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

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.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AB80

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; FCB Assistance to Associations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: In this final rule, we amend the Farm Credit Administration regulation currently entitled "Additional investments of Farm Credit Banks." We remove the requirement that Farm Credit Banks and agricultural credit banks (collectively referred to as banks) obtain our prior approval before making certain transfers of capital to affiliated associations. Instead, we require banks to take into account certain considerations, and to notify bank shareholders and us, before making such transfers. This amendment benefits banks and their associations because it provides clear guidelines and streamlined procedures for banks to follow when they wish to transfer capital to associations. It also enables them to transfer the capital in a more timely manner.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Dale L. Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444, or

Jennifer A. Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-

5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1999, we proposed an amendment to § 615.5171, which implements the authority of banks to purchase nonvoting stock in and to pay in surplus to affiliated associations (64 FR 8018). In the proposed amendment, we termed such purchases and payments "financial assistance." We proposed replacing the requirement that banks obtain our prior approval before providing financial assistance to affiliated associations with a prior notification requirement. In addition, we defined and provided examples of financial assistance, set forth various considerations that banks must take into account before providing financial assistance, and required banks to notify their shareholders within a reasonable time of providing the assistance. We proposed this amendment as part of our commitment to keep regulatory prior approvals in our regulations only when the Farm Credit Act of 1971, as amended (Act), requires them or when safety and soundness concerns exist.

We received two comments on the proposed amendment. One comment was from the Farm Credit Council (Council), representing its member banks and associations, and the other comment was from CoBank, ACB (CoBank). Both commenters generally supported the proposed amendment, although they both suggested some changes. We considered these comments in making changes to our final rule.

II. Scope of Rule

We change the title of this final regulation to "Transfers of capital from banks to associations." In the rule text, we clarify that the rule applies to "preferential transfers of capital" and "nonroutine transfers of capital." We make these changes from the proposed amendment, which covered "financial assistance," in response to the Council's concern that the term "financial assistance" appears limited to transfers made to assist distressed associations. These changes confirm that the rule applies to all transfers of capital that are preferential or nonroutine, not just to transfers made to assist distressed associations.

III. Definitions in this Regulation

In our proposed amendment, we provided examples of the transfers of capital that the rule covers. The final rule includes these examples and adds definitions of the terms "transfer of capital," "preferential transfer of capital," and "nonroutine transfer of capital."

A. Transfer of Capital

We define "transfer of capital" as any payment or forbearance by a bank to an affiliated association. We add this definition to clarify that the term is not limited to the examples of transfers listed in the regulation. These examples include:

- The purchase of nonvoting stock or participation certificates;
- The payment of cash;
- Debt forgiveness or reduction;
- Interest rate concessions or interest-free loans;
- The transfer of loans at other than fair market value;
- The reduction or elimination of standard loan servicing or other fees; and
- The assumption of operating or other expenses, such as legal fees or insurance premiums.

B. Preferential Transfer of Capital

We define "preferential transfer of capital" as a transfer of capital that is not available to all "similarly situated" affiliated associations. We add this definition in response to a comment by the Council. The Council recommended the term "similarly situated" to recognize that the rule does not apply if a bank treats associations differently based on differences in size, asset quality, management, financial performance, and the like, provided that the different treatment has a rational basis. The rule does apply if a bank treats associations differently when those associations are of similar size, asset quality, management, and financial performance. For example, the rule would apply if a bank made an interest rate concession to one association but not to other associations that were similarly situated.

C. Nonroutine Transfer of Capital

We define "nonroutine transfer of capital" as a transfer of capital that is not available in the ordinary course of business. We add this definition in

response to the Council's concern that, without a definition, the rule might be construed to cover transfers made in the ordinary course of business. This definition clarifies that transfers in the ordinary course of business are not subject to this regulation. Transfers in the ordinary course of business may include bank payment of dividends or patronage, normal adjustments to interest rates, bank equalization of purchased equities, and other similar transfers. Routine transfers are often, but not always, addressed in bylaws, General Financing Agreements, loan participation agreements, and loan servicing agreements.

In the preamble to our proposed amendment, we noted that we would consider loss-sharing agreement transfers to be subject to this rule. The Council expressed concern that we would consider transfers made under "endorsement liability" agreements also to be subject to this rule. The Council pointed out that banks and associations make transfers under these agreements, which allocate risks and benefits associated with specific assets, in the ordinary course of business. We agree, and clarify that the rule covers only those loss-sharing agreement transfers that are based on the troubled financial condition of the association receiving the transfer. Banks make transfers under these latter agreements infrequently, and therefore, these transfers are nonroutine.

IV. Considerations for Preferential or Nonroutine Transfers

In our final regulation, we require that, before authorizing a preferential or nonroutine transfer of capital, a bank's board of directors must take into account and document the following considerations:

- Whether the transfer is in the best interests of all of the bank's shareholders;
- Whether the bank will be able to achieve its capital adequacy and business plan goals after making the transfer; and
- Whether the transfer is the "least cost" alternative available and will enable the association to maintain sound, adequate, and constructive service to borrowers.

These considerations contain changes, made in response to comments from the Council, from our proposed amendment.

The Council provided both general comments on the applicability of the considerations and specific comments on individual considerations. In its general comments, the Council agreed that the first and second considerations

are relevant, and should apply, to all preferential or nonroutine transfers. The Council asserted, however, that the third consideration is relevant, and should apply, only to transfers made to assist distressed associations. We believe, however, that all three of these considerations are relevant to most preferential or nonroutine transfers. In fact, under the current prior approval regulation, we have applied the third consideration in approving transfers to nondistressed associations.

Accordingly, in the final rule we keep these three considerations, with some changes.

Our proposed amendment included a fourth consideration that would have required the bank board to take into account and document whether the transfer was necessary, feasible, and the "least cost" alternative available. We remove the necessary and feasible consideration in the final rule because a bank will make these determinations when it reviews the remaining three considerations. We continue to believe that in deciding whether to make a transfer, a bank should take into account whether that transfer is less costly than other alternatives. Accordingly, we retain "least cost" and move it to the third consideration.

The Council also made two specific comments on individual considerations. First, the Council expressed concern that our proposed consideration requiring the bank board to take into account whether the bank will continue to be financially sound and maintain adequate capital after the transfer was too subjective. We understand this concern, and we change the consideration to require the bank board to take into account whether the transfer will prevent the bank from achieving its capital adequacy or business plan goals, as the Council suggested. We emphasize that the bank's capital adequacy and business plan goals must ensure that the bank will be financially sound and maintain adequate capital.

Second, the Council commented that the proposed consideration requiring the bank board to take into account whether the transfer would "enable the association to maintain service to borrowers" was not objective enough, because it did not set standards on the service. We agree and clarify that the bank must take into account whether the transfer will enable the association to maintain "sound, adequate, and constructive" service in accordance with section 1.1 (a) of the Act.

We point out that the rule requires that a bank board "take into account and document" whether the transfer satisfies these considerations. The rule does not,

however, require that banks satisfy these considerations in all cases. The rule does not, for example, require that the transfer be the "least cost" alternative available, merely that the bank board take into account and document its rationale in selecting the best solution taking into account all considerations, not just this consideration. Moreover, the rule does not set out the manner in which the bank board must take into account and document the considerations. In some cases, board minutes could provide satisfactory documentation of the considerations. Where appropriate, a bank board may decide that a particular consideration is not applicable. If so, the board must document why it believes the consideration is not applicable.

V. Notification Requirements

The final rule requires banks to provide their shareholders and us, before making a preferential or nonroutine transfer, with: (1) A description of the transfer, and (2) the banks' documentation of the three considerations discussed in section IV of this preamble. The proposed amendment would have required banks to notify their shareholders within a reasonable time after the transfer. The Council requested that we require banks to notify shareholders in advance so the shareholders can evaluate transfers before they are made. We agree with the Council and change the rule to include the same notification requirement to shareholders (at least 30 days before a transfer) as we require for notification to us. While a bank may disclose the name of the association receiving a transfer, it need not do so if, after considering the specific circumstances, it determines the disclosure would be inappropriate.

CoBank agreed that when it makes a preferential or nonroutine transfer to an affiliated association, it should be required to notify its affiliated associations. CoBank asserted, however, that when it makes such a transfer it should not be required to notify its approximately 2,000 cooperative association equityholders (including farmer cooperatives, rural utilities and international customers) who borrow under title III of the Act. CoBank argued that such notification would be "somewhat burdensome" and that it would be difficult to explain the transfer to its title III equityholders. We believe, however, that CoBank's title III equityholders have the same interests as association shareholders in being able to evaluate transfers made to affiliated associations. Accordingly, the rule continues to require that all banks (including CoBank) notify all

shareholders before they make preferential or nonroutine transfers to affiliated associations.

