability in the event of an accident or injury during construction falls on the homeowner, rather than on the pool contractor.

proposed complaint alleges that, beginning in early April 1998, a series of meetings was held, with some of respondents and all or nearly all of each trade of subcontractors in attendance. At these meetings, some respondents:

- instructed the subcontractors to raise their prices to owner-builders by 50 percent and to home construction developers and contractors by 25 percent, substantial price hikes that were designed to eliminate or reduce the savings homeowners and home construction developers and contractors would normally realize by bypassing pool contractors and dealing directly with subcontractors;

- warned the subcontractors that the respondents would stop subcontracting with them if the subcontractors did not increase their prices to owner-builders and home construction developers and contractors as set forth above; and

- offered the subcontractors a quid pro quo whereby, if the subcontractors agreed to increase prices to owner-builders and home construction developers and contractors as set forth above, respondents would agree to a specified increase (the amount of which varied depending on the particular subcontracting work being done) in the price subcontractors charged respondents for subcontractor services.

As a direct result of these meetings, according to the proposed complaint, most of the subcontractors raised their prices to pool contractors by the specified amounts on or about May 15, 1998. Also as a direct result of these meetings, some subcontractors began charging or sought to charge owner-builders and home construction developers and contractors substantially higher prices than they charged swimming pool contractors. Other subcontractors stopped doing owner-builder jobs altogether, because they were fearful of losing their work with respondents.

According to the proposed complaint, the effects of these collective actions are to increase prices for swimming pool construction services and swimming pool subcontracting services and to interfere with consumers' choice in deciding to build their swimming pool in an owner-builder arrangement or through home construction developers or contractors.

The Proposed Order

The proposed Order contains provisions designed to remedy the violations charged and to prevent the proposed respondents from engaging in similar acts and practices in the future.

Paragraph II of the proposed Order would prohibit the proposed

respondents from (1) entering into any agreement, express or implied, relating to the price for swimming pool contracting or subcontracting services and (2) requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way anyone else to alter in any way their price and terms for such services. Paragraphs II.A.(1) and B.(1) These provisions will prevent future efforts, whether by agreement or through requests to others, to raise prices and alter terms for both swimming pool contracting and subcontracting services.

Paragraph II would also prohibit the proposed respondents from entering into any agreement to refuse to deal with owner-builders or home construction contractors or developers. Paragraph II.A.(2). It would bar them as well from requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way any swimming pool contractor or subcontractor to refuse categorically to deal with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders. Paragraphs II.B.(2) and (3). Finally, Paragraph II would prohibit respondents from requesting, proposing, threatening, urging, recommending, advocating, or attempting to persuade in any way any subcontractor with respect to the terms of that subcontractor's dealings with owner-builders, home construction contractors or developers, or swimming pool contractors who act or wish to act as consultants for owner-builders. Paragraph II.B.(4).

Together, these provisions will bar respondents, collectively as well as individually, from seeking (1) to stop any subcontractor from working for owner-builders, home contractors or developers, and swimming contractors who act or desire to act as consultants for owner-builders; (2) to change the prices and terms subcontractors charge those homeowners and contractors; and (3) to stop other swimming pool contractors from working for those

homeowners and contractors. These provisions, by barring individual efforts as well as collective ones, fence in respondents from engaging in conduct similar or dangerously close to the unlawful activity they engaged in earlier.

A proviso to Paragraph II makes it clear that nothing in this Paragraph prohibits any respondents from discussing and/or entering into a specific proposed or actual business transaction or project in which those involved are or would be in a contractor/subcontractor or other joint or cooperative working relationship.

Paragraph III of the Order requires respondents, for a period of five years, to tape record all meetings and maintain copies of those tape recordings and all materials distributed at the meetings. This provision should have a prophylactic effect in ensuring that the respondents do not seek to engage in such anticompetitive conduct again.

The proposed Order also requires that, should the respondents turn the Association into a more formal organization, they must incorporate Paragraph II of this Order by reference in the by-laws of such organization and distribute a copy of the by-laws to each of the members of the organization. Paragraph IV. Finally, the Order contains reporting requirements (Paragraphs V. and VI.) and provisions guaranteeing Commission staff access should the need arise (Paragraph VII.).

Opportunity for Public Comment

The proposed consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The purpose of this analysis is to invite public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of

the agreement and proposed Order or to modify their terms in any way.

By direction of Commission.

[FR Doc. 99-21919 Filed 8-23-99; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Fellows Program.

OMB No.: 0970-0140.

Description: Public Law 103-252, the Human Services Amendments of 1994, amended the Head Start Act (the Act) to authorize the creation of a Head Start Fellows Program to support the professional development of individuals working in the fields of child development and family services. The Act was most recently reauthorized through fiscal year 2003, by the Coats Human Services Amendments of 1998, Public Law 105-285.

Head Start Fellowships are awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the fields of child development and children and family services. The information collected from the applications is used to ensure that individuals selected to be Head Start Fellows have the appropriate experience/skills, and that the training developed for them and the work assigned to them will enhance their ability to make significant contributions to the fields of child development and family services. The information collected is used by program staff and policy makers at the Federal level to make judgements on the progress and needs of the program.

Respondents: Individuals or Households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Fellows Program	200	1	2	400

Estimated Total Annual Burden Hours: 400.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for

Children and Families, Office of Information Services, Division of Information Resource Management

Services, 370 L'Enfant Promenade, SW.; Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Attn: ACF Desk Officer.

Dated: August 18, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99-218860 Filed 8-23-99; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Adoption and Foster Care Analysis and Reporting System for Title IV-B and Title IV-E.

OMB No.: 0980-0267.

Description: Section 479 of title IV-E of the Social Security Act directs States to establish and implement an adoption and foster care reporting system. The purpose of the data collected is to inform State/Federal policy decisions, program management, and to respond to

Congressional and Department inquiries. Specifically, the data is used for short/long-term budget projections, trend analysis, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents		Average burden hours per response	Total burden hours
Adoption and Foster Care Analysis and Reporting Systems	51	2	3,251	331,602

Estimated Total Annual Burden Hours: 331,602.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW; Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, D.C. 20503, Attn: ACF Desk Officer.

Dated: August 18, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99-21894 Filed 8-23-99; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N-1392]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Enforcement Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 23, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Enforcement Notification—21 CFR 100.2(d) (OMB Control Number 0910-0275)—Extension

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

In the **Federal Register** of June 8, 1999 (64 FR 30525), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.2(d)	1	1	1	10	10

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.2(d) is insignificant because enforcement notifications are seldom submitted by States requesting the agency take enforcement action under the act against a particular food. Over the last 3 years, FDA has not received any enforcement notifications. Since the enactment of section 403A(b) of the act (21 U.S.C. 343–1(b)) as part of the Nutrition Labeling and Education Act of 1990, FDA has received only a few enforcement notifications.

Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future obligation of a State to notify FDA of an enforcement action under the provisions of section 310(b) of the act.

Dated: August 18, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–21853 Filed 8–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiological Safety of Drug Residues in Food; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM) will sponsor a workshop entitled “Microbiological Safety of Drug Residues in Food.” The workshop will discuss the use of model systems to establish acceptable daily intakes (ADI’s) for antimicrobial drug residues in food. The workshop will focus on human consumption of new animal drug residues in food and their direct effects on human intestinal microflora.

The document entitled “A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food–Producing Animals” (the “framework” document) will not be discussed at this workshop. Information about workshops

on the framework document will be announced in a future **Federal Register** notice, CVM update(s), and on CVM’s Internet home page, at “<http://www.fda.gov/cvm/fda/mappgs/antitoc.html>”.

Date and Time: The workshop will be held on Monday and Tuesday, September 20 to 21, 1999, from 8 a.m. to 6 p.m. on Monday and from 8 a.m. to 2 p.m. on Tuesday.

Location: The workshop will be held at The DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD, 20852, 301–468–1100.

Contact: Lynda W. Cowatch, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5281.

Registration: The registration for the workshop is free. However, registration is required. For additional information and a registration form, please contact Lynda W. Cowatch at the above address. A registration form is also available on the CVM home page at “<http://www.fda.gov/cvm/fda/mappqs/registration.html>”.

If you need special accommodations for a disability, please contact the DoubleTree Hotel at least 7 days in advance.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 30, 1996 (61 FR 3043), CVM published a notice of availability of a guidance document entitled “Microbiological Testing of Antimicrobial Drug Residues in Food.” This guidance document defines when antimicrobial drugs would be exempt from additional microbiological testing and when additional testing may be necessary to establish the safety of antimicrobial drug residues in food. The document also establishes 1.5 milligrams/person/day as the ADI of microbiologically active residues that would be allowed in food without additional microbiological testing. CVM also expressed the intention of validating model systems that could be used to evaluate the effect of low levels of antimicrobial drugs on the human intestinal microflora.

In 1995 and 1996, CVM initiated research to validate an in vitro and an in vivo model system that could be used to set ADI’s for antimicrobial drug

residues in food based on perturbations of the human intestinal microflora. The results of this research will be presented at the September workshop. In addition, other methods for determining ADI’s for antimicrobial residues used internationally and in Europe will be presented and discussed.

Based on the information presented and discussed at the workshop, CVM intends to reevaluate its guidance document for testing microbiological effects of antimicrobial residues on the human intestinal microflora.

Dated: August 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–21854 Filed 8–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1076–N]

Medicare Program; September 16, 1999, Meeting of the Competitive Pricing Advisory Committee

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

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) on September 16, 1999. The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on demonstration area designation and appropriate research designs for the project. The CPAC meetings are open to the public.

DATES: The CPAC is scheduled to meet on September 16, 1999, from 9 a.m. until 4 p.m., e.d.s.t.

ADDRESSES: The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard, C4-14-17, Baltimore, MD 21244-1850, (410) 786-6451.

SUPPLEMENTARY INFORMATION:

Section 4011 of the Balanced Budget Act of 1997 (BBA) (Public Law 105-33), requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementing the project. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, May 13, 1999, and July 22, 1999.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program, and representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, Health Care Financing Administration; John Bertko, Actuary Principal, Reden & Anders, Ltd.; Dave Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., former CEO, The Oschner Clinic; Samuel Havens, Healthcare Consultant and Chairman of Health Scope/United; Margaret Jordan, President and CEO, The Margaret Jordan Group; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, Senior Fellow, The Brookings Institution; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President,

Service Employees International Union, AFL-CIO; and Jay Wolfson, Director, Florida Health Information Center, University of South Florida. The chairperson of the CPAC is James Cubbin and the co-chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5) of the BBA, the CPAC will terminate on December 31, 2004.

The agenda for the September 16, 1999, meeting will include the following:

- A review of the competitive pricing demonstration design.
- A discussion on how to minimize disruption for beneficiaries in the demonstration sites.
- A discussion on the process for review of plan bids.
- A revision of the implementation timeline for the Kansas City, MO Metropolitan Area and Maricopa County, AZ demonstration sites.

Individuals or organizations that wish to make 5-minute oral presentations on the CPAC agenda issues should contact Sharon Arnold, CPAC Executive Director, by 12 noon, September 9, 1999, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12 noon, September 9, 1999. Anyone who is not scheduled to speak may submit written comments to the Executive Director, by 12 noon, September 13, 1999.

This meeting is open to the public, but attendance is limited to the space available.

(Sec. 4012 of the Balanced Budget Act of 1997, Pub. L. 105-33 (42 U.S.C. 1395w-23 note) and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sec. 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 18, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99-21859 Filed 8-23-99; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7056 ext. 287; fax: 301/402-0220; e-mail: rr154z@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Peptides and Their Utility in Modulation of Behavior of Cells Expressing $\alpha\beta 1$ Integrins

David D. Roberts, Henry C. Krutzsch (NCI)

DHHS Reference No. E-169-99/0 filed 15 Jul 1999

The present invention relates generally to peptides that bind to or are recognized by $\alpha\beta 1$ integrins and in particular, to pharmaceutical compositions containing and methods of using said peptides to inhibit or promote various functions of cells that express $\alpha\beta 1$ integrins.

Integrins are transmembrane α , $\beta 1$ -heterodimer receptors expressed on a wide variety of cells which are involved in extracellular matrix (ECM) interactions. Experimental data has shown that the ECM can affect gene expression and that this altered gene expression can change the composition of the ECM. A bi-directional exchange of information between cells and their surrounding matrix is therefore taking place and because of this communication, integrins can control cell growth, motility, differentiation and survival. Defects in the regulation of these processes can result in many disease states, such as inheritable developmental disorders, defective wound repair, hemotological disorders, cardiovascular diseases, immunological disorders, neurodegenerative diseases and cancer initiation, invasion and metastasis. The disclosed peptides have been shown to inhibit angiogenesis, cell adhesion and proliferation and wound repair when administered in a soluble

form; however, when the same peptides are immobilized on a substratum, they promote adhesion and proliferation of endothelial cells. Thus by controlling the conditions, these peptides can be used to generate specific responses. Specific applications for the peptides include the treatment of angiogenesis-mediated diseases, production of vascular grafts and artificial blood vessels.

Redox-Stable, Non-Phosphorylated Cyclic Peptide Inhibitors of SH2 Domain Binding to Target Protein, Conjugates Thereof, Compositions and Methods of Synthesis and Use Serial No. 60/137,187 filed 02 Jun 1999

Peter Roller, Ya-Qiu Long, Feng-Di Lung, Charles R. King (NCI)

The present invention is predicated on the surprising and unexpected discovery of non-phosphorylated cyclic peptide inhibitors of binding SH2 domains in proteins comprising SH2 domains to target proteins which not only are redox-stable *in vivo* but have unprecedented specific binding affinities.

Src homology-2 (SH2) domains selectively bind to phosphotyrosyl (pTyr)-containing regions of target proteins. SH2 binding can modulate: c-src activity; substrate specificity for c-abl proto-oncoproteins; and the transduction of signals initiated by growth factor receptors and cellular attach systems. The SH2 domain of growth factor receptor-bound protein (Grb2) is a specific example which contains one SH2 domain and two src homology-3 (SH3) domains. The prevention of Grb2-mediated multi-protein assemblies is considered a promising therapeutic target for the development of antiproliferative agents directed to cells that over-express growth factor receptors. Previously identified SH2-inhibitors have detectable activity, but their binding affinities are substantially lower than natural ligands. A need therefore exists for more efficient and stable inhibitors, and the technology herein disclosed provides for such inhibitors. Additionally, the technology offers the possibility of conjugates comprising a compound (SH2 inhibitor) and a carrier agent, i.e., signal peptides, antennapedia peptides, or lipofectin. Suitable targets would preferably include, but not necessarily be limited to: growth factor receptors, such as EGFR; morphology determining proxies, such as FAK; a cellular attachment protein; a proto-oncoprotein; an oncoprotein, such as BCR-abl; or a mitogen-activated protein (MAP). In one application of this

method, inhibition of the binding of a target protein by an SH2 domain in a protein comprising an SH2 domain prevents cancer, in particular, breast cancer. Administration of the SH2-inhibitor/SH2-conjugate can be accompanied by an anti-cancer agent such as a chemotherapeutic agent, a cytotoxic agent or its prodrug, radiation and/or a radioactive isotope.

Phenylalanine Derivatives

T. Burke *et al.* (NCI)
Serial No. 60/126,047 filed 23 Mar 1999

The present invention relates to novel phenylalanine derivatives, compositions and methods of using said derivatives to inhibit SH2 domain binding with a phosphoprotein. Additionally, the invention provides precursors suitable for preparing these phenylalanine derivatives.

The therapy and prophylaxis of proliferative diseases such as cancer, autoimmune disorders and hyperproliferative skin disorders can involve signal transduction. These signal-pathways are critical to normal cellular homeostasis and are necessary processes for relaying extracellular messages from various sources, e.g., growth factors, hormones or neurotransmitters, via receptors to the interior of the cell. Protein-tyrosine kinases are integral participants of many of these pathways, and they are responsible for the phosphorylation of specific tyrosine residues to form tyrosine phosphorylated residues. These pathways can involve complex networks which contain proteins with specific amino acid sequences called "Src-homology 2" (SH2) domains. Malfunctions in these protein-tyrosine phosphorylations through tyrosine kinase overexpression or deregulation, can manifest a variety of oncogenic and proliferative disorders. SH2 domain containing proteins that play roles in cellular signaling and transformation include, but are not limited to: Src, Lck, Ras GTPase-activating protein, Phospholipase C, PI-3 kinase, Grb2, BCR Abl and Tyk2. Central to the binding of SH2 domains with phosphotyrosine (pTyr)-containing ligands is the interaction of a doubly ionized pTyr phosphate with two highly conserved arginine residues. These interactions are critical, and binding is usually lost by removal of the phosphate group. While the pTyr-pharmacophore therefore plays a dominant role in SH2 domain-ligand interactions, pTyr residues are not suitable components of inhibitors intended for *in vivo* application, due to the enzymatic lability of the phosphate ester bond and

the poor cellular penetration of the doubly ionized phosphate species. Therefore, a need exists for non phosphate containing compounds that can mimic the structural interactions of phosphotyrosyl residues within SH2 domain pTyr-binding sites, and in so doing disrupt the interactions between SH2 domains of proteins, e.g., Grb2, and proteins with phosphorylated moieties. The disclosed invention provides viable candidates for these compounds and could provide for the development of therapeutic agents for the treatment of proliferative diseases or conditions as well as relevant diagnostic or testing procedures.

Dated: August 17, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99-21889 Filed 8-23-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and meet special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: September 22, 1999.

Time: 9:00 AM to 4:00 PM.

Agenda: The Changing Face of Public Health—Implications For The National Cancer Program Now And In The Future.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399,

Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-21885 Filed 8-23-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 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 Cancer Institute Special Emphasis Panel, Evaluation of Chemopreventive Agents by In Vitro Techniques.

Date: September 13, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6130 Executive Boulevard, EPN/F, Rockville, MD 20852, (Telephone Conference Call).

Contract Person: Wilna A. Woods, PHD, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496-7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-21886 Filed 8-23-99; 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: Communication Disorders Review Committee.

Date: October 13-15, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Melissa Stick, PHD, MPH, Scientific Review Administrator, NIH/NIDCD/DEA/SRB, 6120 Executive Blvd (EPS/400), Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99-21881 Filed 8-23-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 15-16, 1999.

Closed: September 16, 1999, 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Closed: September 16, 1999, 8:30 AM to 9:00 AM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Open: September 16, 1999, 9:00 AM to 3:30 PM.

Agenda: Program Developments and Priorities.

Place: Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism; National Institutes of Health, PHS, DHHS; Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99-21882 Filed 8-23-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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 Advisory Mental Health Council.

Date: September 16–17, 1999.

Closed: September 16, 1999, 10:30 AM to recess.

Agenda: To revise and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: September 17, 1999, 8:00 AM to adjournment.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Executive Secretary, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367. (Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21887 Filed 8–23–99; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council, Agenda Available: <http://www.niehs.nih.gov/dert/c-agenda.htm>.

Date: September 13–14, 1999.

Open: September 13, 1999, 8:30 AM to 5:00 PM.

Agenda: Discussion of program policies and issues.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC.

Open: September 14, 1999, 9:00 AM to 9:35 AM.

Agenda: Continuation of program policy discussions.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC.

Closed: September 14, 1999, 10:10 AM to 2:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC.

Contact Person: Anne P. Sassaman, PHD, Director, Division of Extramural Research and Training, Executive Secretary, National Institute of Environmental Health Sciences, NIH/PHS, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(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: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–21888 Filed 8–23–99; 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 application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for the Scientific Review Special Emphasis Panel.

Date: August 17, 1999.

Time: 4:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract 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 limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 18, 1999.

Time: 12:45 PM to 1:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, (301) 435-1045, corsaroc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 20, 1999.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: Laurie L. Foudin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7818, Bethesda, MD 20892, (301) 435-1779.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 30, 1999.

Time: 10:00 AM to 11:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: J. Terrell Hoffeld, DDS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435-1781, th88q@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 30, 1999.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: J. Terrell Hoffeld, DDS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435-1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 3, 1999.

Time: 9:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

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: September 7, 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: Anita Corman Weinblatt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435-1124.

(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: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-21883 Filed 8-23-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.

Date: September 22-23, 1999.

Time: 8:30 AM to 1:00 PM.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review process.

Place: National Institutes of Health, Two Rockledge Center, Conference Room 9104, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Samuel Joseloff, PHD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6160, MSC 7892, Bethesda, MD 20892, (301) 435-1040, joselofs@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: August 17, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-21884 Filed 8-23-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in September 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(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: September 13-16, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: September 13-16, 1999, 8:30 a.m.-5 p.m.

Panel: Targeted Substance Abuse/HIV, SP 99-003(a).

Contact: Stan Kusnetz, Room 17-89, Parklawn Building, Telephone: 301-443-3042 and FAX: 301-443-3437.

Dated: August 17, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99-21906 Filed 8-23-99; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR-4445-N-20, FR-4447-N-03]

Notice of Proposed Information Collection: Comment Request; Application for Approval—FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer Branch Office Notification—Title I/Title II

AGENCY: Office of the Assistant Secretary for Housing, HUD; Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 25, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information: FHA contact Ron Schwartz, Lender Approval and Recertification Division, telephone number (202) 708-3976 (this is not a toll-free number); Ginnie Mae contact Sonya Suarez, Office of Policy, Planning and Risk Management, telephone number (202) 708-2772 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to

be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Form HUD-11701/92001, Application for Approval-FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer; Form HUD-92001-B, Branch Office Notification-Title I/Title II.

OMB Control Number, if applicable: 2502-0005; 2503-0012.

Description of the need for the information and proposed use: This notice requests OMB information collection authorization to update forms and to replace expired forms. HUD's collection of information on Form HUD-11701/92001 is needed to determine if the lender should be approved to participate in the federally insured housing programs or in the Ginnie Mae mortgage-backed securities program. The current application forms for mortgagee approval have expiration dates that must be renewed so that this procedure can continue.

The application forms have been consolidated into two forms, Form HUD-11701/92001 and Form HUD-92001-B. Form HUD-92001-B is used for requests for branch office approval when it is not possible to accomplish this through electronic means. Form HUD-11701/92001 is used for all other requests for approval.

The burden associated with this approval process is the minimum required to achieve program objectives. The information collection frequency is the minimum consistent with program objectives. The frequency cannot change because it applies when a lender requests initial approval.

Agency Form Numbers, if applicable: Form HUD-11701/92001; Form HUD-92001-B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Form HUD-11701/92001: The estimated number of respondents is 1830 (FHA 1780; Ginnie Mae 50), the total annual responses is about 1830 (FHA 1780; Ginnie Mae 50), and the total annual hours of response are estimated at 2288 (FHA-2225; Ginnie Mae 63).

Form HUD-92001-B: The estimated number of respondents is 2300, the total annual responses is about 2300, and the total annual hours of response are estimated at 575.

Status of the proposed information collection: Reinstatement.

Form HUD-11701/92001 consolidates and replaces Form HUD-11701/92001, Form HUD-92001-C, Form HUD-92001-D, Form 92001-E, Form 92001-L, Form HUD-92001-LD, Form HUD-92001-LE.

Form HUD-92001-B replaces Form HUD-92001-B and Form HUD-92001-LB. Information for certain lenders, which was formerly collected on Form HUD-92001-B, is now collected electronically.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 18, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

George S. Anderson,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 99-21879 Filed 8-23-99; 8:45 am]

BILLING CODE 4210-27-M

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.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a proposed collection of information. NPS specifically requests comments on: (1) The need for the information being collected, including whether the information has practical utility; (2) the validity and 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.

NPS requests comments on a proposed research and collecting permit and reporting system that will consolidate and streamline an existing array of information collection instruments used by applicants to apply to parks for research and collecting permits for natural or social science activities that require permits. NPS will use the information you submit to

determine whether or not to make modifications to the proposed research and collecting permit and reporting system. Once NPS makes any modifications that it may decide to adopt, NPS plans to submit a proposed collection of information package to OMB with a request that OMB approve the package and assign an OMB clearance number to the two collection of information forms that are part of this system.

You may obtain copies of the proposed application form, permit form, reporting form, and related guidance and explanatory material from the NPS website at: <http://www.nature.nps.gov/ResearchPermit/>. You also may obtain copies of the documents and additional information from the source identified below.

DATES: Public comments on the proposed ICR will be accepted on or before October 25, 1999.

SEND COMMENTS TO: John G. Dennis, Natural Resources, National Park Service, 1849 C Street NW., Room 3223-MIB, Washington, DC 20240. Voice: 202-208-5193. Fax: 202-208-4620. Email: researchcoll@nps.gov.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the postal address given here. You may also comment via the Internet to the email address given here. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: NPS Research and Collecting Permit and Reporting System" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the phone number given here. Finally, you may hand-deliver comments to the address given here. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: John G. Dennis, Natural Resources, National Park Service, 1849 C Street NW, Room 3223-MIB, Washington, DC 20240. Voice: 202-208-5193. Fax: 202-208-4620. Email: researchcoll@nps.gov.

TO REQUEST PRINTED COPIES OF THE DOCUMENTS CONTACT: Tim Goddard, National Park Service, 1201 Oak Ridge Dr., Suite 250, Fort Collins, CO 80525. Fax: 970-225-9965. Email: tim_goddard@nps.gov.

SUPPLEMENTARY INFORMATION:

Title: National Park Service Research and Collecting Permit System.

Departmental Form Number: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: New clearance.

Description of need: The proposed information collection responds to the statutory requirement that NPS preserve park resources and regulate the use of units of the National Park System. The information proposed to be collected identifies: (1) People who seek to conduct natural or social science research and collecting activities in individual units of the National Park System, (2) what activities they wish to conduct, (3) where they wish to conduct the activities, (4) what kinds of results they expect to obtain from the activities they propose to conduct, and (5) once permitted, the actual results of their permitted activities. NPS will use the collected information for managing the use and preservation of park resources and for reporting the status of permitted research and collecting activities.

Automated data collection: The proposed information collection and status reporting systems will be made available to applicants and the public through the NPS website. NPS proposes to use Internet automation to facilitate the permit application and progress reporting process.

Description of Respondents: Representatives of: academic and other research institutions, Federal, state, or local agencies, research businesses; other scientific parties seeking an NPS research and collecting permit; permittees who submit the annual report of accomplishment that is one of the permit conditions.

Estimated average number of respondents: 3,000 per year.

Estimated average burden hours per response: 1 hour.

Estimated annual reporting burden: 3,000 hours.

Leonard E. Stowe,

*Information Collection Clearance Officer,
National Park Service, WAPC.*

[FR Doc. 99-21909 Filed 8-23-99; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Capulin Volcano National Monument, NM

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Capulin Volcano National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan (GMP) for Capulin Volcano National Monument. This statement will be approved by the Director, Intermountain Region.

Capulin Volcano National Monument (originally Capulin Mountain National Monument) was established by Presidential Proclamation No. 1340 of August 9, 1916, to protect "a striking example of recent extinct volcanoes * * * of great scientific and especially geologic interest." The general management plan is a comprehensive, long-range plan to define resource conditions and visitor experiences to be achieved in various management units throughout the monument, and to identify the kinds of management, use, and development appropriate to achieving and maintaining these conditions and experiences. The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities.

In cooperation with neighboring landowners; other federal, state, and local units of government; and interested organizations and individuals, attention will also be given to resources outside the boundaries that affect the integrity of Capulin Volcano National Monument. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following major issues:

- How can the monument's natural and cultural resources best be protected

and preserved, while providing for present and future visitor use?

- What kind of visitor experiences and levels of visitor use are most appropriate to the monument's purpose and the significance of its resources?
- What kind of facilities and what management actions are needed to achieve desired resource conditions and visitor experiences?

• How can the monument build positive relationships with nearby communities and landowners, and partnerships with related organizations?

Scoping newsletters have been prepared that detail the issues identified to date. For copies of these newsletters and further information, please contact Margaret Johnston, Superintendent, Capulin Volcano National Monument, P.O. Box 40, Capulin, New Mexico; Telephone: 505-278-2201 extension 210; e-mail: Maggie_Johnston@nps.gov.

Dated: August 13, 1999.

R. Everhart,

Director, Intermountain Region.

[FR Doc. 99-21908 Filed 8-23-99; 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 August 14, 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 September 8, 1999.

Carol D. Shull,

Keeper of the National Register.

Arizona

Pinal County

Rancho Linda Vista, 1955 W. Linda Vista Rd., Oracle, 99001099

California

San Diego County

Teacher Training School Building—San Diego State Normal School, 4345 Campus Ave., San Diego, 99001142

Georgia

Fulton County

Troy Peerless Laundry Building, 650 Glen Iris Dr., Atlanta, 99001100

Harris County

Sunnyside School—Midway Baptist Church and Midway Cemetery Historic District, 2495 Hopewell Church Rd. at Sunnyside Church Rd., Hamilton vicinity, 99001101

Indiana

Bartholomew County

New Hope Bridge, Cty. Rd. 400 N over Flat Rock River, Columbus, 99001104

Pugh Ford Bridge, Cty. Rd. 900 N over Flat Rock River, Taylorsville, 99001103

Clay County

Clay County Courthouse, Bounded by US 40, Harrison, Jackson, and Alabama Sts., Brazil, 99001109

Delaware County

Kirby Historic District, Roughly bounded by Jackson, Wolfe, Lincoln, and Main Sts., Muncie, 99001110

Meeks Avenue Historic District, 200-331 N. Meeks Ave., Muncie, 99001105

Gibson County

Lyles Consolidated School (Indiana's Public Common and High Schools MPS), Cty. Rd. 100 N, Lyles Station, 99001111

Grant County

Baldwin Addition Historic District, Roughly along Main St., Between 2nd and 4th Sts., Fairmount, 99001108

Lake County

First Unitarian Church of Hobart, 497 Main St., Hobart, 99001112

Whitaker, William, Landscape and House, 472 S. Main, Crown Point, 99001107

Morgan County

Long Schoolhouse (Indiana's Public Common and High Schools MPS), 0.5 NW of jct. of Jordan Rd. and Hinson Rd., Martinsville, 99001106

Porter County

Chesterton Commercial Historic District, 109-193 N. Calumet Rd. and 130-134 N. Calumet Rd., Chesterton, 99001102

Tippecanoe County

Morton School (Indiana's Public Common and High Schools MPS), 222 N. Chauncey Ave., West Lafayette, 99001113

Louisiana

Jefferson Parish

Buchler, Conrad A., House, 236 Sala Ave., Westwego, 99001114

Massachusetts

Bristol County

Al Mac's Diner—Restaurant (Diners of Massachusetts MPS), 135 President Ave., Fall River, 99001119

Assonet Historic District, Roughly bounded by MA 24, a private Ln., Conrail RR Tracks, and High St., Freetown, 99001116

Essex County

Agawan Diner (Diners of Massachusetts MPS), 166 Newburyport Turnpike, Rowley, 99001124

Capitol Diner (Diners of Massachusetts MPS), 431 Union St., Lynn, 99001121

Salem Diner (Diners of Massachusetts MPS), 70 1/2 Loring Ave., Salem, 99001118

Hampshire County

Miss Florence Diner (Diners of Massachusetts MPS), 99 Main St., Northampton, 99001123

Middlesex County

Casey's Diner (Diners of Massachusetts MPS), 36 South Ave., Natick, 99001122

Rosebud, The (Diners of Massachusetts MPS), 381 Summer St., Somerville, 99001125

Town Diner (Diners of Massachusetts MPS), 627 Mount Auburn St., Watertown, 99001127

Wilson's Diner (Diners of Massachusetts MPS), 507 Main St., Waltham, 99001126

New York

Columbia County

Jordan, Dr. Abram, House, 137 NY 23, Claverack, 99001135

Kings County

Bay Ridge United Methodist Church, 7002 Fourth St., Brooklyn, 99001132

Bay Ridge United Methodist Church, 7002 Fourth St., Brooklyn, 99001133

Livingston County

Tram Site, Address Restricted, Livonia, 99001130

Nassau County

Springbank (Roslyn Harbor, New York MPS), 440 Bryant Ave., Roslyn Harbor, 99001128

New York County

International House, 500 Riverside Dr., New York, 99001129

Orange County

Tweddle Farmstead, 263 Beaver Dam Rd., Montgomery, 99001134

Otsego County

Glimmerglass Historic District, Otsego Lake and Environs, Cooperstown vicinity, 99001136

Oklahoma

Tulsa County

Owen Park Historic District, Roughly bounded by I-244, Zenith Ave., Edison Ave., and Frisco Ave., Tulsa, 99001137

Tennessee

Humphreys County

Enochs Mill, 3072 Little Blue Creek Rd., McEwen vicinity, 99001138

Texas

Dallas County

Lawrence, Stephen Decatur, Farmstead, 701 E. Kearney St., Mesquite, 99001139

El Paso County

Rio Grande Avenue Historic District, Roughly bounded by Rio Grande, Nevada, Kansas, and Campbell Sts., El Paso, 99001140

Wyoming

Carbon County

Rawlins Residential Historic District, Roughly bounded by Eighth St., Walnut St., Wyoming St., and Pine St., Rawlins, 99001141

For PROCEDURAL error the following resource is being removed:

California

San Diego County

Teacher Training School Building—San
Diego State Normal School, 4345 Campus
Ave., San Diego, 98001193

[FR Doc. 99-21855 Filed 8-23-99; 8:45 am]

BILLING CODE 4310-70-P

**INTERNATIONAL TRADE
COMMISSION****Sunshine Act Meeting****Emergency Notice of Cancellation of
Commission Meeting**

AGENCY HOLDING THE MEETING: United
States International Trade Commission.

TIME AND DATE: August 20, 1999 at 10:00
a.m.

PLACE: Room 101, 500 E Street S.W.,
Washington, DC 20436, Telephone:
(202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Outstanding action jacket:

(1) Document No. EC-99-012:

Approval of final report in Inv. No.
332-403 (Assessment of the
Economic Effects on the United
States of China's Accession to the
WTO).

On Friday, August 20, 1999, the
Commission determined to cancel the
Commission meeting which was
scheduled to consider the above
referenced document. Since the action
jacket cleared the Commission, no
further action is required. No earlier
announcement of this cancellation was
possible.

By order of the Commission.

Issued: August 20, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-22033 Filed 8-20-99; 3:03 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE**National Institute of Justice****Agency Information Collection
Activities: Proposed Collection;
Comment Request**

ACTION: Notice of Information Collection
Under Emergency Review
(Reinstatement, without change, of a
previously approved collection for
which approval has expired); Use of
Force in the Arrest of Persons with
Impaired Judgement.

The Department of Justice, National
Institute of Justice, has submitted that

following information collection request
to the Office of Management and Budget
(OMB) for review and clearance in
accordance with emergency review
procedures of the Paperwork Reduction
Act of 1995. OMB approval has been
requested by August 31, 1999. The
proposed information collection is
published to obtain comments from the
public and affected agencies. If granted,
the emergency approval is only valid for
180 days. Comments should be directed
to OMB, Office of Information
Regulatory Affairs, Attention: Jeff Hill,
(202) 395-3176, Department of Justice
Desk Officer, Washington, DC 20530.

During the first 60 days of this same
review period, a regular review of this
information collection is also being
undertaken. All comments and
suggestions, or questions regarding
additional information, to include
obtaining a copy of the proposed
information collection instrument with
instructions, should be directed to Dr.
Raymond Downs, (202) 307-0646,
Office of Science and Technology,
National Institute of Justice, U.S.
Department of Justice, 810 7th Street,
NW, Washington, DC 20531.

Request written comments and
suggestions from the public and affected
agencies concerning the proposed
collection of information. Your
comments should address one or more
of the following four points:

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

(2) Evaluate the accuracy of the
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.

Overview of This Information

(1) *Type of Information Collection:*
Reinstatement of collection for which
OMB Clearance has expired.

(2) *Title of the Form/Collection:* Use
of Force in the Arrest of Persons with
Impaired Judgement.

(3) *Agency form number, if any, and
the applicable component of the*

Department sponsoring the collection:
None. National Institute of Justice,
United States Department of Justice.

(4) *Affected public who will be as or
required to respond, as well as brief
abstract:*

Primary: State, Local or Tribal
Government. *Other:* Federal
Government.

Abstract: This survey will be conducted
in collaboration with policy agencies in
several large metropolitan areas of the
United States. It will compare the force
required to arrest persons with impaired
judgement to the force required to arrest
persons with intact judgement with
regard to types of force used and their
effectiveness and the safety to arrestee
and arresting officer. Data collected will
help determine if modifications are
necessary in training of officers in the
arrest of persons with impaired
judgement or if new methods or
technology, are tried to affect these
arrests safely to all concerned.

(5) *An estimate of the total number of
respondents and the amount of time
estimated for an average respondent to
respond/reply:* 7,000 respondents at an
average of 3 minutes per response.

(6) *An estimate of the total public
burden (in hours) associated with the
collection:* 350 burden hours.

If additional information is required
contact: Mr. Robert B. Briggs, Clearance
Officer, United States Department of
Justice, Justice Management Division,
Information Management and Security
Staff, Suite 1220, National Place
Building, 1331 Pennsylvania Avenue,
NW, Washington, DC 20530.

Dated: August 19, 1999.

Robert B. Briggs,

*Department Clearance Officer, United States
Department of Justice.*

[FR Doc. 99-21892 Filed 8-23-99; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR**Occupational Safety and Health
Administration****Federal Advisory Council on
Occupational Safety and Health; Notice
of Meeting**

Notice is hereby given of the date and
location of the next meeting of the
Federal Advisory Council on
Occupational Safety and Health
(FACOSH), established under Section
1-5 of Executive Order 12196 of
February 26, 1980, and published in the
Federal Register, February 27, 1980 (45
FR 1279). FACOSH will meet on
September 15, 1999 starting at 1:00
p.m., in Room N3437 A and B, of the

Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210. The meeting, which will adjourn at approximately 3:30 p.m., is open to the public.

Agenda items include:

1. Call to Order
2. Vision for FACOSH
3. Federal Worker 2000
4. NPS Agreement
5. VA Evaluation/Partnership
6. VPP
7. 54th Annual Federal Safety and Health Training Conference in Baltimore, Md.
8. Reports from Committees:
 - (a) Standing Committees on Federal Occupational Safety and Health
 - (b) Federal Accident Reporting System (FARS) Committee
 - (c) Annual Federal Safety and Health Training Conference Subcommittee
 - (d) Federal Safety and Health Council Awards Committee.
9. New Business
10. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs, at the address provided below. All such submissions, received by September 10, 1999, will be provided to the members of the Council and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by close of business September 10, 1999. The presentation request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content. Persons who request the opportunity to address the Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson of the Advisory Council. Individuals with disabilities who wish to attend the meeting should contact John E. Plummer at the address indicated below, if special accommodations are needed.

For additional information, please contact John E. Plummer, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3112, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693-2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC this 18th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99-21916 Filed 8-23-99; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 13, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Room: 415.

Program: This meeting will review applications for Regional Humanities Centers Panel I, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

2. *Date:* September 15, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Room: 415.

Program: This meeting will review applications for Regional Humanities Centers Panel II, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

3. *Date:* September 17, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Room: 415.

Program: This meeting will review applications for Regional Humanities Centers Panel III, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

4. *Date:* September 22, 1999.

Time: 8:30 a.m. to 6:00 p.m.

Room: 415.

Program: This meeting will review applications for Regional Humanities Centers Panel IV, submitted to the Office of Challenge Grants at the July 16, 1999 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 99-21768 Filed 8-23-99; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL INSTITUTE FOR LITERACY

Notice of Advisory Board Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: September 10, 1999 from 9 am to 11 pm.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

Shelly Coles, Executive Assistant, National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006. Telephone (202) 233-2027, email scoles@NIFL.gov.

SUPPLEMENTARY INFORMATION: The Board is established under the Workforce Investment Act of 1998. Title II of P.L. 105-220, Sec. 242, the National Institute for Literacy. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the

implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on September 10, 1999 from 9 am to 11 am. The meeting of the Board is open to the public. This meeting of the Institute's Advisory Board will focus on current and future Institute programs and activities. Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW, Suite 730, Washington, DC 20006 from 8:30 am to 5 pm.

Dated: August 18, 1999.

Sharyn M. Abbott,

Acting Director, National Institute for Literacy.

[FR Doc. 99-21912 Filed 8-23-99; 8:45 am]

BILLING CODE 6055-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Aviation Maintenance Repair Facilities: A Public Forum

A public forum on aviation maintenance repair facilities sponsored by the National Transportation Safety Board will be held August 30, 1999, at the Sheraton Chicago Hotel and Towers, 301 East North Water Street, Chicago, Illinois. For more information, contact the Office of Research and Engineering Division, telephone (202) 314-6510, fax (202) 314-6597 or Paul Schlamm, Office of Public Affairs, Washington, DC 20594, telephone (202) 314-6100.

Dated: August 18, 1999.

Rhonda N. Underwood,

Federal Register Liaison Officer.

[FR Doc. 99-21869 Filed 8-23-99; 8:45 am]

BILLING CODE 7533-01-M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data

collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Employee's Certification; OMB 3220-0140.

Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's previous marriages create an impediment either to the current marriage between the employee and his or her spouse or to the marriage which previously existed between the employee and his or her former spouse.

The requirements relating to obtaining evidence for determining valid marital relationships are prescribed in 20 CFR 219.30 through 219.35.

Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G-346 to obtain the information needed for determining if any of the employee's previous marriages create an impediment to the current marriage. Form G-346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes minor and cosmetic editorial changes to Form G-346. The RRB estimates that 5,400 G-346's are completed annually at an estimated completion time of five minutes per response. Total respondent burden is estimated at 450 hours.

ADDITIONAL INFORMATION OR COMMENTS:

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information

collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99-21880 Filed 8-23-99; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23950; 812-11640]

Norwest Advantage Funds, et al.; Notice of Application

August 17, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain series of Wells Fargo Funds Trust ("WFFT") and Wells Fargo Core Trust ("WFCT") to acquire all of the assets and liabilities of certain series of Norwest Advantage Funds ("NAF") and Core Trust (Delaware) ("Core Trust"), respectively (the "Reorganizations"). Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

Applicants: NAF, WFFT, Core Trust, WFCT (each, a "Trust"), Norwest Bank Minnesota, N.A. ("Norwest Bank"), Norwest Investment Management, Inc. ("NIM"), and Wells Fargo Bank, N.A. ("Wells Fargo Bank").

Filing Date: The application was filed on June 3, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 13, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609; Applicants: c/o Kevin M. Broadwater, Esq., Seward & Kissel LLP, 1200 G Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Deepak T. Pai, Senior Counsel, at (202) 942-0574 or George J. Zornada, Branch Chief, at (202) 942-0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. NAF, a Delaware business trust, is registered under the Act as an open-end management investment company comprised of 39 series. Two of the series, NAF Small Company Growth Fund ("NAF Growth Fund") and NAF International Fund (each an "Acquired Fund"), are involved in the Reorganizations. NAF Growth Fund is a feeder fund in a master/feeder structure and invests all of its assets in the Small Company Growth Portfolio of Core Trust. NAF International Fund is a fund of funds that currently invests all of its assets in the International Portfolio of Core Trust (with the Small Company Growth Portfolio, the "Acquired Portfolios"). Core Trust, a Delaware business trust, is registered under the Act as an open-end management investment company.

2. WFFT, a Delaware business trust, is registered under the Act as an open-end management investment company comprised of 61 series. Two newly-created series, WFFT Small Company Growth Fund ("WFFT Growth Fund") and WFFT International Fund (each an "Acquiring Fund") (the Acquiring Funds together with the Acquired Funds, the "Funds"), are involved in the Reorganizations. WFCT, a Delaware business trust, is registered under the Act as an open-end management investment company comprised of 14 series. WFCT Small Company Growth Portfolio and WFCT International Portfolio (the "Acquiring Portfolios") are two newly-created series of WFCT (Acquiring Portfolios together with the Acquired Portfolios, the "Portfolios").¹

3. NIM is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is a wholly-owned subsidiary of Norwest Bank. Norwest Bank is a wholly-owned subsidiary of Wells Fargo. NIM currently serves as investment adviser to each series of NAF and Core Trust except the International Portfolio of Core Trust. Schroder Capital Management International Inc. ("Schroder"), an investment adviser registered under the Advisers Act, serves as investment adviser to the International Portfolio of Core Trust. Wells Fargo Bank is a national bank and is a wholly-owned subsidiary of Wells Fargo. Wells Fargo Bank is the investment adviser for each series of WFFT and WFCT, and is exempt from registration under the Advisers Act.

4. Norwest Bank, as trustee for defined benefit plans sponsored by Norwest Bank ("Norwest Pension Plans"), owns more than 5% of the outstanding voting securities of NAF Growth Fund and NAF International Fund and has an indirect beneficial ownership of more than 5% of Small Company Growth Portfolio and International Portfolio of Core Trust.

5. On March 25 and 26, 1999, the boards of trustees ("Boards") of NAF and WFFT, respectively, including a majority of their respective trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Trustees"), approved a form of Agreement and Plan of Reorganization between NAF and WFFT (the "Agreement"). On April 12 and March 26, 1999, the Boards of Core Trust and WFCT, respectively, including a majority of their respective Independent Trustees, approved a form of Agreement and Plan of Reorganization between Core Trust and WFCT (together with the Agreement, the "Agreements"). Under the Agreements, the Acquiring Funds and Acquiring Portfolios will acquire the assets and assume the liabilities of the Acquired Funds and Acquired Portfolios in exchange for shares of the Acquiring Funds and Acquiring Portfolios having an aggregate net asset value equal to the aggregate net asset value of the Acquired Funds and Acquired Portfolios. Each Acquired Fund and Acquired Portfolio will simultaneously distribute pro rata the Acquiring Fund and Acquiring Portfolio shares received to its shareholders of record, determined as of

the close of business on the closing date, which is currently anticipated to be on or about September 18, 1999 ("Closing Date"). The Acquired Funds and Acquired Portfolios will be liquidated following the distribution.

6. Applicants state that the investment objectives and policies of the Acquired Funds and Acquired Portfolios are substantially similar to those of the respective Acquiring Funds and Acquiring Portfolios. The Acquired Funds offer class I, class A, and class B shares, which, with one exception, are the same as the respective classes of the Acquiring Funds. Class I shares are offered without a front-end load, contingent deferred sales load ("CDSL"), or rule 12b-1 fee. Class A shares have a front-end load but no CDSL or rule 12b-1 fee, and class B shares have no front-end load, but have a CDSL and a rule 12b-1 fee.² For purposes of calculating the CDSL on class B shares, B shareholders of the Acquired Fund will be deemed to have held class B shares of the Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund. Shareholders of the Acquired Funds and Acquired Portfolios will not incur any sales charges in connection with the Reorganizations. Wells Fargo Bank will pay all of the expenses of the Reorganizations.