List of Subjects in 12 CFR Part 615

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

For the reasons stated in the preamble, amend part 615 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

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

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

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

2. Revise the heading of subpart F to read as follows:

Subpart F—Property, Transfers of Capital, and Other Investments

3. Revise § 615.5171 to read as follows:

§ 615.5171 Transfer of capital from banks to associations.

(a) *Definitions for this section.*

(1) *Transfer of capital* means any payment or forbearance by a Farm Credit Bank or agricultural credit bank (collectively, bank) to an affiliated association, including but not limited to:

- (i) The purchase of nonvoting stock or participation certificates;
- (ii) The payment of cash;
- (iii) Debt forgiveness or reduction;
- (iv) Interest rate concessions or interest-free loans;
- (v) The transfer of loans at other than fair market value;
- (vi) The reduction or elimination of standard loan servicing or other fees; and
- (vii) The assumption of operating or other expenses, such as legal fees or insurance premiums.

(2) *Preferential transfer of capital* means a transfer of capital that is not available to all similarly situated affiliated associations.

(3) *Nonroutine transfer of capital* means a transfer of capital that is not

available in the ordinary course of business.

(b) *Considerations for preferential or nonroutine transfers of capital.* Before authorizing a preferential or nonroutine transfer of capital, a bank board of directors must take into account and document whether:

- (1) The transfer of capital is in the best interests of all of the shareholders;
- (2) The bank will be able to achieve its capital adequacy and business plan goals after making the transfer of capital; and
- (3) The transfer of capital is the “least cost” alternative available and will enable the association to maintain sound, adequate, and constructive service to borrowers.

(c) *Notification requirements.* At least 30 days before making a preferential or nonroutine transfer of capital to an affiliated association, banks must provide shareholders and the Chief Examiner of the Farm Credit Administration with a description of the transfer and the documentation required by paragraph (b) of this section.

Dated: September 8, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99-23966 Filed 9-14-99; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NE-28-AD; Amendment 39-11290, AD 99-19-01]

RIN 2120-AA64

Airworthiness Directives; Teledyne Continental Motors O-470, IO-470, TSIO-470, IO-520, TSIO-520, LTSIO-520, GTSIO-520, IO-550, TSIO-550, and TSIO-550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) O-470, IO-470, TSIO-470, IO-520, TSIO-520, LTSIO-520, GTSIO-520, IO-550, TSIO-550, and TSIO-550 series reciprocating engines. This action supersedes priority letter AD 99-09-17 that currently requires a one-time visual and ultrasonic (UT) inspection of the No. 2 and No. 5 crankshaft cheeks for cracks. All

crankshafts found with a cracked cheek must be replaced with a serviceable crankshaft prior to further flight. This action adds to the applicability TCM GTSIO-520 series engines and additional engines, identified by serial numbers (S/Ns), of currently affected engine series; references a revised service bulletin that clarifies snap ring installation; increases to 500 hours time-in-service (TIS) the cutoff for engines that require a more immediate inspection; and corrects the contact telephone number for TCM. This amendment is prompted by inspection results from the current priority letter AD. The actions specified by this AD are intended to prevent crankshaft failure due to crankshaft cheek cracks, which could result in total engine power loss, in-flight engine failure, and possible forced landing.

DATES: Effective September 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-28-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: “9-ane-adcomment@faa.gov”. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, PO Box 90, Mobile, AL 36601; telephone toll free (888) 200-7565. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone (770) 703-6096, fax (770) 703-6097.

SUPPLEMENTARY INFORMATION: On April 22, 1999, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 99-09-17, applicable to Teledyne Continental Motors (TCM) O-470, IO-470, TSIO-470, IO-520, TSIO-520,

LTSIO-520, IO-550, TSIO-550 and TSIOL-550 series new and rebuilt reciprocating engines, manufactured between January 1, 1998, and December 31, 1998, inclusive, listed by serial number (S/N) in TCM Critical Service Bulletin (CSB) 99-3, dated April 19, 1999, and any other engine from the above series that has had a crankshaft installed that was newly manufactured or rebuilt between January 1, 1998, and December 31, 1998, inclusive. That priority letter AD requires a one-time visual and ultrasonic (UT) inspection of the No. 2 and No. 5 crankshaft cheeks for cracks. All crankshafts found with a cracked cheek must be replaced with a serviceable crankshaft prior to further flight. All inspections must be performed by TCM representatives, since it is a new procedure that only TCM-trained personnel are currently authorized to perform.

Background

Priority letter AD 99-09-17 was prompted by reports of crankshaft failures. Since December 1998, the FAA obtained information regarding seven crankshaft failures. The investigation revealed that the crankshafts failed due to cracks through the No. 2 or No. 5 cheeks. Analysis indicated that the crankshaft failures occurred early in the life of a new or rebuilt crankshaft, from 80 to 175 hours time-in-service (TIS). In addition, one crankshaft was found which had not failed but which had a crack initiation. TCM advised the FAA that all of the fractures were due to a discrepancy in the counterweight bushing installation process, involving a tool that can damage the nitride surface of the cheek sufficient to create a crack which will propagate through the nitride layer. The tool has been repaired. Such a crack will always result in failure of the crankshaft. All of the fractures were grouped around certain crankshaft manufacturing dates between January 1998 and December 1998, inclusive. Review of the manufacturing processes, basic metallurgy, nitride characteristics, dimensional characteristics, and supplier practices did not identify any other contributing causes. That condition, if not corrected, could result in crankshaft failure due to crankshaft cheek cracks, which could result in total engine power loss, in-flight engine failure, and possible forced landing.

Events Since the Priority Letter AD

Since the issuance of that priority letter AD, the FAA received results from the inspections mandated by priority letter AD 99-09-17. One crankshaft was found with a significant crack. This

crankshaft had 340 hours TIS, which is outside the range of the previous known cracks. Since this crack was found outside the hours TIS range of the previous known cracks, the cutoff for engines that require a more immediate inspection has been raised to 500 hours TIS. This additional TIS range should not introduce a significant hardship as approximately 3,000 of the original 3,200 crankshafts have already been inspected.

In addition, the FAA received a report of a TCM GTSIO-520 crankshaft failure. The crack initiated on cheek No. 2, occurring within 45 hours TIS since the crankshaft was rebuilt. Based upon this report, the FAA determined the need to add the TCM GTSIO-520 series engines to the AD's applicability. The GTSIO-520 crankshaft is of a different design, with three cheeks that have counterweights; therefore, three cylinders, three connecting rods, and six counterweights must be removed versus two cylinders, two connecting rods, and four counterweights for the other engines affected. This AD requires inspecting crankshaft cheeks No. 2, 5, and 8 on the geared engines in accordance with TCM CSB 99-6A, dated July 21, 1999.

Also, TCM has published Mandatory Service Bulletin (MSB) 99-3C dated July 27, 1999, that adds additional engines, identified by serial numbers (S/Ns), of currently affected engine series and clarifies snap ring installation.

Finally, this AD corrects the contact telephone number for TCM.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-28-AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

**PART 39—AIRWORTHINESS
DIRECTIVES**

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

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

§ 39.13 [Amended]

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

99-19-01 Teledyne Continental Motors:

Amendment 39-11290. Docket No. 99-NE-28-AD. Supersedes AD 99-09-17.
Applicability: Teledyne Continental Motors (TCM) O-470, IO-470, TSIO-470, IO-520, TSIO-520, LTSIO-520, IO-550, TSIO-550, TSIOL-550, series new and rebuilt engines manufactured between January 1, 1998, and December 31, 1998, listed by serial number (S/N) in TCM Mandatory Service Bulletin (MSB) 99-3C, dated July 27, 1999. Also, GTSIO-520 series engines, listed by S/N in TCM Critical Service Bulletin (CSB) 99-6A dated July 21, 1999. This airworthiness directive (AD) is also applicable to any other TCM O-470, IO-470, TSIO-470, IO-520, TSIO-520, LTSIO-520, IO-550, TSIO-550, TSIOL-550, and GTSIO-520 series engines that were overhauled by facilities other than TCM, and that have had replacement crankshafts installed that were sold individually by TCM and were manufactured or rebuilt between January 1, 1998, and December 31, 1998.

Note 1: Engine S/Ns can be found in logbooks or other maintenance records. For those engines that were overhauled in the field with factory new crankshafts, crankshaft S/Ns should be shown in work orders, log books or other maintenance records.

Note 2: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure due to crankshaft cheek cracks, which could result in total engine power loss, in-flight engine failure, and possible forced landing, accomplish the following:

(a) For those engines listed by S/N on pages 3 through 12 of TCM MSB 99-3C, dated July 27, 1999, or on pages 2 and 3 of TCM CSB 99-6A, dated July 21, 1999, with 500 hours or less time-in-service (TIS) on the effective date of this AD, perform visual and ultrasonic (UT) inspections of the crankshaft for cracks within 10 hours TIS after the effective date of this AD, in accordance with sections A and B of TCM 99-3C, dated July 27, 1999, or for the GTSIO-520 series engines, in accordance with sections A and B of TCM CSB 99-6A dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

Note 3: The engines and crankshafts that are the subject of this AD were manufactured or rebuilt by TCM during 1998. The dates that engines and crankshafts were delivered, however, may not coincide with their dates of manufacture. For the engines identified in paragraphs (a) and (b) of this AD, TCM has already determined which engines have either a new or rebuilt suspect crankshaft installed, and identified those engines by engine S/N. Only for those engines identified in paragraphs (c) and (d) of this AD does crankshaft serial number play a role in determining the need for visual and UT inspections.

Note 4: The engine S/Ns listed in TCM MSB 99-3C and TCM CSB 99-6A contain only the numerical portion of the S/N. Rebuilt engines will have the letter "R" at the end of the six digit numerical portion. This letter "R" should be disregarded and only the six digit numerical sequence should be used for determination of applicability. Only TCM is authorized to rebuild TCM engines and they have not approved any other agency to perform that function.

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same part number (P/N) prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99-3 (previously

CSB 99-3) or CSB 99-6, no further action is required.

(b) For those engines listed by S/N on pages 3 through 12 of MSB 99-3C, dated July 27, 1999, or on pages 2 and 3 of TCM CSB 99-6A dated July 21, 1999, with more than 500 hours TIS on the effective date of this AD, perform visual and UT inspections of the crankshaft for cracks at the next maintenance event, or within 50 hours TIS after the effective date of this AD, whichever comes first, in accordance with sections A and B of TCM MSB 99-3C, dated July 27, 1999, or for the GTSIO-520 series engines, in accordance with sections A and B of TCM CSB 99-6A, dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same P/N prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99-3 (previously CSB 99-3) or CSB 99-6, no further action is required.

(c) For any other engine that was overhauled at a facility other than TCM, and that has a crankshaft installed that was manufactured or rebuilt between January 1, 1998, and December 31, 1998, with 500 hours or less TIS on the effective date of this AD, perform visual and UT inspections of the crankshaft for cracks within 10 hours TIS after the effective date of this AD, in accordance with sections A and B of TCM MSB 99-3C, dated July 27, 1999, or for the GTSIO-520 series engines, in accordance with sections A and B of TCM CSB 99-6A, dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same P/N prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99-3 (previously CSB 99-3) or CSB 99-6, no further action is required.

Note 5: The crankshaft manufacture date may be determined from the crankshaft serial number, which consists of eight characters, arranged as follows:

	Position				
	1	2,3	4,5	6,7	8
Content	Letter A-L representing month of manufacture.	Day of month manufactured.	Year of manufacture	Sequence number of crankshaft manufactured on that day.	Always "N"
Example	C	22	98	05	N

The example crankshaft, with a serial number of "C229805N", indicates a date of manufacture of March 22, 1998.

(d) For any other engine that was overhauled at a facility other than TCM, and that has a crankshaft installed that was manufactured or rebuilt between January 1,

1998, and December 31, 1998, with more than 500 hours TIS on the effective date of this AD, perform visual and UT inspections of the crankshaft for cracks at the next

maintenance event, or within 50 hours TIS after the effective date of this AD, whichever comes first, in accordance with sections A and B of TCM MSB 99-3C, dated July 27, 1999, or for the GTSIO-520 series engines, in accordance with sections A and B of TCM CSB 99-6A dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same P/N prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99-3 (previously CSB 99-3) or CSB 99-6, no further action is required.

(e) After the effective date of this AD, installation of a crankshaft that was manufactured or rebuilt between January 1, 1998, and December 31, 1998, is prohibited, unless it has been inspected and reidentified in accordance with section C of TCM MSB 99-3C, dated July 27, 1999, or, for the GTSIO-520 series engines, in accordance with section C of TCM CSB 99-6A, dated July 21, 1999. These inspections must be performed by TCM.

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

Note 6: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta ACO.

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

(h) The actions required by this AD shall be accomplished in accordance with the following TCM SBs:

Document No.	Page	Date
MSB 99-3C	1-26	July 27, 1999.
Total pages: 26.		
CSB 99-6A	1-13	July 21, 1999.
Total pages: 13.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, PO Box 90, Mobile, AL 36601; telephone toll free (888) 200-7565. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment supersedes priority letter AD 99-09-17, issued April 22, 1999.

(j) This amendment becomes effective on September 30, 1999.

Issued in Burlington, Massachusetts, on August 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99-23125 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-220-AD; Amendment 39-11310; AD 99-19-21]

RIN 2120-AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires repetitive inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers; and corrective actions, if necessary. This amendment also requires repetitive x-ray inspections, cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and installation of new fasteners, which constitutes terminating action for the repetitive inspections required by this AD. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the Federal Aviation

Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 15, 1999 (64 FR 38150). That action proposed to require repetitive inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers; and corrective actions, if necessary. That action also proposed to require cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and installation of new fasteners, which would constitute terminating action for the repetitive inspections. That action also proposed to add repetitive x-ray inspections.

Comments

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

Explanation of Change Made to Final Rule

The FAA has added a note to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 279 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to perform the required detailed visual inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be \$66,960, or \$240 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the required eddy current and x-ray inspections, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be \$100,440, or \$360 per airplane, per inspection cycle.

It will take approximately 42 work hours to accomplish the cold working of the fastener holes, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$400 per airplane. Based on these figures, the cost impact of the cold work required by this AD on U.S. operators is estimated to be \$814,680, or \$2,920 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-19-21 SAAB Aircraft AB: Amendment 39-11310. Docket 98-NM-220-AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers -004 through -159 inclusive; and SAAB 340B series airplanes, manufacturer's serial numbers -160 through -439 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane, accomplish the following:

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Initial and Repetitive Inspections

(a) For Model SAAB SF340A series airplanes with manufacturer's serial numbers

-004 through -159 inclusive: Perform the inspections (detailed visual, eddy current, and x-ray) specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 340-55-033, Revision 04, dated December 1, 1998, to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with the service bulletin, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Thereafter, repeat only the eddy current and x-ray inspections at intervals not to exceed 12,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 22,000 total flight cycles as of the effective date of this AD: Perform an eddy current and an x-ray inspection prior to the accumulation of 22,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 22,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 1,200 flight cycles after the effective date of this AD.

Initial and Repetitive Inspections

(b) For Model SAAB 340B series airplanes with manufacturer's serial numbers -160 through -439 inclusive: Perform the inspections (detailed visual, eddy current, and x-ray) specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 340-55-033, Revision 04, dated December 1, 1998, to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with the service bulletin, at the time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Thereafter, repeat only the eddy current and x-ray inspections at intervals not to exceed 6,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 12,000 total flight cycles as of the effective date of this AD: Perform an eddy current and an x-ray inspection prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 12,000 or more total flight cycles and less than 16,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 16,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(3)(i) and (b)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 1,200 flight cycles after the effective date of this AD.

Corrective Actions

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, either repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent); or accomplish the requirements of paragraph (d) of this AD.

Note 3: Inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers that have been accomplished prior to the effective date of this AD in accordance with Saab Service Bulletin 340-55-033, Revision 03, dated January 22, 1998, are considered acceptable for compliance with the applicable action specified by this AD.

Terminating Action

(d) For all airplanes: Except as provided by paragraph (e) of this AD, accomplish cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and install new fasteners; in accordance with Saab Service Bulletin 340-55-034, dated October 16, 1998; at the time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Accomplishment of this action constitutes terminating action for this AD.

(1) For all airplanes that have accumulated less than 26,000 total flight cycles as of the effective date of this AD: Within 10,000 flight cycles after the effective date of this AD.

(2) For all airplanes that have accumulated 26,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Within 6,000 flight cycles after the effective date of this AD.

(3) For all airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Within 3,000 flight cycles after the effective date of this AD.

(e) If any crack is detected during the accomplishment of paragraph (d) of this AD, and if the service bulletin listed in paragraph (d) of this AD specifies to contact the manufacturer for an appropriate corrective action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, or the LFV (or its delegated agent).

Alternative Method of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraphs (c) and (e) of this AD, the actions shall be done in accordance with Saab Service Bulletin 340-55-033, Revision 04, dated December 1, 1998; and Saab Service Bulletin 340-55-034, dated October 16, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Swedish airworthiness directives 1-110R2, dated December 7, 1998, and 1-133, dated October 20, 1998.