7. The Board of each Fund and Portfolio, including the Independent Trustees, has determined that the Reorganization is in the best interests of the shareholders of that Fund or Portfolio and that the interests of shareholders would not be diluted. In assessing the Reorganizations, the Boards considered, among other things, the following factors: (a) the terms and conditions of the Reorganizations; (b) the compatibility of the investment objectives of the Funds and the Portfolios; (c) the expense ratios of the Funds and the Portfolios; (d) the potential economics of scale and operating efficiencies that may result from being in a larger fund family; and (e) the tax-free nature of the Reorganizations.

8. The Reorganizations are subject to a number of conditions precedent, including the following: (a) approval of the Reorganizations by the shareholders of the Acquired Funds; (b) the receipt of an accountant's opinion to the effect that the Reorganizations will be tax-free;

² NAF Growth Fund and WFFT Growth Fund only offer class I shares. Class B shares differ in that NAF International Fund class B shares have a 5% CDSL and a 1% rule 12b-1 fee and WFFT International Fund class B shares have a 5% CDSL and a .75% rule 12b-1 fee.

¹ Acquired Funds and Acquired Portfolios and their corresponding Acquiring Funds and Acquiring Portfolios are: NAF Growth Fund and WFFT Growth Fund; NAF International Fund and WFFT

International Fund; Small Company Growth Portfolio and WFCT Small Company Growth Portfolio; and International Portfolio and WFCT International Portfolio.

and (c) that applicants obtain any required exemption from the Commission under section 17(a) of the Act. Under the Agreements, a majority of the Boards may terminate the Agreements with respect to the Acquiring Fund or Acquiring Portfolio or Acquired Fund or Acquired Portfolio, as appropriate, at any time before the Reorganizations if (i) the party's conditions precedent are not satisfied or (ii) the Boards determine that the consummation of the applicable Reorganization is not in the best interests of shareholders. Applicants will not make any material changes to the Reorganizations without Commission approval.

9. On April 23, 1999, definitive proxies were filed with the Commission and proxies were mailed to shareholders of the Acquired Funds on June 2, 1999. At a special meeting of shareholders held on August 5, 1999 the shareholders of the Acquired Funds approved the Agreement.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a-8 in connection with the Reorganizations because the Funds and the Portfolios may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or

common officers. Applicants state that Norwest Bank, NIM, and Wells Fargo are under common control and Norwest Bank may be deemed to have an indirect interest in the assets of the Norwest Plans. Applicants further state that because the Norwest Plans own more than 5% of each of the Acquired Funds and indirectly of the Acquired Portfolios, the Acquired Funds and Acquired Portfolios may be deemed affiliated persons of an affiliated person of the Acquiring Funds and Acquiring Portfolios.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b) of the Act. The Board of each Fund and Portfolio, including the Independent Trustees, has determined that the Reorganization is in the best interests of the shareholders of the Fund or the Portfolio and that the interests of shareholders would not be diluted. Applicants also state that the Reorganizations will be effected based on the relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-21864 Filed 8-23-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41748; File No. SR-CBOE-99-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Making Certain Changes to Its Fee Schedule

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 25, 1999 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CBOE originally submitted the proposal on June 25, 1999. On August 12, 1999, the CBOE submitted a letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, amending the filing ("Amendment No. 1"). In Amendment No. 1, the CBOE proposes (1) to make all fee changes listed in this filing retroactive as of July 1, 1999, except for the \$.35 paper ticket fee for manual trades by market-makers, (2) to withdraw the \$.35 paper ticket fee, (3) to delete the discussions of the paper ticket fee in the filing, and (4) to amend the text of CBOE Rule 2.22(b) to reflect the fee change for registered representatives and registered options principals. On August 16, 1999, the CBOE subsequently amended Amendment No. 1 with a phone call from Stephanie C. Mullins, Attorney, CBOE, to Joseph Corcoran, Attorney, Division, Commission. In the phone call, the CBOE proposes to reinstate the \$.35 paper ticket fee for manual trades by market-makers and make it effective as of January 24, 2000, and to amend the discussions of the paper ticket fee to reflect this change. Because of the substantive nature of the Amendments, the Commission deems the filing date to be August 16, 1999, the date of the final amendment.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make certain fee changes and additions; to reinstate and amend the Exchange's Prospective Fee Reduction Program; and to renew and amend its Customer "Large" Trade Discount Program. The foregoing fee changes are being implemented by the Exchange pursuant to DBOE Rule 2.22 and, unless otherwise noted, will take effect on July 1, 1999.

The Exchange is amending the following fees. (1) The monthly fee to rent an SPX phone position will be increased from \$300 to \$500. (2) The monthly ABIL Brokerage Billing fee will be changed from .0075% of billed brokerage to \$.005 per contract. The minimum monthly fee will be increased from \$25 to \$50 and the maximum monthly fee will be increased from \$100 to \$200. (3) The monthly fee for ORS Analysis will be increased from \$50 to \$100. (4) The monthly fee for the Floor Efficiency Project ("FEP") will be increased from \$50 to \$100. (5) The subscriber fee for the Exchange Bulletin will be increased from \$100 per year to \$200 per year for each hard copy and from \$50 per year to \$100 per year for each electronic copy. Each member receives one free copy. This fee is charged to members for each additional copy and to non-member subscribers. (6) The Registered Representative fee will be increased from \$25 to \$35 for initial applications; and will be increased from \$20 to \$30 for annual and transfer applications.

The ABIL Brokerage fee is being changed from a percentage of billed brokerage to a fixed rate. This service fee has been a function of the dollars billed. The ABIL client base is facing increasing competitive pressures to lower their charges. As they do so, they bill less brokerage, and the ABIL service fee shrinks accordingly even though the new discounts require more programming support rather than less. The proposed new service fee for ABIL processing converts this variable cost to a fixed rate, whether the agent bills or not. The increase in the floor and cap levels reflect increased paper and processing expenses. Additionally, the ORS Analysis and FEP Report costs are being increased to cover costs of printing paper copies, and to standardize fees for all monthly reports at \$100.

In addition, the CBOE proposes to implement the following new fees. (1)

The fee to replace an I.D. Badge will be \$15; the fee to replace an Acronym badge will be \$15; and the fee for a temporary access badge for members will be \$10 (this fee will only apply for the fourth temporary access badge issued in a calendar year; the first three badges are free of charge). The cost for clerks and floor managers currently is \$10 for the fourth temporary access badge issued in a calendar year. (2) The following fee will be effective as of January 24, 2000. The Exchange proposes to assess a paper ticket fee of \$.35 on all market-maker transactions for a market-maker whose manual trades exceed 15% of the total amount of trades done by the market-maker in any given month. The purpose of this new fee is to encourage market-makers to utilized hand-held terminals for entering orders as opposed to paper tickets, while not penalizing members when occasional system outages occur. (3) The Exchange proposes to institute a program whereby members who fail to change their appointments on a timely basis or meet their in-person trading requirements would be assessed a fee of \$250 for any quarter. A letter of warning will be issued first followed by a \$250 fee for those that fail to comply. The Exchange believes this will affect fewer than 15 people per calendar quarter.

The Exchange proposes to reinstate and amend its Prospective Fee Reduction Program, subject to the Exchange having a minimum of \$10 million in working capital. The program was suspended on March 1, 1999, and the Exchange now proposes to reinstate and renew the program with amendments. The program provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-date basis exceeds one of certain predetermined volume thresholds, the Exchange's marker-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. Trading Volume in the fourth quarter of fiscal year 1999 will be used to determine the discount applied in the first quarter of fiscal year 2000. The CBOE proposes that the Program begin on July 1, 1999 at the beginning of the Exchange's 2000 fiscal year, and continue through the end of the Exchange's 2000 fiscal year, terminating June 30, 2000.

Specifically, the CBOE proposes the following: the threshold volume at which a \$.01 fee reduction applies will be 850,000 contracts; the threshold volume at which the \$.02 fee reduction applies will be 900,000 contracts; the threshold volume at which a \$.03 fee

reduction applies will be 950,000 contracts; and the threshold volume at which a \$.04 fee reduction applies will be 1,000,000 contracts and above.

The Exchange's Index Customer "Larger" Trade Discount Program currently provides for discounts on the transaction fees that CBOE members pay with respect to non-equity public customer orders for 500 or more contracts. Specifically, for any month the Exchange's average contract volume per day exceeds one of certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to non-equity public customer orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The Program is scheduled to terminate on June 30, 1999 at the end of the Exchange's 1999 fiscal year. The CBOE proposes to amend the Program to provide that the Program will continue during the Exchange's 2000 fiscal year and will terminate on June 30, 2000. In addition to renewing the current fee discount percentages under the Program, CBOE proposes to amend the Program to increase by 100,000 contracts all the threshold levels to which the discount rates apply. For example, the threshold level is being increased from 650,000 to 750,000 contracts at which the 30% discount rate applies.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program and the Exchange's Index Customer "Large" Trade Discount Program will terminate at the end of the Exchange's 2000 fiscal year, the Exchange intends to evaluate these Programs prior to the beginning of the 2001 fiscal year and may renew these Programs in the same or modified form for the 2001 fiscal year.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.⁸ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-34 and should be submitted by September 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

[FR Doc. 99-21865 Filed 8-23-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41746; File No. SR-CBOE-99-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on July 30, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 3, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage*.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) ⁵
General Dynamics Corporation (GD)	\$0.07	\$0.00

⁵ The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from \$0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

The fee will be effective as of August 2, 1999.⁶ This fee will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)⁷ of the Act because it is designed to provide for the equitable allocation of

reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, notes that General Dynamics options became multiply-listed on August 2, 1999, and proposes that the surcharge take effect on that date. See letter from Stephanie Mullins, Attorney, CBOE, to Michael Walinskas, Associate Director,

Division of Market Regulation, Commission, dated August 2, 1999 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

⁵ See Amendment No. 1.

⁷ 15 U.S.C. 78f(b)(4).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ At any time within 60 days of the filing of the proposed rule change,¹⁰ the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-41 and should be submitted by September 14, 1999.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-21866 Filed 8-23-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41747; File No. SR-CBOE-99-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Changes to Option Trading Permit Auction Procedures

August 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 9, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on August 2, 1999.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend the procedure through which it auctions Options Trading permits ("Permits") from the Permit lease pool. The text of the proposed rule change is available at CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 3.27(a)(3) provides for the creation of a Permit lease pool to be administered by the Exchange. The procedures for the administration of this lease pool were previously filed with and approved by the Commission.⁴ Under these procedures, the Exchange conducts and auction every six months during which members and non-members who have qualified for membership may submit bids equal to the monthly rent that the bidder is willing to pay for a month-to-month Permit lease. Upon the close of the bidding period, Permits in the lease pool are awarded to the highest bidders in a number equal to the total number of Permits in the lease pool at that time. Under the existing procedures, the monthly rent to be paid by a lessee is the dollar value of the bid submitted by that lessee. Following each auction, the Exchange continues to accept bids for Permit leases. Should any Permit lessee desire to give up that lessee's Permit prior to the next auction, the Permit is transferred to the highest bidder at a monthly lease price equal to the new lessee's bid for the remainder of the six month auction cycle.

The Exchange proposes to amend the method of the auction to establish a procedure known as a Dutch auction. Under the Dutch auction, bidders will submit bids equal to the monthly rent which they are willing to pay for a six-month lease, and, upon the close of the bidding period, Permits in the lease pool will continue to be awarded to the highest bidders in a number equal to the total number of Permits in the lease pool at that time. under the Dutch auction procedure, however, each successful

⁴ The procedures for the administration of the Permit lease pool were filed with the Commission in SR-CBOE-97-14. SR-CBOE-97-14 provided for the issuance of Permits in connection with the transfer of the options business of the New York Stock Exchange, Inc. to CBOE and defined the rights and obligations associated with Permits. SR-CBOE-97-14 was approved by the Commission in Securities Exchange Act Release No. 38541 (April 23, 1997), 62 FR 23516 (April 30, 1997).

The CBOE later amended the procedures for administering the Permit lease pool in SR-CBOE-97-47, which amended the manner in which the CBOE accesses the fee that it charges when a person submits a bid to receive a Permit. See Securities Exchange Act Release No. 39179 (October 1, 1997), 62 FR 52602 (October 8, 1997).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ The proposed rule change is deemed filed as of the date Amendment No. 1 was received by the Commission.

¹¹ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 expands the discussion on the proposed rule change and clarifies the proposed text of the rule change. See letter from Christopher R. Hill, Attorney, CBOE, to Heather Traeger, Attorney, Division of Market Regulation, SEC, dated August 2, 1999.

bidder will pay only the price of the lowest successful bid. Following each Dutch auction, the Exchange will continue to accept bids, with a minimum bid established at the price set in the most recent Dutch auction.

The revised Permit Lease Pool Procedures also contain several other amendments, most of which merely set forth existing exchange practices in greater detail for the benefit of members and the public. The following amendments represent changes to existing practices:

- The proposed rule change establishes a minimum qualifying bid level for all bidding which occurs between Dutch auctions. The minimum qualifying bid is set at the lease rate established in the most recent Dutch auction. This change is designed to equalize Permit lease rates and enhance administrative efficiency by encouraging lessees to use the Dutch auction process, rather than attempt to obtain a lower priced lease by bidding between the Dutch auctions.

- The proposed rule change permits a lessee to terminate the lessee's Permit during the ease period, by written notice to the Membership Department, but provides that the termination notice shall be irrevocable.⁵ The Membership Department will post notice of the availability of the Permit for at least two business days on the Exchange bulletin board. The Permit will be transferred to the highest bidder whose bid is received by 3:30 p.m. on the first Wednesday after notice of the permit's availability has been posted for at least two business days.

- The proposed rule change also allows Permits to be transferred among nominees of an organization with appropriate notice to the Exchange, as is the case with CBOE memberships.

- The proposed rule change provides that an individual can lease only one Permit from the lease pool at a time. Therefore, an individual who is already a Permit lessee may not submit a Permit bid during the six month lease period (except to bid in the next Dutch auction) unless and until the lessee first terminates the lessee's current lease.⁶

- Finally, the proposed rule change establishes a six month Permit lease instead of the current month-to-month lease, for easier and more efficient administration of the lease process.

2. Statutory Basis

The Exchange believes that the proposed Dutch auction procedure for

the Permit lease pool described herein will more effectively equalize the amounts paid for Permits by each successful bidder. As such, the proposed rule changes are consistent with Section 6(b) of the Act,⁷ in general, and further the objectives of Section 6(b)(4)⁸ in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees, and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-99-24 and should be submitted by September 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-21867 Filed 8-23-99; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension for a currently approved information collection.

DATES: Comments on this notice must be received by October 25, 1999.

ADDRESSES: Comments should be sent to the Executive Secretariat, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0002.

FOR FURTHER INFORMATION CONTACT: Mrs. Roberta Fede, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, at the address listed above. Telephone: (202) 366-9764.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

OMB Control Number: 2105-0009.

Expiration Date: August 31, 1999.

Type of Request: Extension for a currently approved information collection.

Abstract: The collection of information obtained by the Advisory Committee Candidate Biographical Information Request form enables Department officials to review the qualifications of individuals who wish to serve on Department-sponsored

⁵ The Exchange represents that this proposed rule change codifies the Exchange's current procedure. See Amendment No. 1.

⁶ *Id.*

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 17 CFR 200.30-3(a)(12).

advisory committees and the qualifications of persons who have been recommended to serve. The collection provides uniform data for each individual and enables DOT to comply with the Federal Advisory Committee Act (Pub. L. 92-463) (5 U.S.C. App.) which requires that advisory committee membership be balanced.

A number of DOT'S advisory committees were created by statute and have statutory requirements for education, experience, or expertise. The data collection enables DOT to comply with such membership requirements, by providing information from which officials may determine which individuals meet specific qualification standards for particular advisory committees and for particular positions within a committee. In fact, some statutory committees require very narrow and specific expertise for each position on the committee, which can be ascertained by reviewing the Advisory Committee Candidate Biographical Information Request form.

Finally, the data collection allows officials to retain a file of interested applicants. As vacancies occur on specific advisory committees, the applications and qualifications can be reviewed for possible placement.

In the absence of the data collection, officials would have to contact by telephone or by letter each person who expressed an interest or who was recommended for an advisory committee position to determine his/her interest, education, experience, or expertise. This would be a more time-consuming and costly data collection effort which would have to be repeated if the individual were to be considered at a later time for vacancies on other advisory committees.

Respondents: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Estimated Number of Respondents per year: 100.

Average Annual Burden per Respondent: 15 minutes.

Estimated Total Burden on Respondents Per Year: 25 hours.

This information collection is available for inspection at the Office of the Executive Secretariat, Room 10205, Office of the Secretary, DOT, at the above address.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, (b) the accuracy of the Department's

estimate of the burden of the proposed information collection; and (c) ways to minimize the burden and enhance the quality of the collection.

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.

Issued in Washington, DC, on August 18, 1999.

Jamie Shell Williams,

Director, Executive Secretariat.

[FR Doc. 99-21920 Filed 8-23-99; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999 64 FR 29404-29405.

DATES: Comments must be submitted on or before September 23, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267-9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airplane Operator Security, 14 CFR Part 108

Type of Request: Extension of a currently approved collection

OMB Control Number: 2120-0098

Form(s): FAA Form 1650-17

Affected Public: Air Carriers

Abstract: 14 CFR Part 108 requires new air carriers to adopt and carry out a security program and develop necessary implementing documentation. 14 CFR Part 108 also requires air carriers with approved security programs to check radiation leakage on x-ray equipment at least annually and maintain security training records.

Estimated Annual Burden Hours: 7,966 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 18, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF-100.

[FR Doc. 99-21928 Filed 8-23-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Henry, Lucas, Wood, and Fulton Counties, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Henry, Lucas, Wood, and Fulton Counties, Ohio.

FOR FURTHER INFORMATION, CONTACT: Dan Dobson, Field Operations Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280-6853.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to improve transportation in the U.S. 24 corridor, from Napoleon to Toledo, in Henry, Lucas, Wood, and Fulton Counties, Ohio. The existing U.S. 24 facility is 25.3 miles in length within the study area. The study area extends generally from the eastern limits of the city of Napoleon in Henry County eastward through Lucas County to I-475

in the Toledo metropolitan area, and includes the extreme southeastern corner of Fulton County, and that portion of Wood County bounded generally by State Route 582 on the south, I-75 on the east, and I-475 on the north. At the western terminus near Napoleon, U.S. 24 is a four-lane, limited-access, divided highway for the first 0.5 miles, where it tapers to a two-lane section, just east of the TR 10 intersection. The two-lane section continues for the next 22.2 miles, until it crosses Dutch Road, just east of Waterville. There, it widens again to a four-lane, limited-access, divided highway for the last 2.6 miles.

This project is part of the "Fort to Port" corridor, identified in the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) as one of 21 High Priority Corridors on the National Highway System. Further, in its statewide long-range transportation plan, the State of Ohio identified the U.S. 24 corridor, from the Indiana state line to Toledo, as a "macro-corridor," defined as "those corridors of statewide significance upon which rests the economic vitality of Ohio." At the eastern terminus, the city of Toledo is an internationally significant intermodal hub. Efficient connections to the Port of Toledo, the Toledo Express Airport, and the I-75/I-80/I-90 highway system are critical to the economic future of northwestern Ohio and northeastern Indiana.

A feasibility study was previously conducted within the Fort to Port corridor to evaluate the deficiencies of the existing route, create a program and schedule for the plan development process, develop a capital cost estimate for improvement, and summarize the impact of the proposed improvements on the regional economy. The study divided the 81-mile Fort to Port corridor into three planning sections for study. Each planning section is independent of the other two. Based principally on existing and projected traffic volumes, resulting capacity problems, accident rates, and increased truck traffic, the section of U.S. 24 that is the subject of this EIS, from Napoleon to Toledo, was made the first priority for development.

Alternatives will be developed that will address capacity, level of service, and safety deficiencies. It is expected that alternative solutions may consist of different alignments that diverge significantly from the existing corridor in some sections. The alternatives may also include improving and widening the existing roadway.

FHWA, ODOT, and other local agencies invite participation in defining the alternatives to be evaluated in the

EIS, and any significant social, economic, or environmental issues related to the alternatives. Information describing the purpose of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule are available on the project's web site (<http://www.usrt24.com>).

Coordination with concerned federal, state, and local agencies will be conducted at four established concurrence points in ODOT's preliminary development process. The first public meetings will be held June 2 and 3, 1999.

Coordination will be continued throughout the study with federal, state, and local agencies, and with private organizations and citizens who express or are known to have interest in this proposal. The draft EIS will be available for public and agency review and comment prior to the official public hearing. To ensure that the full range of issues relating to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 18, 1999.

Mr. Dan Dobson,

Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 99-21955 Filed 8-23-99; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Announcement of Project Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects under the Over-the-road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA-21). The OTRB Accessibility Program makes funds available to private operators of over-

the-road buses to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility final rule, published in a **Federal Register** Notice on September 24, 1998. In the first year of implementation, \$2 million was available for providers of intercity fixed-route services.

SUPPLEMENTARY INFORMATION:

Projects Selected for Fiscal Year 1999 Funding

A total of \$2.8 million was requested by 20 applicants around the nation. Project selections were made on a competitive basis, with 11 projects selected for funding as follows:

Peter Pan Bus Lines, Springfield, MA	\$101,000
Adirondack Transit Lines, Kingston, NY	150,000
Shortline (Hudson Transit Bus), Mahwa, NJ	150,000
Capitol Bus (Capitol Trailways of PA), Harrisburg, PA	102,293
Carl Bieber Tourways, Kutztown, PA	130,000
Frank Martz Coach, Wilkes Barre, PA	54,545
Jefferson Lines, Minneapolis, MN	107,280
Peoria Charter Coach, Peoria, IL	17,250
Greyhound, Dallas, TX	1,056,707
Burlington Trailways, West Burlington, IA	91,000
Northwestern Stage Lines, Spokane, WA	29,925
Total	1,990,000

The nine projects that were not selected for funding in this first year of implementation will be eligible to apply for funding next year. In addition to the \$2 million that will be available for intercity fixed-route providers in FY 2000, an additional \$1.7 million will be available for providers of other over-the-road bus services, such as commuter, charter and tour.

Eligible project costs may be incurred by awardees prior to final grant approval. The incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of the Transportation Equity Act for the 21st Century, is eligible for funding under the over-the-road bus accessibility program.

Applicants selected for funding may be contacted by FTA regional offices if any additional information is needed before grants are made. The grant applications will be sent to the U.S. Department of Labor (DOL) for certification under the labor protection

requirements of the Federal Transit Act, Section 5333(b). After referring applications to affected employees represented by a labor organization, DOL will issue a certification to FTA. The terms and conditions of the certification will be incorporated in the FTA grant agreement under the new guidelines replacing these in 29 CFR Part 215. Please see Amendment to Section 5333(b), Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA-21); Final Rule (64 FR 40990, July 28, 1999).

Issued on August 19, 1999.

Gordon J. Linton,
Administrator.

[FR Doc. 99-21922 Filed 8-23-99; 8:45 am]
BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99-6093; Notice 1]

Italjet S.p.A.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

Italjet S.p.A., an Italian corporation, through Italjet USA ("Italjet") of New York City, NY, has applied for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the request is that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. Sec. 30113(b)(3)(B)(iv).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

Italjet has applied on behalf of its Torpedo 125, Formula 125, Millenium 125, and Millenium 150 motor scooters ("scooters"). The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards. According to Italjet, its scooters have a peak motor output of 26 hp and a top speed of 60 miles per hour.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1).