(i) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 1, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-23352 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-249-AD; Amendment 39-11313; AD 99-19-26]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300-600 series airplanes, that currently requires inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. This amendment establishes repetitive inspection intervals for certain inspections required by the existing AD. This amendment also adds a requirement to modify Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98-03-06, amendment 39-10298 (63 FR 5224, February 2, 1998), which is applicable to certain Airbus Model A300 and A300-600 series airplanes, was published in the **Federal Register** on November 23, 1998 (63 FR 64661). The action proposed to continue to require inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That action also proposed to establish repetitive inspection intervals for certain inspections required by the existing AD. That action also proposed to add a

requirement to modify Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter, an operator, expresses no objection to the inspections or modification required by the proposed AD.

Request to Remove Requirement for Terminating Modification

One commenter, the manufacturer, states that, according to the damage-tolerance methodology of design and evaluation, safety is maintained by adequate repetitive inspections because crack initiation and propagation can be anticipated with sufficient precision to allow inspection programs to safely detect and repair metal fatigue or other structural damage before safety is affected (without accomplishing modifications). Therefore, the commenter does not see the need to mandate structural modifications in general, or in the specific case of this proposed AD.

The commenter notes that if inspection results are considered in specific cases to be unreliable due to access difficulty or human factor considerations, the Airworthiness Assurance Working Group (AAWG) of the Aviation Rulemaking Advisory Committee has established three major criteria for determining when a terminating modification should be mandated. The commenter further states that these criteria were developed industry-wide in the context of general aging aircraft activities, but do apply in general to aircraft structures and provide adequate guidance for such a determination. The commenter requests that general guidelines for mandating structural modifications be established in line with the criteria already set forth by the AAWG.

The FAA does not agree that the damage tolerance methodology, and the continuance of long-term repetitive inspections, provide adequate continued operational safety in many cases. Following a structure-related accident in 1988, FAA policy transitioned to a more stringent assessment of whether modifications should be mandated, and worked with the AAWG in development of criteria for such evaluation. The FAA considers

this policy necessary to counteract the reduced efficacy of inspection resulting from the increased likelihood of damage as airplanes age.

The FAA agrees that general guidelines should be established that are in line with the criteria set forth by the AAWG. In the case of this AD, the FAA did utilize the AAWG criteria as a general guideline in making the decision to require accomplishment of the modification. The FAA infers that the commenter is requesting that the requirement to accomplish the terminating modification be removed from the proposed AD. The FAA does not concur in this case. In making the determination that the terminating modification should be mandated, several factors were considered, as discussed below.

- *Consequence of Failure:* As noted by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, in its corresponding airworthiness directive, the propagation of cracks in the area of concern could affect the structural integrity of the airplane. Although not stated specifically in the proposed AD, the FAA considers that such reduced integrity could cause permanent deformation of the surrounding structure that could lead to fuel leaks. Further, cracking of Gear Rib 5 of the main landing gear (MLG) attachment fitting could precipitate failure of the fitting, which could possibly lead to failure of the MLG during landing, rupture of the fuel tank, and fire. These factors led the FAA to determine that a significant unsafe condition exists.

- *Probability of Occurrence:* The referenced Airbus service bulletins document eleven in-service occurrences of cracking, detected on airplanes which had accumulated between 20,959 and 29,023 total flight cycles. The likelihood of cracking therefore appears high for airplanes on which 21,000 total flight cycles or more have been accumulated. Since a number of airplanes exist today in the world with this amount of service, the FAA proposed 21,000 total flight cycles as the compliance time for the modification. Additionally, due to the age of affected airplanes, the FAA considers it possible that other adjacent damage may exist, which could aggravate the seriousness of the cracking.

- *Access/Inspection Difficulty:* The FAA judges the difficulty of both access to the inspection area and accomplishment of the inspection itself to be above average. Cracks are not evident without a directed inspection, and approximately 3 work hours are required to gain access to the inspection

area. Additionally, some cracks found during inspections were already of a substantial length, indicating that such cracking may have existed without detection for some time. Therefore, the FAA concludes that there is a certain level of difficulty in continued access and accomplishment of this inspection.

In consideration of the factors described above, and using the general criteria established by the AAWG, the FAA has determined that accomplishment of the terminating modification is justified.

Request To Revise Applicability

One commenter requests that the applicability of the proposed AD be revised to exclude those airplanes on which Airbus Modification 11912 has been installed in production. The commenter notes that this production modification is equivalent to the retrofit solution described in Airbus Service Bulletins A300-57-6088 and A300-57-0235, both dated August 5, 1998, which are referenced in the proposed AD as appropriate terminating action for the repetitive inspection requirements of this AD. The FAA concurs that airplanes on which the production modification or the retrofit modification has been installed may be excluded from the requirements of this AD, and has revised the applicability of the final rule accordingly.

Service Bulletin Revisions

Airbus has issued Service Bulletins A300-57-6088, Revision 01 (for Model A300-600 series airplanes), and A300-57-0235, Revision 01 (for Model A300 series airplanes), both dated February 1, 1999. These revisions clarify work procedures, add Figures, and update the cost and materials information. The FAA has determined that these later revisions of the service bulletins are substantially equivalent to the original issue of the bulletins. Therefore, the FAA has revised paragraph (d) of the final rule to cite Revision 01 of the applicable service bulletins as the appropriate source of service information. A **Note 3** also has been added to the final rule to provide credit for operators who may have accomplished the modification in accordance with the previously cited service bulletins prior to the effective date of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has

determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 164 airplanes of U.S. registry that will be affected by this AD.

The inspection currently required by AD 98-03-06, and retained in this new AD, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be \$59,040, or \$360 per airplane, per inspection cycle.

The modification required by this new AD will take approximately 62 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$10,270 per airplane. Based on these figures, the cost impact of the new actions required by this AD on U.S. operators is estimated to be \$2,294,360, or \$13,990 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-10298 (63 FR 5224, February 2, 1998), and by adding a new airworthiness directive (AD), amendment 39-11313, to read as follows:

99-19-26 Airbus Industrie: Amendment 39-11313. Docket 98-NM-249-AD. Supersedes AD 98-03-06, Amendment 39-10298.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300-57-0234, Revision 01, dated March 11, 1998; and Model A300-600 series airplanes, as listed in Airbus Service Bulletin A300-57-6087, Revision 01, dated March 11, 1998; except airplanes on which Airbus Modification 11912 has been installed in production, or on which Airbus Modification 11932 has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98-03-06

Inspections and Repair

(a) For Model A300 series airplanes that have accumulated more than 27,000 flight

cycles as of March 9, 1998 (the effective date of AD 98-03-06, amendment 39-10298): Except as provided by paragraph (b) of this AD, within 40 flight cycles after March 9, 1998, perform a detailed visual inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300-57-0234, Revision 01, dated March 11, 1998. Thereafter, repeat the inspection at intervals not to exceed 40 flight cycles, until the initial inspections required by paragraph (b) are accomplished.

(b) For all airplanes: Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300-57-6087, Revision 01, dated March 11, 1998 (for Model A300-600 series airplanes); or A300-57-0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 2: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300-57A0234 or A300-57A6057, both dated August 5, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) or (b) of this AD.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

New Requirements of This AD

Terminating Modification

(d) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300-57-6088, Revision 01, including Appendix 01 (for Model A300-600 series airplanes), or A300-57-0235, Revision 01, including Appendix 01 (for Model A300 series airplanes), all dated February 1, 1999, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Accomplishment of the modification required by paragraph (d) of

this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A300-57-6088 or A300-57-0235, both dated August 5, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300-57-6087, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300-57-0234, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300-57-6088, Revision 01, dated February 1, 1999, including Appendix 01, dated February 1, 1999; and Airbus Service Bulletin A300-57-0235, Revision 01, dated February 1, 1999, including Appendix 01, dated February 1, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French Airworthiness directive 98-151-247(B), dated April 8, 1998.

(h) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 99-23476 Filed 9-14-99; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-11-AD; Amendment 39-11311; AD 99-19-24]

RIN 2120-AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes, that requires replacement of the elevator auxiliary artificial feel unit (AFU) with a new elevator auxiliary AFU. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the elevator auxiliary AFU. Failure of an AFU, coupled with a control linkage disconnection upstream of the servo actuator and downstream of the main AFU, could result in reduced controllability of the airplane.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 900, Falcon

900EX, and Falcon 2000 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34584). That action proposed to require replacement of the elevator auxiliary artificial feel unit (AFU) with a new elevator auxiliary AFU.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Revise Statement of Unsafe Condition

One commenter, the manufacturer, requests that the FAA clarify the unsafe condition by adding the words, "upstream of the servo actuator and downstream of the main AFU" to the language specified in certain sections of the proposed AD. The commenter states that the single loss of elevator auxiliary AFU or the loss of elevator auxiliary AFU coupled with a control linkage disconnection upstream of the main AFU will have no direct consequences on the airworthiness of an airplane. However, the loss of an auxiliary AFU coupled with the control linkage disconnection upstream of the servo actuator and downstream of the main AFU is a failure with consequences considered to be catastrophic.