Italjet would like to use the left handlebar as the control for the rear brakes of the scooters, whose peak motor output of 26 hp produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The gear ratio of the vehicle is fixed, and "there is no need for the rider to shift gears, as on a standard motorcycle." Because of this, the scooters are "equipped with neither a clutch nor a clutch lever, and the left hand of the rider is free to operate a brake lever." Italjet states that it prefers this design, given its focus on European and Asian markets "where rear brake controls for scooters of all horsepower ratings are typically mounted on the left handlebar."

Italjet argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. It believes that "the prevalence of the left hand operated design in Europe and Asia is one strong indicator that a vehicle designed in this way can be operated safely." It believes that "vehicle safety might be somewhat enhanced with the left hand brake lever, as the hand (bare or gloved) is generally more capable of sensitive modulation of the braking force than the foot."

Italjet intends to field test a small number of the scooters in the American market in Fall 1999 to assess the design, and without an exemption it would be unable to do so. It wishes to consider whether the United States' scooter market offers sufficient sales potential to justify the creation of a design specifically for the United States that incorporates the right foot brake pedal. Alternatively, it may petition for rulemaking to amend Standard No. 123 to allow the hand-operated brake control on motorcycles with more than 5 hp.

Italjet anticipates sales of not more than 2500 scooters a year while an exemption is in effect. It believes that an exemption would be in the public interest and consistent with the objectives of traffic safety "because it would maintain an acceptable level of safety while accelerating the advancement of an important new class of vehicles for use by consumers and businesses."

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10:00 a.m. until 5:00 p.m. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 23, 1999.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on August 13, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99-21930 Filed 8-23-99; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-6092; Notice 1]

Lotus Cars Ltd.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

Lotus Cars Ltd. ("Lotus") of Norwich, England, through Lotus Cars USA, Inc., has applied for a temporary exemption from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201 *Occupant Protection in Interior Impact*, as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

The material below is taken from Lotus's application

Why Lotus Needs a Temporary Exemption

In August 1995, when S7, the new head injury criteria portion of Standard No. 201, was promulgated, Lotus was owned by the Italian owners of Bugatti, a company then in bankruptcy. That year, Lotus was able to produce only 835 cars, selling 152, or 18.2%, in the United States.

This country was the primary market for the Lotus Esprit, which, by then, was an aging design. With the limited resources that it had and the uncertainties of the future, in 1996 Lotus made the decision to invest primarily in an all-new model, the Elise, and to modernize the Esprit, rather than to replace it with an all-new design. Developed on a small budget, the Elise was not designed or intended for the American market. The Esprit was fitted with a new V8 engine meeting current U.S. emissions standards.

At the end of 1996, Lotus was sold to its current owners, a group of Malaysian investors, who reviewed the company's fortunes. The Elise was becoming successful in its markets, while losses in the United States in the previous two years approached \$2,000,000, primarily due to the declining appeal of the Esprit. The company's overall sales in 1996 had declined to 751, including sales of 67 Esprits in the U.S. (8.9% of total sales). Nevertheless, the new owners decided to continue in the U.S. market. Sales were marginally better in the U.S. in 1997, 72 Esprits, and vastly improved elsewhere with the great success of the Elise. Lotus sold 2414 cars in 1997 (with the U.S. sales representing only 3% of total sales, approximately the same as in 1998). However, it lost almost 2,000,000 Pounds in its 1996/7 fiscal year.

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate the Elise for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, Phase-in Schedule #3, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998–September 1, 1999, and to conform 100% of its production thereafter.

But, in addition to the new owners of Lotus, the new year saw the appointment of new CEOs of Lotus and Lotus Cars USA, with the result that a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described below, the company found itself unable to conform the current Esprit to Standard No. 201. In the meantime, the company had turned the corner with the success of the Elise, and had a net profit for its fiscal year 1997/

8 of slightly more than 1,000,000 Pounds.

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

When Lotus decided to continue production of the Esprit, it re-engineered the car's front header rail and installed energy-absorbing material. After these modifications, the Esprit's HIC value was reduced from an already-complying 840 to 300.

However, the side rail was not so simple. The small Esprit cockpit precluded any padding from being added at that location, without compromising ingress/egress and visibility. In order to comply with Standard No. 201, the Esprit "greenhouse" would have to be substantially modified. Modification costs could not be recovered for the relatively few cars that would be involved in the 1999–2002 period without raising the retail price to an unacceptable level. Further, Lotus was encountering major problems sourcing design-specific energy absorbing materials without being compelled to buy a 10-year supply; it was therefore forced to consider materials being produced for high-volume users, with attendant problems.

As redevelopment plans progressed in 1998, Lotus determined that a redesign of the "greenhouse" for the 1999–2002 period would cost in excess of \$950,000, and require retesting to confirm continued compliance of its airbag system with Standard No. 208. But the company did not have the personnel to deploy to both the redesigned and new Esprit projects, and it has chosen to devote its human resources to the all-new Esprit.

The Elise continues to contribute to the company's newly found financial solidarity, and its cumulative net income for the past three fiscal years is 2,466,000 Pounds, or, \$4,068,900 (at an exchange rate of 1.65 to 1). Although a denial of the petition would substantially reduce Lotus's net income but not result in a net loss, the decrease would come primarily at the expense of Lotus Cars USA which Lotus believes could not remain in existence without cars to sell during the period required to develop the new Esprit. Lotus estimates that it would sell 200 Esprits in the U.S. during the period of a 3-year exemption.

Why an Exemption Would be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

After 10 years of sales of the Esprit with its current body shape, Lotus knows of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads. The Esprit will be in full compliance by the same date that the phase-in ends for all manufacturers and when there will be 100% compliance across the board, September 1, 2002.

If Lotus USA is required to close because of a denial, its 10 employees will be out of work. In addition, a denial is bound to affect Lotus dealers in unknown ways. An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

How You May Comment on Lotus's Application

We invite you to submit comments on the application described above. Your comments should refer to the docket number and the notice number, and be submitted to: Central Docket Management Facility, room PL-401, 400 Seventh Street, SW, Washington, DC 20590. We ask, but do not require, that you submit your comments in duplicate. We shall consider all comments received before the close of business on the comment closing date indicated below. You may examine comments in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. You may also view them on the internet at web site dms.dot.gov. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 23, 1999.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: August 13, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–21929 Filed 8–23–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****[STB Docket No. AB-55 (Sub-No. 576X)]****CSX Transportation, Inc.—
Abandonment Exemption—in
Guernsey County, OH**

On August 4, 1999, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 7.79-mile portion of its Louisville Service Lane, Central Ohio Subdivision, between milepost BP-49.49 near Cambridge and milepost BP-41.70 at the end of the track at Gibson, in Guernsey County, OH. The line traverses U.S. Postal Service Zip Codes 43725, 43750, 43755 and 43778, and includes the station of Gibson.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding

pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 12, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 13, 1999. Each trail use request must be accompanied by \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-55 (Sub-No. 576X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001, and (2) Charles M. Rosenberger, 500 Water Street-J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before September 13, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public

Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. [TDD for the hearing impaired is available at (202) 565-1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 18, 1999.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99-21917 Filed 8-23-99; 8:45 am]

BILLING CODE 4915-00-P

Corrections

Federal Register

Vol. 64, No. 163

Tuesday, August 24, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41634; File No. SR-NYSE-97-31]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Voluntary Delistings by Listed Companies

Correction

In notice document 99-19102, beginning on page 40633, in the issue of

Tuesday, July 27, 1999, make the following correction:
On page 40638, in the first column, the fifth line from the bottom "Coommission." should read "Commission".
[FR Doc. C9-19102 Filed 8-23-99; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 71
[Airspace Docket No. 95-AWA-4]
RIN 2120-AA66

Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL

Correction

In rule document 99-20022 beginning on page 42585 in the issue of Thursday,

August 5, 1999, make the following correction:
§ 71.1 [Corrected]
1. On page 42589, in the second column, in § 71.1, in the first full paragraph, in the second line from the bottom, "81°27'03"W" should read "81°27'30"W".
[FR Doc. C9-20022A Filed 8-23-99; 8:45 am]
BILLING CODE 1505-01-D

Final Rule

Tuesday
August 24, 1999

Part II

**Department of
Transportation**

Federal Aviation Administration

14 CFR Parts 27 and 29

**Harmonization of Critical Parts Rotorcraft
Regulations; Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 27 and 29**

[Docket No. 29311; Amdt. Nos. 27–38 and 29–45]

RIN 2120–AG60

Harmonization of Critical Parts Rotorcraft Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airworthiness standards for both normal and transport category rotorcraft. This amendment defines critical parts. This document also requires a critical parts list with procedures to control the design, substantiation, manufacture, maintenance, and modification of critical parts. The benefits of the rule will be the formalization of the current critical parts procedures and the harmonization of the Joint Aviation Authorities and the U.S. requirements.

EFFECTIVE DATE: October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Rotorcraft Directorate, Aircraft Certification Service, Regulations Group, FAA, Fort Worth, Texas 76193–0111, telephone number (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:**Availability of Final Rules**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on a mailing list for future Notices of Proposed Rulemaking (NPRM's) and final rules should request from the above office a copy of Advisory Circular

No. 11–2A, NPRM Distribution System, which describes the application procedure.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA under “Rulemaking (ARM)” in the “Quick Jump” section of the FAA's web page at <http://www.faa.gov> and may send electronic inquiries to the following internet address: 9–AWA–SBREFA@faa.gov

Background

By notice in the **Federal Register** (60 FR 4219, January 20, 1995), the ARAC announced the establishment of the Critical Parts Working Group. The FAA tasked ARAC to recommend new or revised requirements for a critical parts list to control the design, substantiation, manufacture, maintenance, and modification of critical parts. ARAC tasked the Critical Parts Working Group. The working group included representatives from the major rotorcraft manufacturers (normal and transport) and representatives from Aerospace Industries Association of America, Inc., Association Europeene des Constructeurs de Material Aerospacial, Transport Canada Aviation, Joint Aviation Authorities (JAA), the FAA Rotorcraft Directorate, and other interested parties. This broad participation is consistent with FAA policy to involve all known interested parties early in the rulemaking process.

The working group presented its findings to the ARAC. The ARAC recommended that the FAA add a critical parts section to the airworthiness standards, 14 CFR parts 27 and 29 (parts 27 and 29). The FAA evaluated the recommendations and made proposals in NPRM No. 98–10 published in the **Federal Register** on August 24, 1998 (63 FR 45129). These airworthiness standards are harmonized and will be adopted by the JAA.

The objective of identifying critical parts is to ensure that critical parts are controlled during design, substantiation, manufacture, and throughout their service life so that the risk of failure in service is minimized by ensuring that the critical parts maintain the critical characteristics on while certification is

based. Manufacturers currently have various methods to control critical parts.

In §§ 27.602(a) and 29.602(a), a critical part is defined as a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity. The word “could” in the definition was intended to mean that this failure assessment must consider the effect of flight regime (i.e., forward flight, hover, etc.). The operational environment need not be considered. The term “catastrophic” was intended to mean the inability to conduct an autorotation to a safe landing, without exceptional piloting skills, assuming a suitable landing surface.

The FAA requested comments on these proposals. The FAA considered comments from the three commenters. The commenters were generally in favor of the rule with the following comments:

Discussion of Comments

One commenter stated that the definition of a critical part is needed but should be placed in 14 CFR part 1 (part 1). The FAA disagrees because NPRM 98–10 did not propose to amend part 1, and the definition is needed to implement the requirements for a critical parts list in parts 27 and 29.

The commenter was concerned about the FAA requiring duplicate records. The critical parts list specified in §§ 27.602(b) and 29.602(b) will not be a duplicate record but will contain procedures for control of the design, substantiation, manufacturing, maintenance, and modification of critical parts.

The same commenter was concerned that proposed §§ 27.602(b) and 29.602(b) would require a critical parts list for existing model helicopters. The commenter suggested adding a date to the requirements so that the change would not become retroactive. The FAA does not intend a retroactive requirement but does not agree that a date is necessary. Each type design change will be evaluated for the presence of critical parts, which determines the applicability of §§ 27.602(b) and 29.602(b).

Another commenter was concerned that the proposal would abate the Parts Manufacturer Approval (PMA) process for critical parts. The FAA does not intend to change the PMA process by this requirement. The critical parts list will define critical characteristics and contain control procedures that will be a part of the type design data.

Another commenter agreed with the proposal but stated that the requirement should apply to all characteristics and not be limited to critical characteristics. The commenter recommended revising §§ 27.602(b) and 29.602(b) and adding paragraphs (c), (d), and (e). Following are the commenter's recommended paragraph changes and the FAA's response to each recommendation:

(b) The type design shall minimize critical parts. A critical parts list shall be established for the product. Each critical part drawing shall identify this "critical part" classification of the part.

The FAA does not dictate type design. The manufacturer establishes the type design. The FAA's role is to ensure that the type design conforms to the regulations. Minimizing critical parts may not necessarily ensure safer aircraft.

(c) A critical part's plan and supporting procedures shall be established to assure parts consistently are conforming to all engineering requirements for material, process, and dimensions. The Plan's target numerical "escape" risk of a critical non-conformance shall be specified.

The FAA currently requires that all parts conform to all engineering requirements for material, process, and dimensions. The risk of non-conformance is part of the quality assurance program required by 14 CFR part 21 (part 21).

(d) Records of critical parts production and inspection shall be retained for twenty (20) years minimum.

The FAA's record retention requirements are addressed in the quality assurance program required by part 21.

(e) Existence of the critical parts plan shall not minimize the requirement for all products and parts to conform to all technical requirements including the quality assurance requirements of part 21 of this chapter.

The FAA agrees that the critical parts list does not minimize the requirement for all products and parts to conform to technical requirements. However, this proposal places emphasis on the critical parts. Since the commenter's recommended paragraph changes are addressed in the quality assurance program required by part 21, the FAA will not implement them in this rule.

After due consideration of all the comments, the FAA adopts the amendments as proposed in NPRM 98-10.

Paperwork Reduction Act

The information collection associated with this rule is currently covered under OMB control #2120-0018

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Cost/Benefit Analysis

The FAA estimates that any costs will be negligible. Rotorcraft manufacturers already have many requirements (e.g., §§ 21.31, 21.33, 21.50, 21.139, 21.143, 27.1529, and 29.1529) to ensure the safety of the design manufacture maintenance, inspection, and overhaul of rotorcraft parts. All manufacturers have some procedures in place to identify and control "critical parts," which may be called "flight safety parts," "critical parts," "vital parts," or "identifiable parts". This rule will merely formalize these procedures into a critical parts list.

The JAA has indicated that it will amend the Joint Aviation Requirements by adopting the requirements in §§ 27.602 and 29.602. The benefits of the rule will be the formalization of the current critical parts procedures and the harmonization of the JAA and the U.S. requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in

the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. Because this rule formalizes current practices and will result in no more than negligible costs to rotorcraft manufacturers, the FAA certifies that it will not have a significant impact on a substantial number of small entities and an RFA is not required.

International Trade Impact Assessment

The rule will not constitute a barrier to international trade, including the export of American rotorcraft to foreign countries or the import of foreign rotorcraft into the United States. The JAA will harmonize their requirements with those in this rule. There will be no cost (or cost savings) advantage to persons in either the United States or to JAA member countries.

Federalism Implications

The regulations herein will not have a 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. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for

inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million a year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94-163, as amended (42 U.S.C. 6362). It has been determined that it is not major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Parts 27 and 29

Aircraft, Aviation safety, Rotorcraft.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 27 and 29 of Title 14, Code of Federal Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Add a new § 27.602 to read as follows:

§ 27.602 Critical parts.

(a) *Critical part.* A critical part is a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity.

(b) If the type design includes critical parts, a critical parts list shall be established. Procedures shall be established to define the critical design characteristics, identify processes that affect those characteristics, and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of part 21 of this chapter.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

3. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

4. Add a new § 29.602 to read as follows:

§ 29.602 Critical parts.

(a) *Critical part.* A critical part is a part, the failure of which could have a catastrophic effect upon the rotorcraft, and for which critical characteristics have been identified which must be controlled to ensure the required level of integrity.

(b) If the type design includes critical parts, a critical parts list shall be established. Procedures shall be established to define the critical design characteristics, identify processes that affect those characteristics, and identify the design change and process change controls necessary for showing compliance with the quality assurance requirements of part 21 of this chapter.

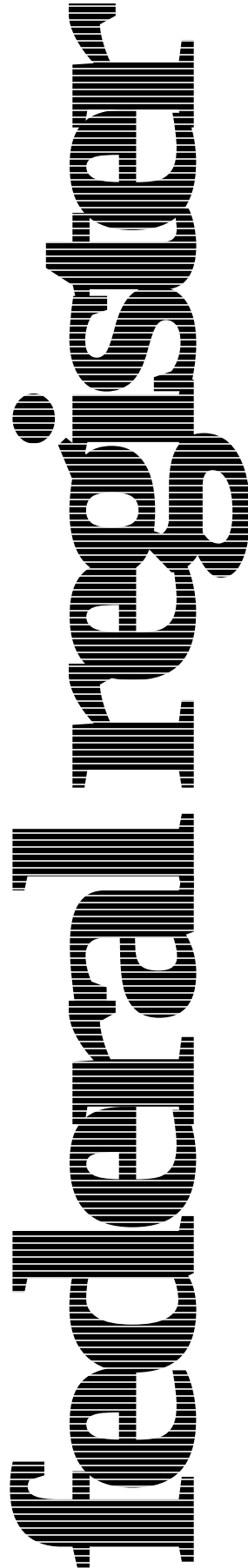
Issued in Washington, DC, on August 16, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99-21647 Filed 8-23-99; 8:45 am]

BILLING CODE 4910-13-M



Tuesday
August 24, 1999

Part III

**Environmental
Protection Agency**

40 CFR Part 35
Technical Assistance Grant Program;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-6419-7]

RIN 2050-AE33

Technical Assistance Grant Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to streamline the Technical Assistance Grant (TAG) program under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The proposed changes simplify application and management procedures, and allow advance payments up to \$5,000. The intent of these changes is to make grants for technical assistance more readily available to local community groups and to promote effective public participation in the Superfund cleanup process.

DATES: Please submit comments by October 8, 1999.

ADDRESSES: Written comments should be sent to: Lois Gartner, Office of Emergency and Remedial Response, 5204-G, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Inquiries may also be submitted via electronic mail (E-mail) to gartner.lois@epa.gov. The Agency requests that commenters follow the following format: type or print comments in ink, and cite, where possible, the paragraphs in this proposal to which each comment refers.

Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments will also be accepted on disks in the formats above.

FOR FURTHER INFORMATION CONTACT: Lois Gartner, Office of Emergency and Remedial Response, 5204-G, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 (703) 603-8889 or the RCRA/Superfund Hotline from 8:30am to 7:30pm, Monday through Friday, toll free at (800) 553-7672 or in the Washington area, (703) 412-3323 or TTY (800) 553-7672.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Introduction
 - A. Authority
 - B. Background of Rulemaking
- II. Explanation of Changes to the Current Regulations
 - A. General Changes

- B. Definitions
- C. Eligibility and Responsibility Requirements
- D. Evaluation Criteria
- E. Timing of Award
- F. Ineligible Activities
- G. Eligible Activities
- H. Technical Advisor's Qualifications
- I. Executive Order 12898
- I. Procurement
- J. Sanctions
- K. Method of Payment
- L. Grant Limitations
- M. Waivers
- N. Disputes
- O. Record Retention and Audits
- P. Reports
- Q. Budget Period (Funding Period)
- R. Closing Out Grants
- S. State Administration
- III. Existing Grants
- IV. Regulatory Analysis
 - A. Regulatory Flexibility
 - B. Unfunded Mandates Reform Act
 - C. National Technology Transfer and Advancement Act
 - D. Executive Order 13045
 - E. Paperwork Reduction Act
 - F. Executive Order 12866
 - G. Executive Order 12875
 - H. Executive Order 13084
 - I. Executive Order 12898

I. Introduction

A. Authority

EPA issues this notice of proposed rulemaking under the authority of section 117(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. 9617(e). Section 117(e) authorizes the President to make available Technical Assistance Grants of up to \$50,000 to groups of individuals which may be affected by a release or threatened release at Superfund sites to obtain assistance in interpreting and disseminating information related to site activities. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order 12580 subsequently delegated to EPA the authority to implement section 117(e).

B. Background of Rulemaking

In 1992, EPA promulgated a final rule to govern the award and administration of TAGs (57 FR 45311 (Oct. 1, 1992)). The Agency based the requirements codified in the final regulation on its early experience with the TAG program and comments generated by the Agency's interim final rule (IFR) (53 FR 9736 (Mar. 24, 1988)), and amendments to interim final rule (54 FR 49848 (Dec. 1, 1989)). The IFR detailed the specific requirements for obtaining TAGs and enabled EPA to issue grants while it received comments for consideration in development of the final rule. Those comments and practical experience led the Agency to develop a final rule

which streamlined the program's application and management procedures reflected in the IFR.

The Agency's experience with the TAG program in the years since it published the final rule has led the Agency to recognize the need to further streamline TAG application and management procedures. In addition, the Agency has drafted the proposed rule in a more readable format to increase accessibility to the program. The Agency publishes this NPRM today to solicit comments for the Agency's consideration in promulgating a revised final rule for TAGs.

II. Explanation of Changes to the Current Regulations

A. General Changes

With this proposed rule, EPA is changing the format of the TAG regulations by presenting them in a question and answer structure. The Agency believes this format will make the regulations easier for applicants and recipients to use. As a result of this new format, EPA proposes to move and renumber many of the current sections and, in some instances, to break up sections to organize the information under more precise headings. Additionally, EPA updated references to other applicable regulations to reflect the changes made to those regulations since the Agency promulgated the current final regulation in October 1992. Specifically, this subpart changes 40 CFR part 30 citations and deletes references to 40 CFR part 33 citations. 40 CFR part 30 is the EPA's general regulation for assistance agreements (for example, grants). It establishes the regulations by which EPA awards, administers and closes out grants and cooperative agreements to non-governmental entities.

B. Definitions

Budget period. To be consistent with terms used in the new 40 CFR part 30, EPA proposes to change the term budget period to funding period. In addition, EPA proposes to modify the definition of funding period by eliminating the requirement that funding periods be a maximum of three years. This modification would allow for the length of funding periods to be tailored to site-specific needs.

Affiliate, Allocable cost, Allowable cost, Cost analysis, Eligible cost, Letter of intent (LOI), National Priorities List (NPL), Outlays, Project period

Reasonable cost, Suspend, and Operation and maintenance. EPA proposes to add these definitions to increase reader understanding of terms used throughout this proposed rule.

Advance payment. EPA proposes to add this definition because it reflects a new provision not found in the current final rule.

C. Eligibility and Responsibility Requirements

Under eligibility requirements, EPA proposes to deem organizations that are affiliated with national organizations to be ineligible for a TAG. The basis for this change is that the TAG program is meant to assist communities directly affected by Superfund sites. Therefore, the intended recipients of TAGs are local grassroots organizations that form out of affected communities. By deeming groups associated with national organizations ineligible, EPA intends to exclude any groups with agendas that might include national issues and concerns.

EPA proposes to eliminate the responsibility requirement that organizations that were not incorporated specifically for the purpose of representing affected individuals at the site demonstrate a "substantial" history of involvement at the site. Such organizations would be required to demonstrate a history of involvement at the site, but it would not need to be substantial. Some ways that a group might demonstrate a history of involvement at the site include: members of the group have attended public meetings regarding the site and/or a group has held its own meeting(s) focusing on issues surrounding the site (and has agenda(s) reflecting such a focus). EPA, however, will retain full discretion in making its determination regarding an applicant's history of involvement at a site.

EPA also proposes to modify the responsibility requirements by prohibiting TAG recipients from restricting access to their group by charging membership fees or by using other means to limit participation in a TAG organization. EPA believes TAG groups should be open to all interested individuals as long as the individuals are not participating in the group as representatives of ineligible entities. (Under both the current and proposed rule, if an individual has a significant financial involvement with a PRP, EPA may decide not to allow that individual to participate in the TAG group even if he or she is not participating in the group as a representative of a PRP.) The purpose of the TAG program is to promote meaningful public

participation in decisions at a Superfund site by providing communities the means to obtain independent technical assistance in interpreting information about a site. TAG recipients that restrict access to their group undermine the very purpose of the program.

D. Evaluation Criteria

EPA proposes several changes to the application evaluation criteria. First, EPA proposes to eliminate the distinction between sole and multiple applicants because under the current rule and the proposed rule, whether there are one applicant or multiple applicants, every applicant must meet the same evaluation criteria. Another proposed change would eliminate the points for each criterion in the current final rule and make all proposed criteria be of equal weight. Under both the current and proposed rule, applicants are ranked with respect to all evaluation criteria. EPA will select the highest ranking applicant of the applicants meeting all the criteria.

Finally, EPA proposes to eliminate the current requirement that applicants demonstrate the presence of an actual or potential health, economic or recreational threat posed by the site. Removal of this requirement streamlines the application process. The current rule requires the demonstration of these actual or potential threats because, at the time the final rule was written, EPA thought there would be many groups competing for a TAG at one site. By including this requirement in the application, EPA sought to make certain the group receiving the TAG was the one "most directly affected by a site." However, the Agency's experience since the final rule was written is that there is usually only one applicant per site. Because of this trend and because the very basis for sites being proposed or made final on the National Priorities List (NPL) is that the Agency has determined that a potential or actual human health and/or environmental threat exists, asking applicants to repeat what the Agency has already determined is burdensome and redundant. While actual or potential economic or recreational threats are not part of the basis for NPL proposal or listing, the Agency does not believe it is necessary to ask applicants to demonstrate the presence of these threats. The presence of potential or actual human health and/or environmental threats is sufficient. Finally, by making groups affiliated with national organizations ineligible, EPA believes it is making certain that only local organizations made up of

affected individuals surrounding a Superfund site will be eligible for TAGs. As with the current rule, this proposed rule considers "affected" to mean "subject to an actual or potential, health, economic or environmental threat."

E. Timing of Award

The proposed rule clarifies that TAGs may be awarded throughout the response action at the site, including the operation and maintenance phase. By including this language, EPA hopes to emphasize to communities that TAG funds are available throughout the Superfund process.

F. Ineligible Activities

EPA proposes to clarify, without modifying, what is meant by "political activity and lobbying" and what is meant by "activities inconsistent with the cost principles stated in Office of Management and Budget (OMB) Circular A-122" by adding examples for each category. TAG recipients frequently require some assistance from EPA in determining whether the federally funded activities they engage in constitute lobbying or are otherwise unallowable under OMB Circular A-122. EPA has decided to include examples of unallowable activities in the TAG regulations to assist recipients in identifying the types of activities that cannot be federally funded rather than merely referring recipients to the OMB circular. EPA, however, does not intend to change in any way the lobbying restrictions or any other provision of OMB Circular A-122.

G. Eligible Activities

EPA has made only editorial changes in the proposed rule regarding eligible activities. First, the proposed rule explicitly states that procuring the services of a grant administrator is an eligible expenditure. While the cost of a grant administrator has always been considered allowable by EPA as a reasonable and necessary expenditure of a TAG grant, the final TAG rule did not specifically identify it as an eligible expenditure. Second, in the proposed rule the provision allowing the use of TAG funds for technical advisor health and safety training is included in the overall discussion of eligible expenses rather than in the section on Ineligible Activities.

H. Technical Advisor's Qualifications

EPA proposes several changes to the provision regarding the technical advisor qualifications. One proposed modification is to detail the type of experience a technical advisor should

have. This experience should include communicating problems and issues associated with hazardous or toxic waste, redevelopment, relocation and health issues to the public. A second proposed modification is to eliminate the other requirements currently contained in § 35.4065(b) that call for a technical advisor to: have experience in making technical presentations and working with affected individual or community groups or other groups of individuals, and demonstrated writing skills. EPA believes these requirements are unnecessary because they are captured in the proposed paragraph § 35.4190(c). Finally, EPA proposes to clarify that the requirements regarding a technical advisor's qualifications do not preclude the hiring of technical advisors with expertise in the fields of relocation, redevelopment and health issues.

Use of TAG funds to hire relocation, redevelopment and health experts are consistent with the statutory intent of the program which is to "obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action" at Superfund facilities. When relocation is seriously being considered as a remedy, residents need to understand a multitude of issues associated with the relocation process as prescribed in the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 as amended, 42 U.S.C. 460 *et seq.* (otherwise referred to as the Uniform Relocation Act or URA). Similarly, the consideration of future land use and its relationship to Superfund site reuse/redevelopment is now an inherent component to the Superfund process. Community plans and preferences regarding future land use(s) are an important part of the successful return of Superfund sites to beneficial use. Issues associated with the health effects of toxic waste are also a common concern held by communities. While health advisors are not permitted to generate any new health data through biomedical testing (for example, blood or urine testing), clinical evaluations, health studies, surveillance, registries and/or public health interventions, they can interpret the health aspects associated with information found in site-related documents.

While EPA believes the use of TAG funds for technical advisors with expertise in relocation issues is an appropriate use of TAG funds, the Agency also believes access to such

technical advisors must be limited. Because EPA's preference is to restore property so people can live in their homes, EPA believes relocation technical advisors can only be procured by communities when the Agency is seriously considering permanent relocation (for example, relocation is one of several remedial alternatives being considered in a feasibility study).

For technical advisors with expertise in relocation issues, EPA believes it is important that such experts have demonstrated knowledge, training and experience in relocations, including knowledge of the URA. Furthermore, EPA believes relocation technical advisors should have experience working with developers, brokers and lenders and demonstrated knowledge of appraisals, title searches, and State and local tax laws. All of these areas of expertise are essential if a technical advisor is going to successfully interpret information regarding relocation as a remedy. TAG funds, however, should not be used to pay for appraisals, title searches, real estate agents' or brokers' services.

For redevelopment technical advisors, EPA believes it is important for such advisors to have knowledge, training, and experience in land use planning with an emphasis on economic development, environmental planning or related fields as appropriate. These qualifications are necessary to ensure redevelopment assistance is meaningful to communities.

Finally, health advisors must have received their public health or related training at accredited schools of medicine, public health, or accredited academic institutions of other related disciplines and be associated with such institutions. These requirements will ensure public health advisors serving communities are appropriately trained and qualified to assist communities on public health issues. Health advisors should possess demonstrated knowledge, training and experience in public health issues as they relate to toxic and hazardous waste.

I. Procurement

The regulations governing procurement under grants at 40 CFR part 33 were repealed since the publication of the last TAG rule. Therefore, references to 40 CFR part 33 have been deleted and replaced by the appropriate provisions in 40 CFR part 30. Additionally, paraphrased versions of the positive efforts required by 40 CFR part 30 with respect to hiring small business enterprises (SBEs), minority business enterprises (MBEs), and women-owned business enterprises

(WBEs) have been included. The purpose in including the positive efforts is to heighten the awareness of recipients that they need to make such efforts to contract with SBEs, MBEs and WBEs.

In 1997, in order to ensure consistency with the Supreme Court decision in *Adarand v. Peña*, 115 S. Ct. 2097 (1995), EPA issued revised Guidance for the Agency's MBE/WBE program (*see* 62 FR 45645 (Aug. 28, 1997)). This Guidance may be accessed on the Internet at <http://www.epa.gov/osdbu>. Under this Guidance, "fair share" objectives are negotiated with recipients of EPA financial assistance based on the availability of qualified MBEs and WBEs in the relevant procurement market. In the case of the TAG program, for example, the relevant markets would be supplies, services and equipment. Recipients are not required to negotiate their own MBE/WBE goals (unless they wish to do so). Instead, they may accept the goals of the State Agency which would have jurisdiction over Superfund activities in the relevant state. State Agency goals may be found on the Internet at <http://Yosemite.epa.gov/ogd/mbe-wbe.nsf> and other information on the EPA Grants page at <http://www.epa.gov/ogd/grants>.

EPA is in the process of initiating a rulemaking for its MBE/WBE program, in which the public will have an opportunity for notice and comment. To the extent that EPA's final MBE/WBE rulemaking differs from the information found here, the MBE/WBE rulemaking will control.

J. Sanctions

This rule includes a detailed list of the sanctions EPA may impose when grant recipients fail to comply with a term of a grant agreement. These sanctions are the same as those set forth in 40 CFR 30.62 and 30.14 and are included in the TAG rule only as a convenience to the reader. EPA does not intend to change the rights or responsibilities of either the recipient or EPA under the provisions for enforcement or special award conditions in 40 CFR part 30.

K. Method of Payment

EPA proposes to provide TAG recipients, under certain circumstances, the opportunity to receive advance payments. EPA proposes this change because it recognizes that some grant recipients are newly formed entities lacking resources to undertake even basic organizational start up activities. Advance payments would provide such groups with the necessary resources to

establish their organization and implement their grant work plan.

While EPA supports advancing funds to TAG recipients for start up purposes, EPA also believes it is important to set appropriate limits on such advances. Therefore, EPA proposes several limits on cash advances. First, only those recipients who lack the resources to incur expenses in advance of reimbursement would be eligible for cash advances. Second, EPA proposes a \$5,000 cap on the amount of money it would advance to a recipient. EPA believes this amount is sufficient to cover reasonable and expected start up expenses for a group. Third, the types of expenditures for which recipients could seek advance payments will be limited to expenditures for opening a bank account, supplies and postage, advance on rent or lease for office space, advertising related to procurement, and rental of other equipment. EPA believes expenditures associated with contracts for technical advisors and other contractors are not appropriate and will not be allowed for advance payments because such expenditures are not necessary to a group's start up functions.

In addition, EPA proposes to require recipients to request in writing the specific activities and/or goods/services for which the group needs the funds. This requirement will ensure EPA has an opportunity to review and authorize the specific use(s) of any advance payments. Finally, advance payments will only be provided on a one-time basis; after an initial advance EPA will reimburse recipients for actual expenses they incur.

L. Grant Limitations

With this rule, EPA proposes to set forth its current interpretation of section 117(e) of CERCLA which provides that "Not more than one grant may be made under this subsection with respect to a single facility, at all stages of remedial action" (CERCLA 117(e)). In the administration of this program, EPA has interpreted this provision to mean that there can be only one TAG recipient at a site at any one time during the Superfund process. This interpretation means that if a TAG to one recipient is terminated, EPA can make a new grant to a new recipient. Accordingly, while there can be only one TAG at a time there can be more than one recipient of a TAG at a single facility. Occasionally, a grant recipient decides not to complete the work for which it received a \$50,000 TAG, or a TAG recipient, although eligible to receive an additional \$50,000 as a renewal of its original grant, elects not to do so and

decides to end its participation at the site.

If, in instances where a TAG is terminated, EPA were to interpret section 117(e) to preclude another community group from receiving a TAG for the site involved, then the affected community of that site would lose the benefit of technical assistance to promote public participation in all stages of the response action as a result of the original grant recipient's actions. EPA does not believe Congress intended such a punitive result, particularly since it would undermine the purpose of section 117 of CERCLA—to promote public participation at Superfund sites. Rather, EPA believes that section 117(e) is only intended to limit to one the number of TAG recipients at any given time at a single site.

Therefore, under § 35.4040 of the proposed rule, EPA will explicitly allow changes in TAG recipients if the original TAG is terminated. Under § 35.4060, a subsequent recipient can only be funded for the amount left by the first recipient of the grant. In the case of a site with characteristics indicating additional funds are necessary due to the nature or the volume of site-related information, the new recipient can receive the amount for which the original recipient was eligible. In either case, the second recipient is not responsible for actions taken by the first recipient, nor is the second recipient responsible for how the first recipient expended the funds it received from EPA.

Finally, EPA proposes to eliminate the 20 percent limit on a TAG recipient's administrative expenses in order to relieve recipients of the obligation to differentiate between programmatic and administrative costs for purposes of the TAG regulations. This elimination will reduce the information collection burden on TAG recipients. As always, under OMB Circular A-122, administrative costs will only be allowable costs of the TAG to the extent they are reasonable and necessary.

Although it proposes to ease this administrative expense cap, EPA believes that continued scrutiny of all grant costs continues to be necessary, including oversight of a recipient's administrative expenses. EPA believes that the enforcement provisions of § 35.4250 ("Under what circumstances would EPA terminate our TAG?") in the proposed regulations provide EPA the opportunity to ensure the identification of abuses and to make certain that recipients expend Federal funds in accordance with the mission of the TAG program. This proposed rule would give EPA and grant recipients the flexibility

to negotiate grants without having unnecessary limitations on administrative expenses not required by statute.

M. Waivers

CERCLA section 117(e) provides that technical assistance grants may not exceed \$50,000 but this limit can be waived when necessary to carry out the purposes of CERCLA section 117. The current TAG rule provides for a waiver from the \$50,000 limit if applicants are affected by multiple sites or "especially complex" sites. The "especially complex" standard is vague and difficult to apply; eliminating it will enlarge the eligible universe of TAG recipients who would benefit from the waiver provision when appropriate. Therefore, under the proposed rule, a waiver will be provided if site characteristics indicate that additional funds are necessary as determined by the presence of any three of nine predetermined criteria. The Agency believes these criteria are the standards by which the Agency can best determine whether a waiver of the \$50,000 limit on the amount of the award is necessary to carry out the purposes of the TAG program.

EPA proposes two changes to the section on waivers from this matching share requirement. First, the proposed rule will eliminate the requirement that a group demonstrate an "unusual" financial hardship. Instead, a group will be eligible for a waiver if it demonstrates that providing the match would cause financial hardship. EPA proposes this change because it believes that ordinary financial hardship is sufficient to justify a waiver. Moreover, this change is consistent with the statute which requires only that grant recipients demonstrate financial need for EPA to be able to waive the matching share requirement.

Second, this rule will eliminate the requirement that an applicant for a waiver to the matching share requirement show that it has made a good faith effort at raising the match, including in-kind services, and has failed. The good faith requirement to raise a match is not required by statute and EPA believes eliminating it will make TAGs more available to financially disadvantaged groups. Furthermore, EPA believes, based on its experience in implementation of the TAG program, that most applicants will continue to provide in-kind services, whether or not such services are required to obtain the waiver.

N. Disputes

EPA proposes to require TAG disputants to exhaust their administrative remedies before they may obtain judicial review of an Agency action. Currently, disputants are given the opportunity to seek further administrative review of the disputes decision official's decision and the Regional Administrator's decision, but disputants are not *required* by statute or regulation to seek such review before going to court. When the current TAG rule was finalized, generally courts would have imposed the requirement that disputants seek the highest level of administrative review permitted by the Agency providing judicial review of the dispute. Subsequently, the Supreme Court held in *Darby v. Cisneros* that the Administrative Procedure Act "explicitly requires exhaustion of all intra-agency appeals mandated either by statute or by agency rule (and therefore,) it would be inconsistent with the plain language of (the APA) to require litigants to exhaust optional appeals as well." 509 U.S. 137, 147 (1993).

EPA has decided to require disputants to exhaust their administrative remedies before seeking judicial review so as to promote the resolution of TAG grant disputes in a non-adversarial manner at the Agency level and to assure consistency in the application of the TAG regulations across regions. Specifically, EPA will require disputants to seek review of the dispute decision official's determination by the Regional Administrator and review by the Assistant Administrator of the Office of Solid Waste and Emergency Response before seeking judicial review of the dispute.

O. Record Retention and Audits

Substantively, EPA proposes to eliminate the record retention requirement for those TAG recipients who elect to have EPA preserve their financial records. This change reflects a recommendation provided by the General Accounting Office (GAO). However, those recipients who do not send their financial records to EPA would still be required to keep them, as at present. In addition, EPA proposes to remove the reference to OMB Circular A-133, Audits of Institutions of Higher Education, which requires recipients who spend more than \$300,000 in one fiscal year to undertake an audit of their finances. EPA proposes removing this reference because it is highly unlikely that TAG recipients would meet this threshold. Finally, EPA proposes to include language informing recipients they must comply with OMB Circular

A-122, Cost Principles for Non-Profit Organizations. This requirement is not new to the TAG program, but previously it was not explicitly included in this subpart.

P. Reports

EPA proposes to restructure the reporting requirements by putting the information in a chart format to make it easier for recipients to understand. In addition, EPA proposes to add reporting requirements necessitated by the inclusion of advance payments. EPA also proposes to add information about the reporting requirements regarding positive efforts the recipient has made to procure from small business enterprises, minority-owned business enterprises, and women-owned business enterprises. This requirement is not new; EPA merely proposes to identify it in the report requirements section of the rule so that applicants and recipients are aware of it.

Substantively, EPA proposes to eliminate the requirement that recipients submit draft final reports. EPA believes only a final report is necessary because Federal review of draft reports contributes minimally to the administration of the program. This proposed reporting change, like the previous two, eases the information collection burden for TAG recipients.

Q. Budget Period (Funding Period)

EPA proposes replacing the term "budget period" with the term "funding period." This change in terms makes the TAG rule consistent with those used in 40 CFR part 30. Substantively, EPA proposes eliminating the current three-year funding period and replacing it with a period to be negotiated by the applicant and EPA. The mutually agreed upon period would be documented in the award agreement. EPA makes this proposal because it believes TAG recipients should be allowed flexibility when formulating their budget to synchronize the period of time during which recipients anticipate having a technical advisor involved with the schedule of work at a site.

R. Closing Out Grants

Although 40 CFR 30.70 through 30.73 will continue to govern the close out process and procedures, the proposed regulation includes a summary of those regulations in order to help recipients understand the grant close out process and procedures for TAGs. As with all other instances where EPA summarizes provisions found in other regulations, EPA includes the summary of the grant close out process and procedures only as a convenience to the reader. EPA

does not intend to change the rights or responsibilities of either the recipient or EPA under the provisions for closing out grants in 40 CFR part 30.

S. State Administration

EPA proposes to move the regulations governing the administration of the TAG program by States to 40 CFR part 35, subpart O which governs the award of cooperative agreements to States and Indian tribes under section 104(d) of CERCLA. EPA is in the process of revising subpart O at this time. Therefore, this proposed regulation does not include any provisions regarding the State administration of TAGs.

III. Existing Grants

TAG recipients receiving a TAG under previous regulations may request having their grant administered under this regulation once it is final. Groups wishing to do so must seek amendments to their grant from the Award Official. However, any funds spent prior to the finalization of this rule are subject to the previous regulation. Amendments to current grants will apply only to future work.

IV. Regulatory Analysis

A. 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. This proposed rule would not have a significant impact on a substantial number of small entities because this regulation imposes no new requirements, but rather streamlines and simplifies current requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

B. 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 by State, local, and tribal governments, in the aggregate,

or by the private sector, of \$100 million or more in any one year. This regulation contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance.

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. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

C. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA does not believe that this proposed rule addresses any technical standards subject to NTTAA. Commenters who disagree with this conclusion should indicate how the proposed rule is subject to the Act and identify any potentially applicable voluntary consensus standards.

D. Executive Order 13045

Executive Order 13045 applies to any rule that is determined to be: (1) "Economically significant" as defined under Executive Order 12866; and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

E. Paperwork Reduction Act

The Office of Management and Budget 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 2030-0020. This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record keeping requirements subject to the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

F. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined this rule is not a "significant regulatory action" under the terms of Executive Order 12866. As such, this action was not submitted to the Office of Management and Budget (OMB) for review.

G. 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, 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.

H. 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."

This proposed rule does not significantly or uniquely affect the communities of Indian Tribal

governments nor does it impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

I. Executive Order 12898

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

No action from the proposed rule will have a disproportionately high and adverse human health and environmental effects on any segment of the population. In addition, the proposed rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of the Executive Order do not apply.

List of Subjects in 40 CFR Part 35

Environmental protection, Air pollution control, Coastal zone, Grant programs—environmental protection, Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: August 6, 1999.

Carol M. Browner,
Administrator.

Accordingly, as set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 35 as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 4368b, unless otherwise noted.

2. Subpart M is revised to read as follows:

Subpart M—Grants for Technical Assistance

Sec.

35.4000 Authority.

General

35.4005 What is a Technical Assistance Grant?

35.4010 What does this subpart do?

35.4011 What other regulations apply to the award of TAGs?

35.4012 If there appears to be a difference between the requirements in Part 30 and this subpart, which regulations should my group follow?

35.4015 Do certain words in this subpart have specific meaning?

Who is Eligible?

35.4020 Is my community group eligible for a TAG?

35.4025 Is there any way my group can get a TAG if it is currently ineligible?

35.4030 Can I be a part of a TAG group if I belong to an ineligible group?

35.4035 Does EPA use the same eligibility criteria for TAGs at "Federal facility" sites?

35.4040 How many groups can receive a TAG at one Superfund site?

Your Responsibilities as a TAG Recipient

35.4045 What requirements must my group meet as a TAG recipient?

35.4050 Must my group contribute toward the cost of a TAG?

35.4055 What if my group can't come up with the "matching funds"?

How Much Money TAGs Provide

35.4060 How much money can my group receive through a TAG?

35.4065 How can my group get more than \$50,000?

What TAGs Can Pay For

35.4070 How can my group spend TAG money?

35.4075 Are there things my group can't spend TAG money for?

How You Get the Money

35.4080 Does my group get a lump sum up front, or does EPA reimburse us for costs we incur?

35.4085 Can my group get an "advance payment" to help us get started?

35.4090 If my group is eligible for an advance payment, how do we get our funds?

35.4095 What can my group pay for with an advance payment?

35.4100 Can my group incur any costs prior to the award of our grant?

How to Apply for a TAG

35.4105 What is the first step for getting a TAG?

35.4106 What information should an LOI include?

35.4110 What does EPA do once it receives the first LOI from a group?

35.4115 After the public notice that EPA has received an LOI, how much time does my group have to form a coalition or submit a separate LOI?

35.4120 How much time do my group or other interested groups have to submit a TAG application to EPA?

35.4125 Does the TAG application process affect the schedule for work at my site?

35.4130 What does my group do next?

35.4135 What else does my group need to do?

35.4140 What must be included in my group's budget?

35.4145 What period of time should my group's budget cover?

35.4150 What must be included in my group's work plan?

35.4155 How does EPA decide whether to award a TAG to our group?

35.4160 What does EPA do if more than one group applies for a TAG at the same site?

35.4165 When does EPA award a TAG?

Managing Your TAG

35.4170 What kinds of reporting does EPA require?

35.4175 What other reporting and record keeping requirements are there?

35.4180 Must my group keep financial records after we finish our TAG?

35.4185 What does my group do with reports our technical advisor prepares for us?

Procuring a Technical Advisor or Other Contractor With TAG Funds

35.4190 How does my group identify a qualified technical advisor?

35.4195 Are there certain people my group cannot select to be our technical advisor, grant administrator, or other contractor under the grant?