The FAA concurs with the request. The FAA agrees that further clarification in regard to the unsafe condition is necessary and has added the words suggested by the commenter to this final rule. (The FAA acknowledges that the Discussion section of the proposed AD also needs clarification in regard to the unsafe condition, however, because the Discussion section is not restated in the final rule, no change to this final rule is necessary in this regard.)

Request to Revise Relevant Service Information

The same commenter requests that the relevant service information of the proposed AD be revised to reference the applicable Airplane Maintenance Manual (AMM) revisions. In support of this request, the commenter notes that after investigations and discussion with the Direction Générale de l'Aviation Civile (DGAC), the bushing of the AFU, part number (P/N) 105045-10, is considered to be a 2,000-landing safe-life part. Furthermore, the commenter notes that the AMM revisions were required by French airworthiness directives 98-429-023(B) and 98-428-007(B), each dated November 4, 1998.

The FAA does not concur with the commenter's request. The FAA acknowledges that the AMM's have

been revised to include safe-life limits for the elevator auxiliary AFU having P/N 105045-10. However, this AD requires that operators install a new AFU, P/N 105045-13, that does not have life limits. Additionally, paragraph (b) of this AD does not allow operators to install the old AFU's referenced by the commenter, as of the effective date of this AD. The FAA has determined that there is no need to refer to the AMM revisions that include the life limits of the old part. Therefore, no change to the final rule in this regard is necessary.

Request to Revise the Compliance Time

The same commenter, the manufacturer, requests that the compliance time of the proposed AD be revised to read, "The elevator auxiliary AFU P/N 105045-10 which have reached or exceeded 2,000 landings must be replaced within 6 months after the effective date of this AD." The commenter states that the current compliance time would penalize operators whose airplanes are far from 2,000 landings. The commenter also states that spare parts availability has been determined according to the French airworthiness directives 98-429-023(B) and 98-428-007(B), each dated November 4, 1998.

The FAA does not concur. The FAA acknowledges the comment, but points out that the commenter fails to recognize the last phrase in the compliance sentence, "whichever occurs later." Therefore, an airplane that has accumulated very few landings as of the effective date of this AD will have until 2,000 total landings to comply with the requirements of this AD. The compliance time of this AD as written, aligns with the French airworthiness directives. Therefore, no change to the final rule in this regard is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 186 airplanes of U.S. registry will be affected by this required AD, that it will take approximately 3 work hours per airplane to accomplish the required replacement, and that the average labor rate is \$60 per work hour. Required

parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be \$33,480, or \$180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-19-24 DASSAULT AVIATION: Amendment 39-11311. Docket 99-NM-11-AD.

Applicability: Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes, equipped with an elevator auxiliary artificial feel unit (AFU), part number 105045-10; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator auxiliary AFU, coupled with a control linkage disconnection upstream of the servo actuator and downstream of the main AFU, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Prior to the accumulation of 2,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, replace the elevator auxiliary AFU, part number 105045-10, with an elevator auxiliary AFU, part number 105045-13, in accordance with Dassault Service Bulletin F900-235, dated October 13, 1998 (for Model Mystere-Falcon 900 series airplanes); F900EX-88, dated October 20, 1998 (for Model Falcon 900EX series airplanes); or F2000-175, dated October 20, 1998 (for Model Falcon 2000 series airplanes); as applicable.

Spares

(b) As of the effective date of this AD, no person shall install an elevator auxiliary AFU, part number 105045-10, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

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

obtained from the International Branch, ANM-116.

Special Flight Permits

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

Incorporation by Reference

(e) The replacement shall be done in accordance with Dassault Service Bulletin F900-235, dated October 13, 1998; Dassault Service Bulletin F900EX-88, dated October 20, 1998; or Dassault Service Bulletin F2000-175, dated October 20, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 98-429-023(B) and 98-428-007(B), both dated November 4, 1998.

(f) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 99-23475 Filed 9-14-99; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-251-AD; Amendment 39-11314; AD 99-19-27]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-100, -200, -300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-100, -200, -300, -400, and -500 series airplanes, that requires a one-time inspection of the main landing gear (MLG) wheel assemblies to determine whether certain parts are installed, and follow-on corrective actions, if necessary. For certain airplanes, this amendment also requires eventual

modification of MLG wheel assemblies, which terminates the requirements of this AD. This amendment is prompted by incidents of multiple tie bolt failures on certain BFGoodrich wheel assemblies. The actions specified by this AD are intended to prevent failure of multiple tie bolts of MLG wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurlle, Senior Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2798; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737-100, -200, -300, -400, and -500 series airplanes was published in the **Federal Register** on November 18, 1998 (63 FR 64013). That action proposed to require a one-time inspection of the main landing gear (MLG) wheel assemblies to determine whether certain parts are installed, and follow-on corrective actions, if necessary. For certain airplanes, that action also proposed to require eventual modification of MLG wheel assemblies, which would terminate the requirements of this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter has no objection to the proposed AD.

Explanation of Change Made to Proposal

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas the proposed specified a visual inspection, the FAA has revised paragraphs (b)(2)(i) and (b)(2)(ii) of this final rule to clarify that its intent is to require a detailed visual inspection. Additionally, Note 2 has been added to the final rule to define that inspection.

Request to Revise Applicability

One commenter requests that the applicability of the proposed AD be revised to read, "All Model 737-100, -200, -300, -400, and -500 series airplanes certificated in any category, having wheel assemblies manufactured by BFGoodrich installed." In support of its request, the commenter states that the current applicability does not exclude airplanes that do not have BFGoodrich wheel and brake assemblies installed.

The FAA does not concur. The purpose of the AD is to assure that all operators verify part numbers, determine if BFGoodrich wheel assemblies are installed, and if so, take appropriate action. No change to the applicability section of the AD is made in this regard. However, the FAA recognizes that a records review can verify part numbers, and as discussed below, paragraph (a) of the AD has been revised to essentially accomplish the result sought by the commenter.

Request to Revise Inspection Procedures

Several commenters request that the proposed inspection procedures of the main landing gear (MLG) wheel assemblies be revised to allow for a records review in lieu of a visual inspection to determine whether certain parts are installed. In support of this request, the commenters noted that other wheel assemblies (AlliedSignal) are not interchangeable with BFGoodrich wheel assemblies, and since it is not necessary to determine the type of wheel assemblies that are installed, a review of records would be less expensive than a visual inspection.

The FAA concurs with the commenters' request to revise the inspection procedures required by paragraph (a) of this AD. The FAA recognizes that a visual inspection is not necessary to determine the type of wheel assemblies that are installed. In light of this, the FAA has revised paragraph (a) of this final rule to

require, "an inspection of the MLG wheel assemblies or perform other verifications (such as a records review) to determine the part number (P/N) of each assembly."

Request for Clarification of Discussion Section

One commenter requests that the FAA clarify the description in the Discussion Section of the proposed AD of the tie bolt failures to indicate that they occurred only on certain BFGoodrich wheel assemblies that are installed on the main landing gear (MLG) of Boeing Model 737-300 and -400 series airplanes.

The FAA agrees that the Discussion section of the proposed rule may have been unclear regarding the incidents of tie bolt failures on certain BFGoodrich wheel assemblies. The FAA acknowledges that no reports of failures have been reported for Boeing Model 737-100, -200, or -500 series airplanes. However, because the Discussion section is not restated in the final rule, no change to this final rule is necessary in this regard.

Request for Revision of Cost Impact Information

One commenter requests that the cost impact information of the proposed AD be revised to clarify the usage of parts should an operator elect to accomplish the replacement. The commenter requests adding a phrase to clarify that if the same part number steel tie bolt fasteners were used, such replacement will require no additional work hours if accomplished during a regularly scheduled tire change.

The FAA concurs with the commenter's request. The cost impact information, below, has been revised accordingly.

The same commenter requests that the cost impact information of the proposed AD be revised to clarify the types of parts to be used. The commenter requests adding a phrase to clarify that the modification of the wheel assembly be accomplished by installing improved, Inconel tie bolt fasteners, and that it would require no additional work hours per airplane if the modification is accomplished during a regularly scheduled tire change.

The FAA concurs with the commenter's request. The cost impact information, below, has been revised accordingly.

Request for Clarification of Requirements

One commenter requests that the proposed rule be revised to clarify certain requirements. The commenter

suggests that additional information be provided to clarify the visual inspections, replacements, and terminating action.

The FAA does not concur. The FAA acknowledges the comment, however, the commenter did not make any specific recommendations. Therefore, no change to the final rule in this regard is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 460 Model 737-100, -200, -300, -400, and -500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required one-time inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the one-time inspection required by this AD on U.S. operators is estimated to be \$7,080, or \$60 per airplane.