35.4200 What restrictions apply to contractors my group procures for our TAG?

35.4205 How does my group procure a technical advisor or any other contractor?

35.4210 Must my group solicit and document bids for our procurements?

35.4215 What if my group can't find an adequate number of potential sources for a technical advisor or other contractor?

35.4220 How does my group ensure a prospective contractor does not have a conflict of interest?

35.4225 What if my group decides a prospective contractor has a conflict of interest?

35.4230 What are my group's contractual responsibilities once we procure a contractor?

35.4235 Are there specific provisions my group's contract(s) must contain?

Requirements for TAG Contractors

35.4240 What provisions must my group's TAG contractor comply with if it subcontracts?

Grant Disputes, Termination, and Enforcement

- 35.4245 How does my group resolve a disagreement with EPA regarding our TAG?
- 35.4250 Under what circumstances would EPA terminate my group's TAG?
- 35.4255 Can my group terminate our TAG?
- 35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?

Closing Out a TAG

- 35.4265 How does my group close out our TAG?

Other Things You Need to Know

- 35.4270 Definitions.
- 35.4275 Where can my group get the documents this subpart references (for example, OMB circulars, other subparts)?

Subpart M—Grants for Technical Assistance

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

General**§ 35.4000 Authority.**

The Environmental Protection Agency ("EPA") issues this subpart under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

§ 35.4005 What is a Technical Assistance Grant?

A Technical Assistance Grant (TAG) provides money for your group to obtain technical assistance in interpreting information with regard to a Superfund site. EPA awards TAGs to promote public participation in decision making at eligible sites. A TAG allows your group to procure independent technical advisors to help you interpret and comment on site-related information and decisions. Examples of how a technical advisor can help your group include, but are not limited to:

- (a) Reviewing preliminary site assessment/site investigation data;
- (b) Participating in public meetings to help interpret information about site conditions, proposed remedies, and the implementation of a remedy; and
- (c) Visiting the site vicinity periodically during cleanup, if possible, to observe progress and provide technical updates to your group.

§ 35.4010 What does this subpart do?

This subpart establishes the regulations for TAGs awarded by EPA.

§ 35.4011 What other regulations apply to the award of TAGs?

EPA's general grant regulations for nonprofit organizations at 40 CFR part 30 also apply to TAGs.

§ 35.4012 If there appears to be a difference between the requirements in Part 30 and this subpart, which regulations should my group follow?

You should follow the regulations in 40 CFR part 30, except for the following provisions from which this subpart deviates:

- (a) 40 CFR 30.11, Pre-Award Policies;
- (b) 40 CFR 30.22 (b) and (c), Payment;
- (c) 40 CFR 30.44 (e) (2), Procurement Procedures;
- (d) 40 CFR 30.53 (b), Retention and Access Requirements for Records; and
- (e) 40 CFR 31.70 (c) and 31.70 (i) as referenced by 40 CFR 30.63, Disputes.

§ 35.4015 Do certain words in this subpart have specific meaning?

Yes, some words in this subpart have specific meanings that are described in § 35.4270, Definitions. The first time these words are used, they are marked with quotation marks, for example, "EPA."

Who Is Eligible?**§ 35.4020 Is my community group eligible for a TAG?**

(a) Yes, your community group is eligible for a TAG if:

- (1) You are a group of people who may be "affected" by a release or a threatened release at any facility listed on the National Priorities List ("NPL") or proposed for listing under the National Contingency Plan (NCP) where a "response action" under CERCLA has begun;

(2) Your group meets the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating you have or will have reliable procedures for record keeping and financial accountability related to managing your TAG (you must have these procedures in place before your group incurs any expenses); and

- (3) Your group is not ineligible according to paragraph (b) of this section.

(b) No, your community group is not eligible for a TAG if your group is:

- (1) A "potentially responsible party" (PRP), receives money or services from a PRP, or represents a PRP;
- (2) Not incorporated as a nonprofit organization for the specific purpose of representing affected people except as provided in § 35.4045;
- (3) "Affiliated" with a national organization;

- (4) An academic institution;
- (5) A political subdivision (for example, township or municipality); or
- (6) Established or presently sustained by ineligible entities that paragraphs (b) (1) through (5) of this section describe, or if any of these ineligible entities are represented in your group.

§ 35.4025 Is there any way my group can get a TAG if it is currently ineligible?

You can make your group eligible by establishing an identity separate from that of the PRP or other ineligible entity by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that your group has a separate and distinct:

- (a) Formal legal identity (for example, your group has different officers); and
- (b) Substantive existence (meaning, is not affiliated with an ineligible entity), including its own finances.

(1) In determining whether your group has a different substantive existence from the ineligible entity, you must establish for us that your group:

- (i) Is not controlled either directly or indirectly, by the ineligible entity; and
- (ii) Does not control, either directly or indirectly, an ineligible entity.

(2) You must also establish for EPA that a third group does not have the power to control both your group and an ineligible entity.

§ 35.4030 Can I be part of a TAG group if I belong to an ineligible group?

You may participate in your capacity as an individual in a group receiving a TAG, but you may not represent the interests of an ineligible entity. However, we may prohibit you from participating in a TAG group if the "award official" determines that you have a significant financial involvement in a PRP.

§ 35.4035 Does EPA use the same eligibility criteria for TAGs at "Federal facility" sites?

Yes, EPA uses the same criteria found in § 35.4020 in evaluating the eligibility of your group or any group of individuals who may be affected by a release or a threatened release at a Federal facility for a TAG under this subpart.

§ 30.4040 How many groups can receive a TAG at one Superfund site?

(a) Only one TAG may be awarded for a site at any one time. However, the recipient of the grant can be changed when:

- (1) EPA and the recipient mutually agree to terminate the current TAG or the recipient or EPA unilaterally terminates the TAG; or

(2) The recipient elects not to renew its grant even though it is eligible for additional funding.

(b) In each of the situations described in paragraph (a) of this section the following information applies:

(1) If you are a subsequent recipient of a TAG, you are not responsible for actions taken by the first recipient, nor are you responsible for how the first recipient expended the funds received from EPA; and

(2) The process for changing recipients begins when an interested applicant submits a Letter of Intent ("LOI") to the Agency expressing interest in a TAG as described in § 35.4105. We will then follow the application procedure set forth at §§ 35.4105 through 35.4165.

Your Responsibilities as a TAG Recipient

§ 35.4045 What requirements must my group meet as a TAG recipient?

Your group, including those groups which form out of a coalition agreement, must incorporate as a nonprofit corporation for the purpose of participating in decision making at the Superfund site for which we provide a TAG. However, a group that was previously incorporated as a nonprofit organization and includes all individuals and groups who joined in applying for the TAG is not required to

reincorporate for the specific purpose of representing affected individuals at the site, if in EPA's discretionary judgment, the group has a history of involvement at the site. You must also:

(a) At the time of award, demonstrate that your group has incorporated as a nonprofit organization or filed the necessary documents for incorporation with the appropriate State agency;

(b) At the time of your first request for reimbursement or advance payment, submit proof that the State has incorporated your group as a nonprofit organization; and

(c) Not restrict access to your group by charging membership fees or by using other means to limit participation in your organization.

§ 35.4050 Must my group contribute toward the cost of a TAG?

(a) Yes, your group must contribute 20 percent of the total cost of the TAG project unless EPA waives the match under § 35.4055. For example, if your group receives \$50,000 in Federal funds, the matching share would be \$12,500, which is 20 percent of the total project costs of \$62,500 (meaning, \$50,000 plus \$12,500).

(b) Under 40 CFR 30.23, your group may use "cash" and/or "in-kind contributions" (for example, your board members can count their time toward your matching share) to meet the matching funds requirement. Without

specific statutory authority, you may not use Federal funds to meet the required match.

§ 35.4055 What if my group can't come up with the "matching funds"?

(a) EPA may waive all or part of your matching funds requirement if we:

(1) Have not issued the "record of decision" ("ROD") at the last "operable unit" for the site (in other words, if EPA has not already made decisions on the final cleanup actions at the site); and

(2) Determine, based on evidence in the form of documentation provided by your group, that:

(i) Your group needs a waiver because providing the match would be a financial hardship to your group (for example, your local economy is depressed and coming up with in-kind contributions would be difficult); and

(ii) The waiver is necessary to help your community participate in selecting a remedial action at the site.

(b) If your group receives a waiver of the matching funds after your initial award, your grant agreement must be amended.

How Much Money TAGs Provide

§ 35.4060 How much money can my group receive through a TAG?

The following table shows how much money your group can receive through a TAG:

If your group is . . .	Then your initial award will . . .
(a) the first recipient of a TAG at a site or a subsequent recipient at a site where the initial recipient spent the entire award amount.	not exceed \$50,000 per site.
(b) a subsequent recipient at a site with remaining funds from an initial \$50,000 award.	be the unspent amount remaining from the initial award (for example, if the Agency awarded the first recipient \$50,000 but that recipient only spent \$27,000, then your group's initial award would be \$23,000).

§ 35.4065 How can my group get more than \$50,000?

The EPA regional office award official for your grant may waive your group's \$50,000 limit and provide up to \$100,000 per site under the following circumstances:

(a) Your group is geographically close to more than one eligible site (for example, two or more sites × \$50,000 = grant of \$100,000) and wishes to receive funding for technical assistance to address multiple eligible sites; or

(b) Your group demonstrates that:

(1) If it received previous TAG funds, you managed those funds effectively; and

(2) Site(s) characteristics indicate additional funds are necessary due to

the nature or volume of site-related information. In this case, three of the nine factors below must occur:

(i) A Remedial Investigation/Feasibility Study ("RI/FS") costing more than \$2 million is performed;

(ii) Treatability studies or evaluation of new and innovative technologies are required as specified in the Record of Decision;

(iii) EPA reopens the Record of Decision;

(iv) The site public health assessment (or related activities) indicates the need for further health investigations and/or health promotion activities;

(v) EPA designates one or more additional operable units after awarding the TAG;

(vi) A legislative or regulatory change results in new site information after EPA awards the TAG;

(vii) EPA expects a cleanup lasting more than eight years from the beginning of the RI/FS through construction completion;

(viii) Significant public concern exists, where large groups of people in the community require many meetings, copies, etc.; and

(ix) Any other factor that, in EPA's judgment, indicates that the site is unusually complex.

What TAG Can Pay For

§ 35.4070 How can my group spend TAG money?

(a) Your group must use all or most of your funds to procure a technical advisor(s) to help you understand the nature of the environmental and public health hazards at the site, the various stages of health and environmental investigations and activities, cleanup, and "operation and maintenance" of a site, including exposure investigation, health study, surveillance program, health promotion activities (for example, medical monitoring and pediatric health units), remedial investigation, and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, and removal action. This technical assistance should contribute to the public's ability to participate in the decision making process by improving the public's understanding of overall conditions and activities at the site.

(b) Your group may use a portion of your funds to:

- (1) Undertake activities that communicate site information to the public through newsletters, public meetings or other similar activities;
- (2) Procure a grant administrator to manage your group's grant; and/or
- (3) Provide one-time health and safety training for your technical advisor to gain site access to your local Superfund site. To do provide this training, you must:

- (i) Obtain written approval from the EPA regional office; and
- (ii) Not spend more than \$1,000.00 for this training, including travel, lodging and other related costs.

§ 35.4075 Are there things my group can't spend TAG money for?

Your TAG funds cannot be used for the following activities:

- (a) Lawsuits or other legal actions;
- (b) Attorney fees for services:
 - (1) Connected to any kind of legal action; or
 - (2) That could, if such a relationship were allowable, be interpreted as resulting in an attorney/client relationship to which the attorney/client privilege would apply;
- (c) The time of your technical advisor to assist an attorney in preparing a legal action or preparing and serving as an expert witness at any legal proceeding;
- (d) Political activity and lobbying that is unallowable under Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-Profit Organizations (this restriction includes activities such as attempting to

influence the outcomes of any Federal, State or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, or publicity, or attempting to influence the introduction or passage of Federal or state legislation; your EPA regional office can supply you with a copy of this circular);

(e) Other activities that are unallowable under the cost principles stated in OMB Circular A-122 (such as costs of amusement, diversion, social activities, fund raising and ceremonies);

(f) Tuition or other training expenses for your group's members or your technical advisor except as § 35.4070(b)(3) allows;

(g) Any activities or expenditures for your group's members' travel;

(h) Generation of new primary data such as well drilling and testing, including split sampling;

(i) Reopening or challenging final EPA decisions such as:

- (1) Records of Decision; and/or
- (2) Disputes with EPA under its dispute resolution procedures set forth in 40 CFR 30.63 (see § 35.4245); and

(j) Generation of new health data through biomedical testing (for example, blood or urine testing), clinical evaluations, health studies, surveillance, registries, and/or public health interventions.

How You Get The Money

§ 35.4080 Does my group get a lump sum up front, or does EPA reimburse us for costs we incur?

(a) EPA pays your group by reimbursing you for "allowable" costs, which are costs that are:

- (1) Grant related;
- (2) "Allocable";
- (3) "Reasonable"; and
- (4) Necessary for the operation of the organization or the performance of the award.

(b) You will be reimbursed for the allowable costs up to the amount of the TAG if your group incurred the costs during the approved "project period" of the grant (except for allowable costs of incorporation which may be incurred prior to the project period), and your group is legally required to pay those costs.

§ 35.4085 Can my group get an "advance payment" to help us get started?

Yes, a maximum of \$5,000.00 in the form of an advance payment is available if EPA determines that your group lacks the resources to incur expenditures for necessary start up activities in advance of (or prior to) reimbursement by us.

§ 35.4090 If my group is eligible for an advance payment, how do we get our funds?

(a) Your group must submit in writing a request for an advance payment and identify what activities, goods or services your group requires.

(b) Your EPA regional office project officer identified in your award document must approve the items for which your group seeks advance funding.

(c) Upon approval of your request, EPA will advance cash (in the form of a check or electronic funds transfer) to your group, up to \$5,000, to cover its estimated need to spend funds for an initial period generally geared to your group's cycle of spending funds.

(d) After the initial advance, EPA reimburses your group for its actual cash disbursements.

§ 35.4095 What can my group pay for with an advance payment?

(a) Advance payments may be used only for the purchase of supplies, postage, the payment of the first deposit to open a bank account, the rental of equipment, the first month's rent of office space, advertisements for technical advisors and other items associated with the start up of your organization specifically requested in your advance payment request and approved by your EPA project officer.

(b) Advance payments must not be used for contracts for technical advisors or other contractors.

(c) Advance payments are not available for the costs of incorporation.

§ 35.4100 Can my group incur any costs prior to the award of our grant?

(a) The only costs you may incur prior to the award of a grant from EPA are costs associated with incorporation but you do so at your own risk.

(b) If you are awarded a TAG, EPA may reimburse you for preaward incorporation costs or allow you to count the costs toward your matching funds requirement if the costs are:

- (1) Necessary and reasonable for incorporation; and
- (2) Incurred for the sole purpose of complying with this subpart's requirement that your group be incorporated as a nonprofit corporation.

How to Apply for a TAG

§ 35.4105 What is the first step for getting a TAG?

To let EPA know of your group's interest in obtaining a TAG, your group should first submit to its EPA regional office an LOI. (The addresses of EPA's regional offices' TAG Coordinators are listed in § 35.4275.)

§ 35.4106 What information should an LOI include?

The LOI should clearly state that your group intends to apply for a TAG, and should identify:

- (a) The name of your group;

(b) The Superfund site(s) for which your group intends to submit an application; and

(c) Provide the name of a contact person in the group and his or her mailing address and telephone number.

§ 35.4110 What does EPA do once it receives the first LOI from a group?

The following table shows what EPA does when it receives the first LOI from a group:

If your site . . .	Then EPA . . .
(a) is not proposed for listing on the NPL or is proposed but no response is underway or scheduled to begin.	will advise you in writing that we are not yet accepting TAG "applications" for your site. EPA may informally notify other interested groups that it has received an LOI.
(b) is listed on the NPL or is proposed for listing on the NPL and a response action is underway.	will publish a notice in your local newspaper to formally notify other interested parties that they may contact the first group that sent the LOI to form a coalition or they may submit a separate LOI.

§ 35.4115 After the public notice that EPA has received an LOI, how much time does my group have to form a coalition or submit a separate LOI?

Your group has 30 days (from the date the public notice appears in your local newspaper) to submit documentation that you have formed a coalition with the first group and any other groups or to submit a separate LOI.

§ 35.4120 How much time do my group or other interested groups have to submit a TAG application to EPA?

(a) Your group must file your application with your EPA regional office within 60 days from the date the public notice appears in your local newspaper announcing that EPA has received an LOI. EPA will only accept applications from groups that submitted an LOI within 30 days from the date of that public notice.

(b) If your group requires more time to file a TAG application, you may submit a written request asking for an extension. If EPA decides to extend the time period for applications in response to your request, it will notify, in writing, all groups that submitted an LOI of the new deadline for submitting TAG applications.

(c) EPA will not accept other applications or requests for extensions after the final application deadline has passed.

§ 35.4125 Does the TAG application process affect the schedule for work at my site?

No, the schedule for response activities at your site is not affected by the TAG process.

§ 35.4130 What does my group do next?

(a) After you submit an LOI, one of the first steps in applying for your TAG is determining whether your state requires review of your grant application. This review allows your governor to stay informed about the

variety of grants awarded within your state. This process is called intergovernmental review. Your EPA regional office can provide you with the contact for your state's intergovernmental review process.

(b) You should call that state contact as early as possible in the application process so that you can allow time for this review process which may take up to 60 days.

(c) EPA cannot process your application package without evidence that you have submitted it to the state for review, if your state requires it.

(d) EPA cannot award a TAG until the state has completed its intergovernmental review.

§ 35.4135 What else does my group need to do?

Once you've determined your state's intergovernmental review requirements, you must prepare a TAG application on EPA SF-424, Application for Federal Assistance, or those forms and instructions provided by EPA that include:

(a) A "budget";

(b) A scope of work;

(c) Assurances, certifications and other preaward paperwork as 40 CFR part 30 requires. Your EPA regional office will provide you with the required forms.

§ 35.4140 What must be included in my group's budget?

Your budget must clearly show how:

(a) You will spend the money and how the spending meets the objectives of the TAG project;

(b) Your group will provide the required cash and/or in-kind contributions; and

(c) Your group derived the figures included in the budget.

§ 35.4145 What period of time should my group's budget cover?

The period of time your group's budget covers (the "funding period" of your grant) will be:

(a) One which best accommodates your needs;

(b) Negotiated between your group and EPA; and

(c) Stated in the "award document."

§ 35.4150 What must be included in my group's work plan?

(a) Your scope of work must clearly explain how your group:

(1) Will organize;

(2) Intends to use personnel you will procure for management/coordination and technical advice; and

(3) Will share and disseminate information to the rest of the affected community.

(b) Your scope of work must also clearly explain your project's milestones and the schedule for meeting those milestones.

(c) Finally, your scope of work must explain how your board of directors, technical advisor(s) and "project manager" will interact with each other.

§ 35.4155 How does EPA decide whether to award a TAG to our group?

Once EPA determines your group meets the eligibility requirements in § 35.4020 the Agency considers whether and how successfully your group meets these criteria, each of which are of equal weight:

(a) Representation of groups and individuals affected by the site;

(b) Your group's plans to use the services of a technical advisor throughout the Superfund response action; and

(c) Your group's ability and plan to inform others in the community of the information provided by the technical advisor.

§ 35.4160 What does EPA do if more than one group applies for a TAG at the same site?

When multiple groups apply, EPA will rank each applicant relative to other applicants using the criteria in § 35.4155.

§ 35.4165 When does EPA award a TAG?

(a) EPA may award TAGs throughout the Superfund process, including during operation and maintenance, but we will not award a TAG before the start of your site's response action if the site is proposed for listing on the NPL.

(b) Based on the availability of funds, EPA may delay awards of grants to qualified applicants.

Managing Your TAG**§ 35.4170 What kinds of reporting does EPA require?**

There are several types of reports you need to complete at various points during the life of your group's grant; the number varies based on whether you receive an advance payment:

Type of Report	Required Information	Timing and Frequency
(a) Federal Cash Transactions Report	The amount of funds advanced to you or electronically transferred to your bank account and how you spent those funds..	Semiannually within 15 working days following the end of the semiannual period which ends June 30 and December 31 of each year.
(b) Minority-Owned Business Enterprise/ Women-Owned Business Enterprise (MBE/WBE) Utilization.	Whether your group contracted with a MBE/WBE in the past Federal fiscal year, the value of the contract, if any, and the percentage of total project dollars on MBE/WBEs..	Annually, even if no contracts have been signed.
(c) Progress Report	Full description in chart or narrative format of the progress your group made in relation to your approved schedule, budget and the TAG project milestones, including an explanation of special problems your group encountered..	Quarterly, within 45 days after the end of each calendar quarter.
(d) Financial Status Report	Status of project's funds through identification of project transactions..	Annually, within 90 days after the anniversary date of the start of your TAG project, and within 90 days after the end of your TAG's funding period.
(e) Final Report.	Description of project goals and objectives, activities undertaken to achieve goals and objectives, difficulties encountered, technical advisors' work products and funds spent.	Within 90 days after the end of your project.

§ 35.4175 What other reporting and record keeping requirements are there?

In addition to the report requirements § 35.4170 describes, EPA requires your group to:

(a) Comply with any reporting requirements in the terms and conditions of the "grant agreement";

(b) Keep complete financial records accurately showing how you used the Federal funds and the match, whether it is in the form of cash or in-kind assistance; and

(c) Comply with any reporting and record keeping requirements in OMB Circular A-122 and 40 CFR part 30.

§ 35.4180 Must my group keep financial records after we finish our TAG?

(a) You must keep TAG financial records for ten years from the date of the final Financial Status Report, or until any audit, litigation, cost recovery, and/or disputes initiated before the end of

the ten-year retention period are settled, whichever, is longer.

(b) At the ten-year mark, you may dispose of your TAG financial records if you first get written approval from EPA.

(c) If you prefer, you may submit the financial records to EPA for safekeeping when you give us the final Financial Status Report.

§ 35.4185 What does my group do with reports our technical advisor prepares for us?

You must send to EPA a copy of each final written product your advisor prepares for you as part of your TAG. We will send them to the local Superfund site information repository(ies) where all site-related documents are available to the public.

Procuring a Technical Advisor or Other Contractor With TAG Funds**§ 35.4190 How does my group identify a qualified technical advisor?**

(a) Your group must select a technical advisor who possesses the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues, relocation issues, redevelopment issues or public health issues as those issues relate to hazardous substance/toxic waste issues, as appropriate (relocation technical advisors may only be hired under certain circumstances, see § 35.4200);

(2) Academic training in a relevant discipline (for example, biochemistry, toxicology, public health, environmental sciences, engineering, environmental law and planning); and

(3) Ability to translate technical information into terms your community can understand.

(b) Your technical advisor for public health issues must have received his or her public health or related training at accredited schools of medicine, public health, or accredited academic institutions of other allied disciplines (for example, toxicology) and must be associated with such institutions.