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

Should an operator elect to accomplish the repetitive visual inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the repetitive inspections, if accomplished, is estimated to be \$60 per airplane, per inspection cycle.

Should an operator elect to accomplish the replacement using the same part number steel tie bolt fasteners, such replacement would require no additional work hours if accomplished during a regularly scheduled tire change. Required parts would cost \$2,840 per airplane (\$710 per wheel). Based on these figures, the cost impact of the replacement, if accomplished, is estimated to be \$2,840 per airplane, per replacement cycle.

Should an operator elect to accomplish the revisions to the FAA-approved maintenance program, it

would take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the maintenance program revision, if accomplished, is estimated to be \$60 per airplane.

Should an operator be required to accomplish the necessary modification of the wheel assembly by installing improved Inconel tie bolt fasteners, it would require no additional work hours per airplane, if the modification is accomplished during a regularly scheduled tire change. Required parts would cost \$4,848 per airplane (\$1,212 per wheel). Based on these figures, the cost impact of any necessary modification is estimated to be \$4,848 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-19-27 Boeing: Amendment 39-11314.
Docket 98-NM-251-AD.

Applicability: Model 737-100, -200, -300, -400, and -500 series airplanes, certificated in any category;

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of multiple tie bolts of main landing gear (MLG) wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an inspection of the MLG wheel assemblies or perform other verifications (such as a records review) to determine the part number (P/N) of each assembly. If no wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3-1398-1, 3-1439-2, or 3-1439-3 is installed on the airplane, no further action is required by this AD.

(b) Except as provided by paragraph (d) of this AD, if any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3-1398-1, 3-1439-2, or 3-1439-3 is installed on the airplane, within 60 days after the effective date of this AD, accomplish the actions specified by paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish the actions specified by (b)(1)(i) or (b)(1)(ii) of this AD.

(i) Replace all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual. Thereafter, repeat the replacement of tie bolts, nuts, and washers, at intervals not to exceed 5 tire changes, until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. Or

(ii) Perform a detailed visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual. Thereafter, repeat the inspection at intervals not to exceed 100 flight cycles until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. If any fracture of any tie bolt

is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(2) Revise the FAA-approved maintenance program as specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Revise the FAA-approved maintenance program to require replacement of all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual, at intervals not to exceed 5 tire changes. Or

(ii) Revise the FAA-approved maintenance program to require a detailed visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual, at intervals not to exceed 100 flight cycles. If any fracture of any tie bolt is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

Note 3: After the maintenance program has been revised to include the procedures specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, operators are not required to subsequently record AD compliance each time the replacement or inspection is performed.

(c) If any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3-1398-1, 3-1439-2, or 3-1439-3 is installed on the airplane: Except as provided by paragraph (d) of this AD, within 2 years after the effective date of this AD, modify any BFGoodrich Aerospace wheel assembly, having P/N 3-1398-1, 3-1439-2, or 3-1439-3; by replacing all existing tie bolts, nuts, and washers, with new, improved parts; and by converting the P/N of the MLG wheel assembly to 3-1398-2 (for BFGoodrich wheel assemblies having the old P/N 3-1398-1), 3-1439-5 (for BFGoodrich wheel assemblies having the old P/N 3-1439-2), or 3-1439-6 (for BFGoodrich wheel assemblies having the old P/N 3-1439-3), as applicable; in accordance with BFGoodrich Aerospace Service Bulletin 3-1439-32-13, or BFGoodrich Aerospace Service Bulletin 3-1398-32-16, both dated August 20, 1993, as applicable. Such modification constitutes terminating action for the requirements of this AD, and the FAA-approved maintenance program procedures specified by paragraph (b)(2) of this AD may be removed following

accomplishment of the requirements of this paragraph.

(d) Airplanes on which the modification required by paragraph (c) of this AD is accomplished within the compliance time specified in paragraph (b) of this AD are not required to accomplish the actions required by paragraph (b).

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) The modification shall be done in accordance with BFGoodrich Aerospace Service Bulletin 3-1439-32-13, dated August 20, 1993; or BFGoodrich Aerospace Service Bulletin 3-1398-32-16, dated August 20, 1993, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-23474 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98–NM–261–AD; Amendment 39–11315; AD 99–19–28]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120RT and –120ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120RT and –120ER series airplanes, that requires repetitive detailed visual inspections to detect discrepancies of the brake assemblies on the main landing gear (MLG), and replacement of the brake assemblies with new or serviceable brake assemblies, if necessary. This amendment is prompted by reports of fatigue cracking or splitting of the brake stator disk at the thermal expansion slots. The actions specified by this AD are intended to prevent failure of the brake assemblies of the MLG due to cracking or splitting of the stator disk, which could result in loss of brake effectiveness and could cause the airplane to leave the runway surface.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio, 45373. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia

30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120RT and –120ER series airplanes was published in the **Federal Register** on October 14, 1998 (63 FR 55059). That action proposed to require repetitive visual inspections to detect discrepancies of the brake assemblies on the main landing gear (MLG), and replacement of the brake assemblies with new brake assemblies, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

Request to Withdraw Proposed AD

- One commenter, the manufacturer, states that it discussed with the Brazilian airworthiness authority the “cracked/splitted stator brakes” that were impairing the expected service life of the brakes of Model EMB–120 series airplanes. Upon request by the Brazilian airworthiness authority, the manufacturer incorporated the inspections specified by BFGoodrich Service Bulletins 2–1585–32–1 and 2–1479–32–2 into the “EMB–120 Maintenance Review Board (MRB)” document, temporary revision No. 3. The commenter contends that, since the MRB is an FAA-approved document applicable to all U.S.-registered airplanes and includes the same inspection procedures as the service bulletins, issuance of the proposed AD would be a duplication and, therefore, is unnecessary.

The FAA does not concur. Although the MRB is an FAA-approved document, the procedures specified in that document are recommended (rather than mandatory) for U.S. operators. The FAA finds that accomplishment of the inspections as part of a recommended action in the MRB report would not ensure an acceptable level of safety. In light of this and the identified unsafe condition, the FAA has determined that issuance of this AD is necessary in order to mandate repetitive detailed visual inspections for discrepancies of the brake assemblies on the MLG in paragraph (a) of this AD.

- One commenter states that the proposed rule is not justified because the actions required do not effectively prevent brake rotor failure or promote safety. The commenter suggests that additional research needs to be

accomplished to determine answers to the following questions. Why are some operators having problems with brake rotors when others, such as the largest operator of Model EMB–120 series airplanes in the world, are not? Is the problem of rotor breakage associated with landing cycles, or is it associated with brake rotor over-temperature situations? Have there been any runway excursions or passenger injuries as a result of brake rotor failure on Model EMB–120 series airplanes?

The FAA does not concur that the proposed AD is not justified. BFGoodrich’s investigation of the brake stator rotors indicates that fatigue cracking began to occur between 600 and 1,000 flight hours, which clearly shows that a service difficulty does exist with the rotors. To address this problem, BFGoodrich issued Service Bulletins 2–1585–32–1 and 2–1479–32–2, both Revision 1, dated June 17, 1998. Although the exact cause of the cracking is unknown at this time, BFGoodrich has informed the FAA that the cracking and splitting [of the brake stator disks] are due to overheat and thermal distortion of the stator disks. The FAA considers that the number of landing cycles and over-temperature conditions are related to the identified unsafe condition. Although no runway excursions or passenger injuries have been reported as a result of the identified unsafe condition to date, the FAA has determined that the procedures required by this AD are necessary to prevent an unsafe condition from occurring and to ensure continued operational safety. No change to the final rule is necessary in this regard.

Request to Increase the Compliance Time for the Inspections

Three commenters request that the compliance times for the initial and repetitive inspections be increased.

One commenter requests revising the initial inspection in paragraph (a) of the proposed AD to “within 400 hours after the effective date of this AD” and repeating the inspections thereafter “at an interval not to exceed 400 hours.” The commenter contends that such an extension of the compliance time would allow accomplishment of these inspection requirements during an operator’s regularly scheduled “A” checks. The commenter adds that some operators do not have certified inspectors at remote line stations to support a mandatory inspection requirement to accomplish the repetitive inspections at each wheel change, although it is preferred to have

line mechanics inspect the brakes at each wheel removal.

Another commenter states that the repetitive inspection interval required by the proposed AD of "300 landings" would require very labor intensive and costly tracking and planning, which would make operators prone to "overfly" errors. The commenter contends that repetitive inspection intervals should include the option of using airframe hours and should be based on an operator's existing maintenance/inspection program, as determined by each operator's continuing analysis and surveillance system. Based on a sampling of COEX brake removal data due to stator/disc breakage, an "A-check" interval of 400 hours would provide an equivalent level of safety for our fleet.

Another commenter states that a "300 cycle re-inspection requirement" is impractical and does not increase safety. There is no documented time at which cracks appear, nor is there any documentation of crack propagation rates. In addition, the "300 cycle interval" at each wheel change required by the proposed AD appears to be arbitrary with no supporting data.

The FAA concurs with the commenters' requests to extend the compliance time for the inspections. Based on information provided by one of the commenters, the FAA recognizes that "400 flight hours" corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules, where special equipment and trained maintenance personnel will be available if necessary. The FAA does not consider that this extension will adversely affect safety. Paragraph (a) of the final rule has been changed to specify the compliance times for the initial detailed visual inspection as: "Within 400 flight hours after the effective date of this AD," and the repetitive inspections [in paragraphs (a) and (b)] as: "at an interval not to exceed 400 flight hours."

Request to Change Brake Replacement Requirement

Three commenters request changing the proposed AD to require replacement of the brake assembly with a "serviceable" rather than a "new" brake assembly. One commenter contends that it is doubtful the brake manufacturer can maintain production levels to support Model EMB-120 series airplanes with new replacement units. Another commenter contends that there is no justification for requiring a new part to be installed as a replacement because, in every instance, a

"serviceable" part should be acceptable for replacement.

The FAA concurs that the replacement of discrepant brake assemblies with serviceable parts is acceptable. The FAA has provided operators with the option of replacing any discrepant brake assemblies with either a new or serviceable brake assembly. This option provides greater flexibility to the operators in meeting the requirements of this AD and alleviates any problems regarding parts availability, while still providing an acceptable level of safety for the fleet. The FAA has revised the preamble and paragraph (b) of the final rule accordingly.

Request to Consider Adding Brake Assemblies to the Applicability

One commenter requests that the FAA consider whether the applicability of the proposed AD should include brake assemblies, part numbers (P/N) 2-1585 and 2-1479-1, that have been modified with parts manufacturer approval (PMA) heat sink components.

The FAA finds that this AD would apply to airplanes equipped with brake assemblies having part number (P/N) 2-1585 or 2-1479-1, if those assemblies have been modified with PMA heat sink components and if the PMA approval was based on identity. Such components are identical to the original part in materials and dimensions and, therefore, may be subject to the same identified unsafe condition. However, investigation reveals that the only known PMA's to these brake assemblies were obtained through test and computation. Because there are no known PMA's to these brake assemblies that have been obtained through identity, no change to the applicability of the final rule is necessary.

Request to Revise the Preamble of the Proposal

One commenter requests revising the Summary of the proposed AD by clarifying that the brake stator disk is located at the "thermal expansion slots" rather than at the "cut-out slots." The FAA concurs and has changed the Summary of the final rule accordingly.

That same commenter also requests revising the "Discussion" paragraph of the proposed AD to clarify that the cause of the cracking and splitting are the result of overheat and thermal distortion of the stator disks, although the exact cause of these conditions have not been determined at this time. The FAA recognizes that the suggested change provides improved technical accuracy. However, since the

"Discussion" paragraph of the preamble to the NPRM is not restated in the final rule, no change to the final rule is necessary.

That same commenter also requests revising the "Explanation of Relevant Service Information" paragraph of the proposed AD to change one of the discrepancies listed in that paragraph from "wear of plates" to "excessive distortion of the wear plates." The FAA acknowledges that the suggested change improves technical accuracy. Even though the referenced paragraph does not appear in the final rule, the FAA considers that the suggested change is appropriate for paragraph (a) of the final rule and has changed that paragraph accordingly.

Request to Revise the Cost Impact in the Proposed AD

One commenter requests revising the Cost Impact paragraph of the proposed AD. The commenter states that the referenced service bulletins estimate that the inspection at a tire change would be 15 minutes per brake, or one hour per airplane. However, if the inspections were not accomplished at a tire change, additional time and cost (approximately 2 hours per airplane) would be required to jack the airplane and remove the wheel/tire assembly to enable the inspection.

The FAA does not concur. As explained earlier in this AD, no additional time would be required for the inspections because the compliance times are extended in the final rule, which should allow the operator to perform the inspection during a tire change. No change to the final rule was necessary in this regard.

Differences Between Service Bulletin and This AD

Operators should note that BFGoodrich Service Bulletins 2-1585-32-1 and 2-1479-32-2, both Revision 1, dated June 17, 1998, specify an "examination" of the brake assembly and a "visual examination" of each stator disk expansion slot. However, this final rule requires a "detailed visual inspection" to determine the existence of any discrepancies of the brake assemblies on the MLG. A note has been added to the final rule to define that inspection.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will

neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 227 Model EMB-120RT and -120ER series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$13,620, or \$60 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-19-28 Empresa Brasileira De Aeronautica S.A. (EMBRAER):

Amendment 39-11315. Docket 98-NM-261-AD.

Applicability: Model EMB-120RT and -120ER series airplanes, equipped with BFGoodrich brake assemblies having part number (P/N) 2-1585 or 2-1479-1; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brake assemblies of the main landing gear (MLG) due to cracking or splitting of the stator disk, which could result in loss of brake effectiveness and could cause the airplane to leave the runway surface, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, perform a detailed visual inspection for discrepancies (e.g., locking or hanging up, broken or damaged stators, and excessive distortion of the wear plates) of the brake assemblies on the MLG, in accordance with paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 400 flight hours.

(1) For airplanes equipped with BFGoodrich main brake assemblies having P/N 2-1479-1: Inspect in accordance with BFGoodrich Service Bulletin 2-1479-32-2, Revision 1, dated June 17, 1998.

(2) For airplanes equipped with BFGoodrich main brake assemblies having P/N 2-1585: Inspect in accordance with BFGoodrich Service Bulletin 2-1585-32-1, Revision 1, dated June 17, 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or

assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD, prior to further flight, replace the brake assembly with a new or serviceable brake assembly, in accordance with section 32-41-05 of EMBRAER EMB-120 Brasilia Maintenance Manual, dated April 30, 1992. Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 400 flight hours.

(c) Within 10 days after accomplishing any inspection required by this AD, if a discrepant brake assembly is detected, submit a report of the inspection results to BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340 Troy, Ohio, 45373. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (b) of this AD, the inspections and replacement shall be done in accordance with BFGoodrich Service Bulletin 2-1479-32-2, Revision 1, dated June 17, 1998, and BFGoodrich Service Bulletin 2-1585-32-1, Revision 1, dated June 17, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-23473 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-278-AD; Amendment 39-11316; AD 99-19-29]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires repetitive inspections of certain H-11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged or broken bolts; and follow-on actions, if necessary. This amendment also requires eventual replacement of the existing bolts with new, improved bolts, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report that an operator found two broken H-11 tension bolts on the side-of-body kick-load fitting on one airplane. The actions specified by this AD are intended to prevent cracking of the bolts due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2783; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on November 23, 1998 (63 FR 64657). That action proposed to require repetitive inspections of certain H-11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged, broken, or improperly sealed bolts; and follow-on actions, if necessary. That action also proposed to require eventual replacement of the existing bolts with new, improved bolts, which constitutes terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

Two commenters support the proposed rule, and one commenter does not object to the proposed rule.

Editorial Changes to the Final Rule

The FAA has determined that it is necessary to clarify the detailed visual inspection of paragraph (a)(1) of the requirements of this AD. The FAA has added the words "of the bolts," to further clarify the inspection area. The final rule has been changed accordingly.

Request to Delete Certain Descriptive Language

One commenter, the manufacturer, requests that the FAA delete the words "improperly sealed" from paragraphs (a) and (b) of the proposed AD. The commenter states that because the most significant influence of the H-11 bolt fracture is the presence of high pre-load, which cannot be determined by inspection, any anomalies in the bolt sealant will have no effect on the bolt fracture, unless the bolt is highly pre-loaded. The commenter also suggests that using the condition of the H-11 bolt sealant as a guide for bolt replacement will cause unnecessary, unscheduled airplane down time and confusion, as it is likely that improperly sealed bolts will be found. The commenter further adds that a clear definition of an

"improperly sealed bolt" is not provided in either the Boeing Service Bulletin or the Notice of Proposed Rulemaking (NPRM).

The FAA concurs with the request to delete certain descriptive language of the AD, as requested by the commenter. The FAA has revised this language throughout the final rule.

Request to Revise the Compliance Time for the Terminating Action

One commenter requests that the FAA revise the proposed compliance time for the terminating action from 6,000 flight cycles to 9,000 flight cycles. The commenter states that the issue of H-11 bolts fracture is more dependent on calendar time rather than flight cycles. This additional allowance of time would provide high cycle usage operators an equivalent of 48 months calendar time that is provided for low cycle usage operators.

The FAA concurs with this request, and has revised paragraph (c) of the final rule accordingly.