(c) Your group should select a technical advisor who has experience working on hazardous or toxic waste problems, relocation, redevelopment or public health issues, and communicating those problems and issues to the public.

§ 35.4195 Are there certain people my group cannot select to be our technical advisor, grant administrator, or other contractor under the grant?

Your group may not hire the following people:

(a) The person(s) who wrote the specifications for the "contract" and/or who helped screen or select the contractor;

(b) In the case of a technical advisor, anyone doing work for the Federal or State government or any other entity at the same NPL site for which your group is seeking a technical advisor; and

(c) Anyone who is on the List of Parties Excluded from Federal Procurement or NonProcurement Programs.

§ 35.4200 What restrictions apply to contractors my group procures for our TAG?

When procuring contractors your group:

(a) Cannot award cost-plus-percentage-of-cost contracts;

(b) Must award only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract; and

(c) Can only hire a relocation technical advisor when EPA is seriously considering permanent relocation as part of the site remedy (for example, permanent relocation is one of several remedial alternatives being considered in the feasibility study).

§ 35.4205 How does my group procure a technical advisor or any other contractor?

When procuring contractors your group must also:

(a) Provide opportunity for all qualified contractors to compete for your work (see § 35.4210);

(b) Keep written records of the reasons for all your contracting decisions;

(c) Make sure that all costs are reasonable in a proposed contract;

(d) Inform EPA of any proposed contract over \$1,000.00;

(e) Provide EPA the opportunity to review a contract before your group awards or amends it;

(f) Perform a "cost analysis" to evaluate each element of a contractor's cost to determine if it is reasonable, allocable and allowable for all contracts over \$25,000; and

(g) Comply with the small business enterprises (SBE), minority-owned business enterprises, women-owned business enterprise requirements in 40 CFR 30.44(b) which outlines steps your group must take to make positive efforts to use small businesses, minority-owned

firms and women's business enterprises. These steps generally say:

(1) Make sure to use small businesses, minority-owned firms, and women's businesses as often as possible.

(2) Make information on upcoming opportunities available and plan time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) When procuring firms for larger contracts, consider whether those firms intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of those to handle on its own.

(5) Use the services and help, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(6) If your contractor awards a contract, require the contractor to take the steps in 40 CFR 30.44(b) as summarized in paragraphs (g)(1) through (5) of this section.

§ 35.4210 Must my group solicit and document bids for our procurements?

(a) The steps needed to be taken to procure goods and/or services depends on the amount of the proposed procurement:

If the aggregate amount of the . . .	Then your group . . .
(1) purchase is \$1,000 or less	may make the purchase as long as you make sure the price is reasonable; no oral or written bids are necessary.
(2) proposed contract is over \$1,000 but less than \$25,000	must obtain and document oral or written bids from two or more qualified sources.
(3) proposed contract is \$25,000 to \$100,000	must: (i) Solicit written bids from three or more sources who are willing and able to do the work; (ii) Provide potential sources in the scope of work to be performed and the criteria your group will use to evaluate the bids; (iii) Objectively evaluate all bids; and (iv) Notify all unsuccessful bidders.
(4) proposed contract is greater than \$100,000	must follow the procurement regulations in 40 CFR Part 30 (these regulations outline the standards for your group to use when contracting for services with Federal funds; they also contain provisions on: codes of conduct for the award and administration of contracts; competition; procurement procedures; cost and price analysis; procurement records; contract administration; and contracts generally).

(b) Your group must not divide any procurements into smaller parts to get under any of the dollar limits in paragraph (a) of this section.

§ 35.4215 What if my group can't find an adequate number of potential sources for a technical advisor or other contractor?

In situations where only one adequate bidder can be found, your group may request written authority from the EPA award official to contract with the sole bidder.

§ 35.4220 How does my group ensure a prospective contractor does not have a conflict of interest?

Your group must require any prospective contractor on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with all PRPs at the site, with PRP parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement includes past and anticipated financial and business relationships, and services related to any proposed or pending litigation, with such parties;

(b) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(c) A statement that it will disclose to you immediately any such information discovered after submission of its bid or after award.

§ 35.4225 What if my group decides a prospective contractor has a conflict of interest?

If, after evaluating the information above, your group decides a prospective contractor has a significant conflict of interest that cannot be avoided or otherwise resolved, you must exclude him or her from consideration.

§ 35.4230 What are my group's contractual responsibilities once we procure a contractor?

For contractual responsibilities, your group, not EPA:

(a) Is responsible for resolving all contractual and administrative issues arising out of contracts you enter into under a TAG; you must establish a procedure for resolving such issues with your contractor which complies with the provisions of 40 CFR 30.41. These provisions say your group, not EPA, is responsible for settling all issues related to decisions you make in procuring advisors or other contractors with TAG funds; and

(b) Must ensure your contractor(s) perform(s) in accordance with the terms and conditions of the contract.

§ 35.4235 Are there specific provisions my group's contract(s) must contain?

Your group must include the following provisions in each of its contracts:

(a) Statement of work;
(b) Schedule for performance;
(c) Due dates for deliverables;
(d) Total cost of the contract;
(e) Payment provisions;
(f) The following clauses from 40 CFR part 30, appendix A, which your EPA regional office can provide to you:

(1) Equal Employment Opportunity; and

(2) Suspension and Debarment;

(g) The following clauses from 40 CFR 30.48:

(1) Remedies for breaches of contract (40 CFR 30.48(a));

(2) Termination by the recipient (40 CFR 30.48(b));

(3) Access to records (40 CFR 30.48(d)); and

(h) Provisions that require your contractor(s) to keep the following detailed records as § 35.4180 requires for ten years after the end of the contract:

(1) Acquisitions;

(2) Work progress reports;

(3) Expenditures; and

(4) Commitments indicating their relationship to established costs and schedules.

Requirements for TAG Contractors

§ 35.4240 What provisions must my group's TAG contractor comply with if it subcontracts?

A TAG contractor must comply with the following provisions when awarding subcontracts:

(a) Section 35.4205 (b) pertaining to documentation;

(b) Section 35.4205 (c) and (f) pertaining to cost;

(c) Section 35.4195 (c) pertaining to suspension and debarment;

(d) Section 35.4200 (b) pertaining to responsible contractors;

(e) Section 35.4205 (g) pertaining to disadvantaged business enterprises;

(f) Section 35.4200 (a) pertaining to unallowable contracts;

(g) Section 35.4235 pertaining to contract provisions; and

(h) Cost principles in 48 CFR part 31, the Federal Acquisition Regulation, if the contractor and subcontractors are profit-making organizations.

Grant Disputes, Termination, and Enforcement

§ 35.4245 How does my group resolve a disagreement with EPA regarding our TAG?

The regulations at 40 CFR 30.63 and 31.70 will govern disputes except that,

before you may obtain judicial review of the dispute, you must have requested the Regional Administrator to review the dispute decision official's determination under 40 CFR 31.70(c), and, if you still have a dispute, you must have requested the Assistant Administrator for the Office of Solid Waste and Emergency Response to review the Regional Administrator's decision under 40 CFR 31.70(h).

§ 35.4250 Under what circumstances would EPA terminate my group's TAG?

(a) EPA may terminate your grant if your group materially fails to comply with the terms and conditions of the TAG and the requirements of this subpart.

(b) EPA may also terminate your grant with your group's consent in which case you and EPA must agree upon the termination conditions, including the effective date as 40 CFR 30.61 describes.

§ 35.4255 Can my group terminate our TAG?

Yes. Your group may terminate your TAG by sending EPA written notification explaining the reasons for the termination and the effective date.

§ 35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?

EPA may take one or more of the following actions, under 40 CFR 30.62, depending on the circumstances:

(a) Temporarily withhold advance payments until you correct the deficiency;

(b) Not allow your group to receive reimbursement for all or part of the activity or action not in compliance;

(c) Wholly or partly "suspend" your group's award;

(d) Withhold further awards (meaning, funding) for the project or program;

(e) Take enforcement action;

(f) Place special conditions in your grant agreement; and

(g) Take other remedies that may be legally available.

Closing Out a TAG

§ 35.4265 How does my group close out our TAG?

(a) Within 90 calendar days after the end of the approved project period of the TAG, your group must submit all financial, performance and other reports as required by § 35.4180. Upon request from your group, EPA may approve an extension of this time period.

(b) Unless EPA authorizes an extension, your group must pay all your bills related to the TAG by no later than 90 calendar days after the end of the funding period.

(c) Your group must promptly return any unused cash that EPA advanced or paid; OMB Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables, governs unreturned amounts that become delinquent debts.

Other Things You Need To Know

§ 35.4270 Definitions.

Advance payment means a payment made to a recipient before "outlays" are made by the recipient.

Affected means subject to an actual or potential health, economic or environmental threat. Examples of affected parties include people:

- (1) Who live in areas near NPL facilities, whose health may be endangered by releases of hazardous substances at the facility; or
- (2) Whose economic interests are threatened or harmed.

Affiliated means a relationship between persons or groups where one group, directly or indirectly, controls or has the power to control the other, or, a third group controls or has the power to control both. Factors indicating control include, but are not limited to:

- (1) Interlocking management or ownership;
- (2) Shared facilities and equipment; and
- (3) Common use of employees.

Allocable cost means a cost which is attributable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

- (1) Is incurred specifically for the award;
- (2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received; or
- (3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

Allowable cost means those project costs that are: eligible, reasonable, allocable to the project, and necessary to the operation of the organization or the performance of the award as provided in the appropriate Federal cost principles, in most cases OMB Circular A-122 (see 40 CFR 30.27), and approved by EPA in the assistance agreement.

Applicant means any group of people that files an application for a TAG.

Application means a completed formal written request for a TAG that you submit to a State or the EPA on EPA form SF-424, Application for Federal

Assistance (Non-construction Programs).

Award document or grant agreement is the legal document that transfers money or anything of value to your group to accomplish the purpose of the TAG project. It specifies funding and project periods, EPA's and your group's budget share of "eligible costs," a description of the work to be accomplished, and any additional terms and conditions that may apply to the grant.

Award Official means the EPA official who has the authority to sign grant agreements.

Budget means the financial plan for spending all Federal funds and your group's matching share funds (including in-kind contributions) for a TAG project that your group proposes and EPA approves.

Cash contribution means actual non-Federal dollars, or Federal dollars if expressly authorized by Federal statute, that your group spends for goods, services, or personal property (such as office supplies or professional services) used to satisfy the matching funds requirement.

Contract means a written agreement between your group and another party (other than a public agency) for services or supplies necessary to complete the TAG project. Contracts include contracts and subcontracts for personal and professional services or supplies necessary to complete the TAG project.

Contractor means any party (for example, a technical advisor) to whom your group awards a contract.

Cost analysis is the evaluation of each element of cost to determine whether it is reasonable, allocable, and allowable.

Eligible cost is a cost permitted by statute, program guidance or regulations.

EPA means the Environmental Protection Agency.

Federal facility means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

Funding period (previously called a "budget period") means the length of time specified in a grant agreement during which your group may spend Federal funds. A TAG project period may be comprised of several funding periods.

Grant agreement or award document is the legal document that transfers money or anything of value to your group to accomplish the purpose of the TAG project. It specifies funding and project periods, EPA's and your group's budget share of eligible costs, a description of the work to be accomplished, and any additional terms

and conditions that may apply to the grant.

In-kind contribution means the value of a non-cash contribution used to meet your group's matching funds requirement in accordance with 40 CFR 30.23. An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to the EPA-funded project.

Letter of intent (LOI) means a letter addressed to your EPA regional office which clearly states your group's intention to apply for a TAG. The letter tells EPA the name of your group, the Superfund site(s) for which your group intends to submit an application, and the name of a contact person in the group including a mailing address and telephone number.

Matching funds means the portion of allowable project cost contributed toward completing the TAG project using non-Federal funds or Federal funds if expressly authorized by Federal statutes. The match may include in-kind as well as cash contributions.

National Priorities List (NPL) means the Federal list of priority hazardous substance sites, nationwide. Sites on the NPL are eligible for long-term cleanup actions financed through the Superfund program.

Operable unit means a discrete action defined by EPA that comprises an incremental step toward completing site cleanup.

Operation and maintenance means the steps taken after site actions are complete to make certain that all actions are effective and working properly.

Outlay means a charge made to the project or program that is an allowable cost in terms of costs incurred or in-kind contributions used.

Potentially responsible party (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters or generators) potentially responsible under sections 106 or 107 of CERCLA (42 U.S.C. 9606 or 42 U.S.C. 9607) for the contamination problems at a Superfund site.

Project manager means the person legally authorized to obligate your group to the terms and conditions of EPA's regulations and the grant agreement, and designated by your group to serve as its principal contact with EPA.

Project period means the period established in the TAG award document during which TAG money may be used. The project period may be comprised of more than one funding period.

Reasonable cost means a cost that, in its nature or amount, does not exceed that which would be incurred by a prudent person under the circumstances

prevailing at the time the decision was made to incur the costs.

Recipient means any group that has been awarded a TAG.

Record of decision (ROD) means a public document that explains the cleanup method that will be used at a Superfund site; it is based on technical data gathered and analyses performed during the remedial investigation and feasibility study, as well as public comments and community concerns.

Remedial investigation/feasibility study (RI/FS) means the phase during which EPA conducts risk assessments and numerous studies into the nature and extent of the contamination on site, and analyzes alternative methods for cleaning up a site.

Response action means all activities undertaken by EPA, other Federal agencies, States, or PRPs to address the problems created by hazardous substances at an NPL site.

Start of response action means the point in time when funding is set-aside by either EPA, other Federal agencies, States, or PRPs to begin response activities at a site.

Suspend means an action by EPA that temporarily withdraws Federal

sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension.

§ 35.4275 Where can my group get the documents this subpart references (for example, OMB circulars, other subparts)?

EPA Headquarters and the regional offices that follow have the documents this subpart references available if you need them:

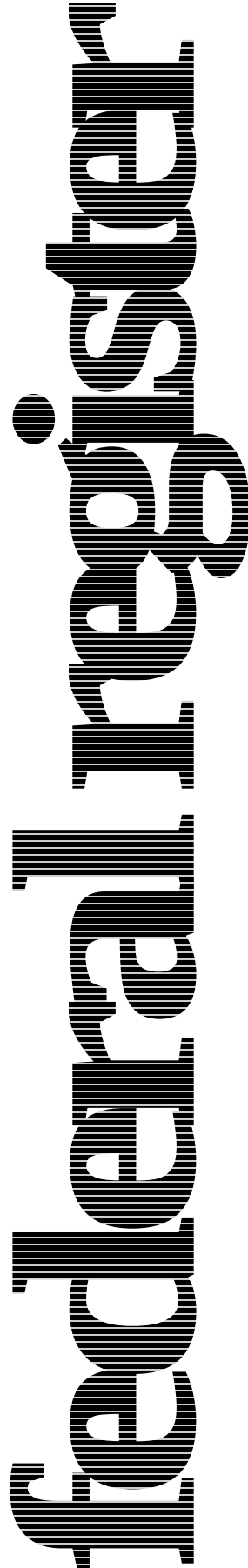
- (a) TAG Coordinator or Grants Office, U.S. EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203.
- (b) TAG Coordinator or Grants Office, U.S. EPA Region II, 290 Broadway, New York, NY 10007-1866.
- (c) TAG Coordinator or Grants Office, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19106.
- (d) TAG Coordinator or Grants Office, U.S. EPA Region IV, Atlanta Federal

Center, 61 Forsyth Street, Atlanta, GA 30303.

- (e) TAG Coordinator or Grants Office, U.S. EPA Region V, Metcalfe Federal Building, 77 W. Jackson Blvd., Chicago, IL 60604.
- (f) TAG Coordinator or Grants Office, U.S. EPA Region VI, Wells Fargo Bank, Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733.
- (g) TAG Coordinator or Grants Office, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.
- (h) TAG Coordinator or Grants Office, U.S. EPA Region VIII, 999 18th Street, Suite #500, Denver, CO 80202-2466.
- (i) TAG Coordinator or Grants Office, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
- (j) TAG Coordinator or Grants Office, U.S. EPA Region X, 1200 6th Avenue, Seattle, WA 98101.
- (k) National TAG Coordinator, U.S. EPA Mail Code: 5204-G, 401 M Street SW, Washington, DC 20460.

[FR Doc. 99-20871 Filed 8-23-99; 8:45 am]

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Tuesday
August 24, 1999

Part IV

**Department of
Education**

34 CFR Part 685

**William D. Ford Federal Direct Loan
Program; Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840-AC68

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. These amendments are a result of recently enacted changes to the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998. These final regulations remove references to the phase-in of the Direct Loan Program, update the loan interest rate formulas, and reflect the Secretary's authority to charge reduced loan fees on Direct Subsidized and Direct Unsubsidized Loans.

DATES: These regulations are effective August 24, 1999.

FOR FURTHER INFORMATION CONTACT:

Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., ROB-3, Room 3045, Washington, DC 20202-5346. Telephone: (202) 708-8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiocassette, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations address changes made to the Higher Education Amendments of 1998 (1998 Amendments) (Pub. L. 105-244) that affect the Direct Loan Program. On June 16, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the Direct Loan Program in the **Federal Register** (64 FR 32358). In the preamble to the NPRM, the Secretary discussed on pages 32359 and 32360 the following proposed changes:

- Amending § 685.202(a) to include the interest rate formulas that apply to Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans that are first disbursed on or after October 1, 1998 and before July 1, 2003, and to Direct Consolidation Loans that are first disbursed on or after July 1, 1998.

- Amending § 685.202(c) to reflect that the Secretary charges a loan fee on a Direct Subsidized or Direct Unsubsidized Loan not to exceed four percent of the principal amount of the loan.

- Amending § 685.211 to allow the Secretary to charge borrowers reduced interest rates to encourage on-time loan repayment.

- Moving the school selection provisions in § 685.401 to § 685.400 and removing § 685.401 from the Direct Loan Program regulations to delete all references to the phase-in of the Direct Loan Program and the transition from the Federal Family Education Loan (FFEL) Program to the Direct Loan Program.

The amendments to §§ 685.202(a), 685.400, and 685.401 reflect statutory changes that became effective on October 1, 1998, in accordance with section 3 of the 1998 Amendments. The amendments to § 685.202(c) reflect the Secretary's interpretative rule with respect to the 1998 Amendments that became effective upon its announcement in the NPRM published on June 16, 1999.

In the preamble to the NPRM, the Secretary discussed amending § 685.211 to allow the Secretary to charge borrowers reduced interest rates to encourage on-time loan repayment. This proposed amendment is not included in these final regulations. Section 455(b)(7) of the HEA includes certain requirements that must be met before final regulations on this subject are published. For example, a report from the Office of Management and Budget (OMB) on the cost neutrality of a proposed repayment incentive must be submitted to Congress not less than 60 days prior to publishing final regulations. At this time, the OMB report has not been submitted to Congress. The Secretary will publish final regulations for the repayment incentive provision once the Department has complied with the applicable statutory requirements.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, several parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Interest Rates (§ 685.202(a)(3)(i)(E) and (ii)(D))

Comments: Commenters representing guaranty agencies, lenders, and servicers in the FFEL Program

submitted joint and individual comments in which they requested that the Secretary provide further clarification on the calculation of the interest rate on a Direct Consolidation Loan for which the consolidation application is received by the Secretary on or after February 1, 1999 and before July 1, 2003. The commenters stated that there is confusion as to whether the Direct Consolidation Loan interest rate calculation is the same as the interest rate calculation for consolidation loans made under the FFEL Program. The commenters also repeated the belief they stated during negotiated rulemaking that the repayment period interest rate, rather than the in-school, grace, or deferment period interest rate, always should be used to calculate the weighted average interest rate on consolidation loans made under the Direct Loan and FFEL programs. Further, the commenters believe that Congress intended for the repayment period interest rate to be used in all cases.

Discussion: As provided in section 455(b)(6)(D) of the HEA, the interest rate on a Direct Consolidation Loan for which the consolidation application is received by the Secretary on or after February 1, 1999 and before July 1, 2003 is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, not to exceed 8.25 percent. Section 427A(k)(4) of the HEA establishes the same interest rate formula for consolidation loans made under the FFEL Program for which the consolidation application is received by the lender on or after October 1, 1998 and before July 1, 2003.

The Secretary believes that in both the Direct Loan and FFEL programs, the weighted average interest rate should be calculated based on the interest rates that apply to the loans being consolidated at the time the loan holders complete the verification certificates. An interest rate that is lower than the repayment period rate applies to most subsidized and unsubsidized Direct Loan and FFEL program loans during the in-school, grace, and deferment periods. If, for example, a loan is in a grace period at the time the loan holder completes the verification certificate, the lower grace period interest rate would be used in the calculation of the weighted average interest rate on the consolidation loan.

To do as the commenters have suggested and always use the repayment period interest rate would mean that, in cases in which the loan being consolidated is in an in-school, grace, or deferment period, the weighted average

interest rate would be based on an interest rate that may never apply to the loan and is speculative since it would not be known when that loan would enter repayment. We know of no legal basis to support the commenters' approach and do not agree that this was the intent of Congress.

Change: None.

Loan Fees (§ 685.202(c)(1))

Comments: A number of commenters representing individual schools and associations representing schools supported the Secretary's proposed rule that would reflect the Secretary's authority to charge a loan fee not to exceed four percent on a Direct Subsidized or Direct Unsubsidized Loan. These commenters agreed with the Secretary's interpretation of the statute as discussed in the NPRM.

A number of commenters representing guaranty agencies, lenders, and services in the FFEL Program submitted joint and individual comments in which they questioned the Secretary's legal authority for proposing to amend the regulations to clarify that the Secretary may charge a loan fee not to exceed four percent on a Direct Subsidized or a Direct Unsubsidized Loan. The commenters argued that such a proposal was not consistent with the HEA.

Discussion: The Secretary continues to believe that he has the legal authority to charge a loan fee of less than four percent on the same basis as lenders in the FFEL Program. The Secretary appreciates the support provided by the commenters representing schools.

The loan fee in the Direct Loan Program is the equivalent of the three percent loan origination fee and the one percent insurance premium charged to borrowers in the FFEL Program. Prior to enactment of the 1998 Amendments, the Secretary charged borrowers the full four percent fee. This practice was generally consistent with the practice in the FFEL Program. Some Lenders charged some borrowers less than the full four percent but the HEA did not control this practice and lenders had complete discretion to offer a lower fee to some borrowers and not to others.

The 1998 Amendments made a significant change in the lender's authority to charge a lower loan origination fee to some borrowers and not others.

The 1998 Amendments made a significant change in the lender's authority to charge a lower loan origination fee to some borrowers and not others. The 1998 Amendments modified section 438(c)(2) of the HEA to establish, for the first time, legally binding standards that must be met for

a lender to reduce loan origination fees charged to borrowers in the FFEL Program. The HEA now requires lenders to provide reduced loan origination fees to all borrowers or to borrowers who demonstrate a greater financial need. The negotiated rulemaking committee reached consensus on proposed regulations that established national standards governing the reduction of loan fees. The creation of these standards under the HEA make a reduced loan fee a term and condition of the borrower's FFEL loans. A borrower now has a legal basis to insist on equal treatment from the lender on loan fees, including a lower fee, if the lender offers a lower fee to any other borrowers.

Under section 455(a) of the HEA, Direct Loan Program loans made to borrowers under the HEA "shall have the same terms, conditions, and benefits" as FFEL Program loans unless otherwise specified. As discussed above, the 1998 Amendments changed the HEA to modify the terms, conditions, and benefits of FFEL Program loans in regard to the charging of loan fees to borrowers. The Secretary believes that, under section 455(a) of the HEA, Direct Loan borrowers are entitled to a reduction in the loan fee under the same conditions as FFEL Program borrowers. Thus, the Secretary will provide a lower loan fee in the Direct Loan Program under the same conditions that govern a lender's authority to charge a reduced loan fee in the FFEL Program.

Some commenters representing lenders, guaranty agencies, and servicers in the FFEL Program argued that the authority to provide a reduced loan fee does not apply to the Direct Loan Program because section 455(c) of the HEA states that the Secretary "shall" charge a loan fee of four percent. These commenters, however, ignore the fact that their interpretation would cause a conflict between the language in section 455(c) and the requirement in section 455(a) that loans made under the Direct Loan Program "shall" have the same terms, conditions, and benefits as loans made under the FFEL Program. The commenters' interpretation would give borrowers in the FFEL Program a reduced loan fee as a term of their loan, while denying the same opportunity to borrowers in the Direct Loan Program. The Secretary is required to interpret the statute as a whole to give meaning to all statutory provisions. The Secretary's interpretation gives meaning to the requirements in both sections 455(a) and 455(c). The Secretary also notes that nothing in the 1998 Amendments or its legislative history

indicates that Congress intended to deny the opportunity for reduced loan fees provided to FFEL Program borrowers to Direct Loan Program borrowers. Accordingly, the Secretary declines to adopt the interpretation proposed by these commenters.

In commenting on the proposed rule, some commenters argued that the interpretation was inconsistent with prior interpretations of the word "shall" by the Secretary in other contexts. The examples provided by these commenters are not inconsistent with the Secretary's proposed rule in this case. In interpreting statutory language the Secretary is required to interpret the statute as a whole. In other circumstances, the Secretary has interpreted the word "shall" as denying any discretion to the Secretary when the rest of the statute does not support any other approach on a particular issue. As noted above, however, in this case, the Secretary believes that the statute as a whole supports the interpretation reflected in these regulations.

The commenters representing lenders, guaranty agencies, and servicers in the FFEL Program also argued that the Secretary should only implement a reduced loan fee in the Direct Loan Program when the HEA is changed to provide for a reduced loan fee in both programs. These comments, however, are based on a misunderstanding of the Secretary's position. The proposed rule simply applies the same new statutory provision governing reduced loan fees to borrowers in the Direct Loan Program that now applies to borrowers in the FFEL Program under section 438(c) (2) of the HEA. Thus, the Secretary's interpretation and proposed rule results in equal treatment of borrowers in both programs. In contrast, failing to apply the new rule to the Direct Loan Program would deny Direct Loan borrowers an opportunity for a reduced loan fee that is now guaranteed by statute in the FFEL Program.

In addition, we note that any statutory reduction in the fee would benefit the lender, not necessarily the borrower. The lender is required to pay the fee in the FFEL Program to the Secretary and may choose to pass the fee on to the borrower as permitted by section 438(b)(2) of the HEA. Competition in the FFEL Program has already led many lenders to offer borrowers reduced loan fees, which in turn reduces the lenders' revenues from those borrowers. Reducing the fee in the statute would simply increase the lender's profits by reducing the fee the lender is required to pay without necessarily reducing fees charged to borrowers.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM on page 32360.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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<http://www.access.gpo.gov/nara/index.html>

(Catalog of Federal Domestic Assistance Number 84.268 William D. Ford Federal Direct Loan Program.)

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

Dated: August 13, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending part 685 as follows:

**PART 685—WILLIAM D. FORD
FEDERAL DIRECT LOAN PROGRAM**

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

2. Section 685.202 is amended by revising paragraphs (a) and (c) (1) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest—(1) Interest rate for Direct Subsidized Loans and Direct*

Unsubsidized Loans. (i) *Loans first disbursed before July 1, 1995.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(ii) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* (A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior

to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(iii) *Loans first disbursed on or after July 1, 1998.* (A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(2) *Interest rate for Direct PLUS Loans.* (i) *Loans first disbursed before July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(ii) *Loans first disbursed on or after July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(3) *Interest rate of Direct Consolidation Loans.* (i) *Interest rate for Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.* (A) *Loans first disbursed before July 1, 1995.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(i) of this section.

(B) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(ii) of this section.

(C) *Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is*

made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998. The interest rate is the rate established for District Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(iii) of this section.

(D) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(E) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(ii) *Interest rate for Direct PLUS Consolidation Loans.* (A) *Loans first disbursed before July 1, 1998.* The interest rate is the rate established for

Direct PLUS Loans in paragraph (a)(2)(i) of this section.

(B) *Loans for which the first disbursement is made on or after July 1, 1998 and prior to October 1, 1998, and loans for which the disbursement is made on or after October 1, 1998 for which the consolidation application was received by the Secretary before October 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(D) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one

percent, but does not exceed 8.25 percent.

* * * * *

(c) * * *

(1)(i) Charges a borrower a loan fee not to exceed four percent of the principal amount of the loan on a Direct Subsidized or Direct Unsubsidized Loan; and

(ii) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct PLUS Loan.

* * * * *

3. Section 685.400 is amended by adding a new paragraph (d) to read as follows:

§ 685.400 School participation requirements.

* * * * *

(d) The Secretary selects schools to participate in the Direct Loan Program from among those that apply to participate and meet the requirements in paragraphs (a)(1), (b), and (c) of this section.

§ 685.401 [Removed]

4. Section 685.401 is removed and reserved.

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Vol. 64, No. 163

Tuesday, August 24, 1999

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FEDERAL REGISTER PAGES AND DATES, AUGUST

41765-41998.....	2
41999-42264.....	3
42265-42578.....	4
42579-42822.....	5
42823-43042.....	6
43043-43254.....	9
43255-43598.....	10
43599-43896.....	11
43897-44100.....	12
44101-44396.....	13
44397-44642.....	16
44643-44816.....	17
44817-45148.....	18
45149-45406.....	19
45407-45858.....	20
45859-46110.....	23
46111-46256.....	24

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	102.....	43043
Proclamations:	105.....	43043
7103 (See Proc.	112.....	43043
7214).....	113.....	43043, 45419
42265	116.....	43043
7202 (See Proc.	124.....	43043
7214).....	318.....	44644
42265	319.....	44644
7208 (See Proc.	390.....	43902
7214).....	Proposed Rules:	
42265	145.....	43301
Executive Orders:	147.....	43301
12372 (Supplemented		
by EO 13132).....		
43255		
12612 (Revoked by		
EO 13132).....		
43255		
12866 (Supplemented		
by EO 13132).....		
43255		
12875 (Revoked by		
EO 13132).....		
43255		
12924 (See Notice of		
Aug. 10, 1999).....		
44101		
12988 (Supplemented		
by EO 13132).....		
43255		
13083 (Revoked by		
EO 13132).....		
43255		
13095 (Revoked by		
EO 13132).....		
43255		
13132.....		
43255		
13133.....		
43895		
13134.....		
44639		

10 CFR		
31.....	42269	
50.....	42823	
76.....	44645	
420.....	46111	
Proposed Rules:		
30.....	45900	
35.....	45907	
40.....	45900	
50.....	44137, 44860, 45900,	
	45908, 45911	
70.....	45900, 45911	
72.....	45918, 45920, 45923	
709.....	45062	
710.....	44433, 45062	
711.....	45062	

11 CFR		
110.....	42579	
9004.....	42579	
9034.....	42579	
9036.....	42584	

12 CFR		
201.....	41765	
602.....	41770, 45589	
612.....	43046	
614.....	43046, 43049	
616.....	43049	
618.....	43046, 43049	
621.....	43049	
905.....	44103	

Proposed Rules:		
6.....	42288	
354.....	43103	
505.....	44634	
915.....	45461	
931.....	42858	
932.....	42619	
944.....	45461	
981.....	43298	
984.....	45208	
1106.....	42860	
3419.....	42576	

13 CFR		
120.....	44109	
Proposed Rules:		
120.....	43636	

14 CFR		
4.....	43599	
25.....	44817	
27.....	43016, 45092, 46230	
29.....	43016, 45336, 46230	

39 41775, 41776, 41778,
42007, 42275, 42824, 43050,
43051, 43053, 43056, 43058,
43060, 43061, 43905, 44110,
44112, 44650, 45868, 45870
71 41780, 42276, 42432,
42585, 42591, 42592, 43063,
43065, 43066, 43068, 43069,
43261, 43599, 43907, 44114,
44116, 44117, 44268, 44397,
44398, 44399, 44400, 44578,
44819, 44821, 44823, 44825,
45149, 45421, 45423, 45425,
45426, 45433, 45435, 45436,
46114, 46115, 46116, 46228
91 44814
97 44117, 44119
121 46117
125 46117
254 41781
382 41781

Proposed Rules:

25 43570, 43943, 43946,
45589
39 41841, 41842, 42289,
42291, 42293, 42295, 42296,
42297, 42619, 42622, 42866,
42868, 42870, 43314,
43316, 43318, 43638, 43948,
43950, 43953, 43955, 43957,
43959, 43961, 43963, 43966,
44137, 44446, 44663, 44666,
44667, 45211, 45466, 45468,
45470, 45472, 45474, 45476,
45477, 45481, 45483, 45485,
45487, 45925, 45827, 45929
65 42810
66 42810
71 42300, 42301, 44139,
44140, 44141, 44142, 44144,
44865
93 44145, 46155
107 43321
108 43322
119 45090
121 45090
129 45090
135 45090
147 42810
183 45090

15 CFR

734 42009
738 42009
740 42009
742 42009
902 42826

16 CFR

2 43599
5 42594
Proposed Rules:
1212 42302

17 CFR

9 43254
10 43071
211 45150
12 43071
200 42594
240 42031, 42594
249 42594
Proposed Rules:
4 41843
275 43556

18 CFR

3 44400
341 44400
342 44400
346 44400
357 44400
362 44400
381 44652
385 44400
Proposed Rules:
101 42304
343 43600
357 42623, 45931
385 42307, 43600

19 CFR

4 43262
10 43262
12 43262
24 42031, 43262
102 43262
112 43262
113 43262
118 43262
122 43262
133 43262
141 43262
143 43262
144 43262
148 43262
151 43608
162 43262
173 43262
174 43262, 43608
178 43608
181 43262
Proposed Rules:
12 41851
113 41851, 42872
141 41851

20 CFR

404 46122
Proposed Rules:
375 44670
404 42310
416 42310

21 CFR

101 42277
172 43072, 43908, 44121
173 44122
175 45872
176 46129, 46130
178 44406, 44407, 45873,
46132
310 44653
510 42596
520 42596
522 42596, 42830
524 42831
558 42596, 43909
606 45366
640 45366
878 45155, 46011
1308 42432
1312 42432
Proposed Rules:
101 42315, 45932
207 43114
310 44671
314 42625, 42873
344 44671
600 45383
606 45355, 45375

607 43114, 45340
610 45340
630 45355
640 45340, 45375
660 45340
807 43114
870 43114
888 43114
890 43114

22 CFR

41 42032, 45162
514 44123

24 CFR

108 44094
982 43613

Proposed Rules:

990 43641

26 CFR

1 41783, 43072, 43267,
43613, 43910, 45874
31 42831
301 41783
602 41783, 43072, 43613
801 42834
Proposed Rules:
1 43117, 43323, 43462,
43969, 46155
301 43324
602 43462

28 CFR

505 43880

29 CFR

1610 45164
2570 42246
2575 42246
4044 44128

Proposed Rules:

1910 45098
2520 42792, 42797
2560 42792, 42797
2570 42797

30 CFR

26 43280
29 43280
57 43280
70 43283
71 43283
75 43280, 43286, 45165
90 43283
202 43506
206 43288, 43506
250 42597
914 43911
943 43913

Proposed Rules:

206 45213
913 44674
914 44448
935 42887
936 43327
946 45489

31 CFR

103 45438
538 41784
550 41784
560 41784
590 43924
Proposed Rules
375 42626

32 CFR

199 45453, 46133
505 45877

Proposed Rules:

230 43856
231 43858
231a 43856

33 CFR

100 42278, 42598, 43289
110 42279
117 42033, 42599, 44129,
44131, 44826
160 41794
165 43290, 43291, 44658,
45878, 45879

Proposed Rules:

100 41853
117 44145, 44147, 44148,
44149, 44151

34 CFR

611 42837
685 46252

Proposed Rules:

668 42206, 43024, 43582
673 42206
674 42206
675 42206
676 42206
682 42176, 43024, 43428
685 43428
690 42206

36 CFR**Proposed Rules:**

13 41854
1191 42056

37 CFR**Proposed Rules:**

201 42316

38 CFR

17 44659
21 44660

39 CFR

20 43292, 46141

Proposed Rules:

111 44681

40 CFR

9 42432, 43426, 43936
52 42600, 43083, 44131,
44134, 44408, 44411, 44415,
44417, 45170, 45175, 45178,
45182, 45454
58 42530
62 43091, 44420, 45184,
45880, 46148
63 42764, 45187
86 43936
122 42432, 43426
123 42432, 43426
124 42432, 43426
180 41804, 41810, 41812,
41815, 41818, 42280, 42839,
42846, 44826, 44829, 45885,
45888
186 41818
261 42033
271 41823, 42602, 44836
300 44135
403 42552

501.....42432, 43426	148.....45786	611.....43618	2439.....46092
503.....42552	150.....45786	613.....43618	2442.....46092
745.....42849	801.....42039	614.....43618	2446.....46092
Proposed Rules:		615.....43618	2451.....46092
35.....46234	46 CFR	616.....43618	2452.....46092
51.....45491	10.....42812, 44786	617.....43618	2453.....46092
52.....42629, 42888, 42891, 42892, 44152, 44450, 44451, 44452, 45215, 45216, 45217	12.....42812, 44786	619.....43618	5416.....41834
55.....45217	Proposed Rules:	622.....43618	Proposed Rules:
62.....43123, 45222, 45937, 46165	298.....44152	623.....43618	17.....44100
63.....45116, 45221	535.....42057	625.....43618	536.....44683
97.....43124, 44452	47 CFR	626.....43618	2403.....46104
122.....46058	0.....43618	628.....43618	2409.....46104
123.....46058	1.....42854, 45891	629.....43618	2436.....46104
124.....46058	5.....43094	630.....43618	2439.....46104
130.....46012	43.....43618	631.....43618	2442.....46104
131.....46058	62.....43937	632.....43618	2452.....46104
147.....43329	63.....43095, 43618	633.....43618	2453.....46104
259.....45632	64.....43618, 44423	634.....43618	9903.....45700
261.....42317, 44866, 45632, 46166	69.....45196	636.....43618	
266.....45632	73.....41827, 41828, 41829, 41830, 41831, 41832, 41833, 41834, 42614, 42615, 42616, 43095, 44856, 45893	637.....43618	49 CFR
270.....45632	76.....42617, 42855	639.....43618	171.....45388, 45457
271.....42630, 43331, 44876	90.....43094	641.....43618	172.....44426, 44578, 45388
281.....43336, 46178	101.....45891	642.....43618	173.....44426
300.....41875, 42328, 42630, 43129, 43641, 43970, 44452, 44454, 44456, 44458, 45222, 45224	Proposed Rules:	643.....43618	175.....45388
372.....42222	Ch. 1.....41883, 42635	644.....43618	396.....45207
441.....45072	20.....44682	645.....43618	571.....45895
41 CFR	1.....41884, 41887	646.....43618	Proposed Rules:
301.....43254	2.....41891, 43643	647.....43618	190.....43972
303-70.....45890	15.....41897	649.....43618	385.....44460
Proposed Rules:	32.....44877	652.....43618	390.....44460
51-2.....41882	43.....44877	653.....43618	571.....42330
51-5.....41882	51.....41897	701.....42040	575.....44164
42 CFR	64.....44877	702.....42040	
413.....42610, 44841	68.....41897	703.....42040	50 CFR
498.....43295	73.....41899, 43132, 45500	705.....42040	17.....41835
1001.....42174	76.....41887	706.....42040	20.....45400
Proposed Rules:	78.....41899	709.....42040	300.....44428
Ch. IV.....43338	95.....41891	714.....42040	600.....42286
84.....46178	48 CFR	716.....42040	622.....43941, 45457
43 CFR	202.....43096	719.....42040	635.....42855, 43101
4.....46151	204.....43098, 45196, 45197	726.....42040	648.....42042, 42045, 44661
44 CFR	212.....43098	732.....42040	660.....42286, 42856
61.....41825	213.....43098	733.....42040	679.....41839, 42826, 43295, 43296, 43297, 43634, 43941, 43942, 44431, 44432, 44858, 44859, 45459, 45460, 46153
64.....42852, 44421	217.....43096	734.....42040	Proposed Rules:
206.....41827	219.....45197	749.....42040	17.....41903, 42058, 42250, 43132, 44171, 44470, 44883
Proposed Rules:	252.....43098, 45196	750.....42040	20.....44384
61.....42632	253.....43098, 45197	752.....42040	32.....43834
62.....42633	413.....45894	2401.....46092	36.....43834
45 CFR	453.....45894	2402.....46092	226.....44683
144.....45786	601.....43618	2403.....46092	600.....42335, 43137, 45501
146.....45786	602.....43618	2409.....46092	622.....41905, 42068, 44884
	603.....43618	2413.....46092	635.....44885
	604.....43618	2414.....46092	648.....42071, 43137, 43138, 45938
	605.....43618	2415.....46092	649.....45501
	606.....43618	2416.....46092	660.....44475
	608.....43618	2419.....46092	679.....42080
	609.....43618	2424.....46092	
	610.....43618	2425.....46092	
		2426.....46092	
		2428.....46092	
		2432.....46092	
		2433.....46092	
		2436.....46092	
		2437.....46092	

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 24, 1999**EDUCATION DEPARTMENT**

Postsecondary education:

William D. Ford Federal Direct Loan Program; published 8-24-99

ENERGY DEPARTMENT**Energy Efficiency and Renewable Energy Office**

Energy conservation:

State Energy Program; Special Projects funding; comment request; published 8-24-99

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Idaho; published 6-25-99

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Food additives:

Paper and paperboard components—
Polyethylene glycol monoisotridecyl ether sulfate, sodium salt; published 8-24-99
Tetrakis(hydroxymethyl) phosphonium sulfate; published 8-24-99

INTERIOR DEPARTMENT**Hearings and Appeals Office, Interior Department**

Hearings and appeals procedures:

Indian affairs—
Indian trust estates; summary distributions authority; published 8-24-99

POSTAL SERVICE

International Mail Manual:

Global Package Link service—
Argentina; published 8-24-99

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:

Airbus; published 8-9-99
Bell; published 8-9-99

Boeing; published 8-9-99

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Prunes (dried) produced in California; comments due by 8-30-99; published 7-29-99

AGRICULTURE DEPARTMENT**Cooperative State Research, Education, and Extension Service**

Grants:

Land-grant institutions (1890 and 1862); agricultural research and extension activities; matching funds requirements for formula funds; comments due by 9-3-99; published 8-4-99

AGRICULTURE DEPARTMENT**Food and Nutrition Service**

Food stamp program:

Retail food store definition and program authorization guidance; comments due by 8-30-99; published 6-30-99

AGRICULTURE DEPARTMENT**Operations Office**

Donation of excess research equipment; priorities and administrative guidelines; comments due by 8-30-99; published 7-29-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—
Northeast multispecies; comments due by 9-2-99; published 8-3-99
Spiny dogfish; comments due by 8-30-99; published 6-29-99

ENERGY DEPARTMENT

Assistance to foreign atomic energy activities:

Miscellaneous amendments; comments due by 8-31-99; published 7-2-99

ENERGY DEPARTMENT**Federal Energy Regulatory Commission**

Oil pipelines:

Annual report; technical conference; comments due by 9-1-99; published 8-23-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Washington; comments due by 8-30-99; published 7-30-99

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 9-1-99; published 8-2-99

National priorities list update; comments due by 9-3-99; published 8-4-99

FEDERAL TRADE COMMISSION

Industry guides:

Jewelry, precious metals, and pewter industries; comments due by 8-31-99; published 7-9-99

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:

Historic preference, for use in acquisition of leasehold interests in real property; comments due by 8-30-99; published 6-30-99

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Medical devices:

Mammography quality standards; comments due by 8-31-99; published 6-17-99

HEALTH AND HUMAN SERVICES DEPARTMENT**Health Care Financing Administration**

Medicare and Medicaid:

Hospital participation conditions; patients' rights; comments due by 8-31-99; published 7-2-99

HEALTH AND HUMAN SERVICES DEPARTMENT
National Institutes of Health

Fellowships, internships, training:

National Research Service Awards; comments due by 8-30-99; published 6-30-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

HUD-owned properties:

HUD-acquired single family property disposition—
Officer Next Door Sales Program; comments

due by 8-31-99;
published 7-2-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT**Federal Housing Enterprise Oversight Office**

Federal claims collection; comments due by 8-30-99; published 6-30-99

INTERIOR DEPARTMENT**National Park Service**

Concession contracts; solicitation, award, and administration; comments due by 8-30-99; published 6-30-99

LIBRARY OF CONGRESS**Copyright Office, Library of Congress**

Copyright office and procedures:

Subscription digital transmissions; notice and recordkeeping; comments due by 9-3-99; published 8-4-99

MERIT SYSTEMS PROTECTION BOARD

Freedom of Information Act; implementation; comments due by 8-31-99; published 7-2-99

Privacy Act; implementation; comments due by 8-31-99; published 7-2-99

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Undercapitalized federally-insured credit unions; prompt corrective action system
Correction; comments due by 8-31-99; published 8-17-99

PERSONNEL MANAGEMENT OFFICE

Voting rights program; comments due by 9-2-99; published 8-3-99

SECURITIES AND EXCHANGE COMMISSION

Securities:

Portugal; securities exemption for purposes of trading futures contracts; comments due by 8-30-99; published 7-29-99

TRANSPORTATION DEPARTMENT**Coast Guard**

Drawbridge operations:

New Jersey; comments due by 8-31-99; published 7-6-99

Oregon; comments due by 8-30-99; published 6-29-99

**TRANSPORTATION
DEPARTMENT****Federal Aviation
Administration**

Airworthiness directives:

Airbus; comments due by 9-3-99; published 8-4-99

Boeing; comments due by 8-30-99; published 6-29-99

Eurocopter Deutschland; comments due by 8-30-99; published 7-1-99

Eurocopter France; comments due by 8-30-99; published 6-29-99

Fokker; comments due by 8-31-99; published 8-6-99

Lockheed; comments due by 8-30-99; published 7-14-99

McDonnell Douglas; comments due by 8-30-99; published 7-14-99

Overland Aviation Services; comments due by 9-3-99; published 7-12-99

Precise Flight, Inc.; comments due by 8-30-99; published 7-7-99

Short Brothers; comments due by 9-3-99; published 8-4-99

Stemme GmbH & Co. KG; comments due by 8-30-99; published 7-21-99

Class E airspace; comments due by 8-30-99; published 7-13-99

**TRANSPORTATION
DEPARTMENT****Federal Highway
Administration**

Motor carrier safety standards:

Inspection, repair, and maintenance—

Intermodal container chassis and trailers; comments due by 8-30-99; published 5-5-99

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

H.R. 211/P.L. 106-48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106-49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106-50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106-51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106-52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106-53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106-54

For the relief of Global Exploration and Development Corporation, Kerr-McGee

Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106-55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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