Explanation of Change Made to Proposal

The FAA has added a note to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 177 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection of the kick-load fitting, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection of the kick-load fitting required by this AD on U.S. operators is estimated to be \$8,400, or \$120 per airplane, per inspection cycle.

It will take approximately 23 work hours per airplane to accomplish the required inspection of the splice plate, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection of the splice plate required by this AD on U.S.

operators is estimated to be \$96,600, or \$1,380 per airplane, per inspection cycle.

It will take approximately 140 work hours per airplane to accomplish the required replacement, at an average labor rate of \$60 per work hour. Parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be \$588,000, or \$8,400 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-19-29 Boeing: Amendment 39-11316. Docket 98-NM-278-AD.

Applicability: Model 767 series airplanes, line positions 1 through 177 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the H-11 tension bolts on the side-of-body kick-load fitting due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a detailed visual inspection of the four H-11 tension bolts at each side-of-body kick-load fitting located on the wing rear spar to detect damaged or broken bolts; and accomplish the requirements in either paragraph (a)(1) or (a)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767-57A0064, Revision 1, dated July 9, 1998.

(1) *Option 1:* Repeat the detailed visual inspection of the bolts at each side-of-body kick-load fitting thereafter at intervals not to exceed 90 days, until accomplishment of the actions specified in paragraph (c) of this AD. Or

(2) *Option 2:* Perform a detailed visual inspection of the four H-11 tension bolts on the lower splice plate located on the wing rear spar to detect damaged or broken bolts. Repeat the detailed inspection of each side-of-body kick-load fitting and the lower splice plate thereafter at intervals not to exceed 18 months, until accomplishment of the actions specified in paragraph (c) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) If evidence of any damaged or broken bolt is detected, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767-57A0064, Revision 1, dated July 9, 1998. Thereafter, repeat the detailed inspection in either paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of the actions specified in paragraph (c) of this AD.

(c) Within 9,000 flight cycles or 48 months after the effective date of this AD, whichever occurs first, replace all four H-11 tension bolts at each side-of-body kick-load fitting with new, improved bolts, and perform a detailed visual inspection to detect any damaged or broken bolt of the lower splice plate located on the wing rear spar, in accordance with Boeing Service Bulletin 767-57A0064, Revision 1, dated July 9, 1998. If any damaged or broken bolt is detected during the inspection, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767-57A0064, Revision 1, dated July 9, 1998. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The inspections and replacements shall be done in accordance with Boeing Service Bulletin 767-57A0064, Revision 1, dated July 9, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-23471 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-159-AD; Amendment 39-11312; AD 99-19-25]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires a one-time inspection of all gland nuts supplied with certain shock struts of the center landing gear (CLG) to verify that the gland nuts have the correct thread profile, and replacement of any defective gland nut with a new gland nut. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent the failure of the CLG, and subsequent damage to the airplane structure or injury to airplane occupants.

DATES: Effective September 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-159-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW.,

Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A340 series airplanes. The DGAC advises that, during take-off, the center landing gear (CLG) shock strut of an in-service airplane disengaged from the CLG main fitting because of a defective gland nut. Inspection of the defective gland nut revealed that the thread profile of the gland nut was incorrect. This condition, if not corrected, could result in the failure of the CLG, and subsequent damage to the airplane structure or injury to airplane occupants.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A340-32-4111, Revision 01, dated May 28, 1998, which describes procedures for a one-time inspection of all gland nuts supplied with certain shock struts of the CLG to verify that the gland nuts have the correct thread profile. For any defective gland nut, the service bulletin describes procedures for replacement of the gland nut with a new part.

Accomplishment of the actions specified in Airbus Service Bulletin A340-32-4111 is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98-153-088(B), dated April 8, 1998, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A340-32-4111 refers to Messier-Dowty Service Bulletin No. M-DT SB18000-32-8, dated October 30, 1997, which provides the criteria for acceptability of the gland nut and is an additional source of service information for accomplishment of the inspection and replacement.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the failure of the CLG, and subsequent damage to the airplane structure or injury to airplane occupants. This AD requires accomplishment of the actions specified in Airbus Service Bulletin A340-32-4111, described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this AD would be \$240 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments

as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-159-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-19-25 Airbus Industrie: Amendment 39-11312. Docket 99-NM-159-AD.

Applicability: Model A340 series airplanes, certificated in any category, on which Airbus Modification 43028 (reference Airbus Service Bulletin A340-32-4083, dated September 19, 1996) has been incorporated.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the center landing gear (CLG), and subsequent damage to the airplane structure or injury to airplane occupants, accomplish the following:

Inspection

(a) Within one month after the effective date of this AD, perform a detailed visual inspection of all gland nuts supplied with the 18000 series shock struts, part numbers 18100-1001 through 18100-1061 and part numbers 18105-1001 through 18105-1061, on the CLG to verify that the gland nuts have the correct thread profile, in accordance with Airbus Service Bulletin A340-32-4111, Revision 01, dated May 28, 1998. For any gland nut thread profile that is not acceptable, as specified by the service bulletin: Prior to further flight, replace that gland nut with a new part, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An

intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Accomplishment of the inspection in accordance with Airbus Service Bulletin A340-32-4111, dated November 27, 1997, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 4: Airbus Service Bulletin A340-32-4111 refers to Messier-Dowty Service Bulletin No. M-DT SB18000-32-8, dated October 30, 1997, as an additional source of service information for the inspection, the replacement of any defective gland nut, and the criteria for acceptability of the gland nut thread profile.

Spares

(b) As of the effective date of this AD, no person shall install an 18000 series shock strut, part numbers 18100-1001 through 18100-1061 and part numbers 18105-1001 through 18105-1061, on the CLG of any airplane, unless that shock strut has been inspected and applicable corrective actions have been performed in accordance with Airbus Service Bulletin A340-32-4111, dated November 27, 1997, or Airbus Service Bulletin A340-32-4111, Revision 01, dated May 28, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A340-32-4111, Revision 01, dated May 28, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French airworthiness directive 98-153-088(B), dated April 8, 1998.

(f) This amendment becomes effective on September 30, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-23470 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-16]

Removal of Class E Airspace; Arlington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on August 24, 1999, (64 FR 46116), Airspace Docket No. 99-ASO-16.

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

Federal Register Docket DOCID: fr24au99-4, Airspace Docket NO. 99-ASO-16, published on August 24, 1999, (64 FR46116), revoked Class E airspace at Arlington Municipal Airport, Arlington, TN. Errors were discovered in the geographic coordinates of the Memphis NAS/Millington Municipal Airport, Millington, TN. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Memphis NAS/Millington Municipal Airport for the Class E airspace at, Millington, TN, as published in the **Federal Register** on August 24, 1999, (64 FR46116), (**Federal Register** Document DOCID: fr24au99-4; page 46116), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO TN E Memphis NAS/Millington, TN [Corrected]

By removing "Lat. 35°21'20" N, long. 89°40'22" W and substituting "Lat. 35°21'24", long. 89°52'13" W".

* * * * *

Issued in College Park, Georgia, on September 1, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99-23939 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Operating Requirements: Domestic, Flag, and Supplemental Operations

CFR Correction

In Title 14 of the Code of Federal Regulations, parts 60 to 139, revised as of Jan. 1, 1999, page 433, § 121.339 is corrected by inserting the words "beyond the rated capacity" between the words "capacity" and "of" in the last sentence in paragraph (a)(2).

[FR Doc. 99-55531 Filed 9-14-99; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 99F-0299]

Secondary Direct Food Additives Permitted in Food for Human Consumption

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 acidified sodium chlorite solutions as an antimicrobial agent on raw agricultural commodities (RAC's). This action is in response to a petition filed by Alcide Corp.

DATES: This regulation is effective September 15, 1999; written objections and requests for a hearing by October 15, 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:

Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0001, 202-418-3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 3, 1999 (64 FR 10302), FDA announced that a food additive petition (FAP 9A4648) had been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposed to amend the food additive regulation in § 173.325 to provide for the safe use of aqueous solutions of acidified sodium chlorite as an antimicrobial agent on RAC's.

The petitioner is proposing to limit the use of this additive to RAC's in preparing, packing, or holding of such commodities for commercial purposes, consistent with section 201(q)(1)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(q)(1)(B)(i)), as amended by the Antimicrobial Regulation Technical Corrections Act of 1998 (ARTCA) (Public Law 105-324). The petitioner is not proposing that the additive be intended for use for any application under section 201(q)(1)(B)(i)(I), (q)(1)(B)(i)(II), or (q)(1)(B)(i)(III) of the act, which use would be subject to regulation by the Environmental Protection Agency (EPA) as a pesticide chemical. The proposed use of the additive is to reduce the microbial contamination on RAC's. Under ARTCA, the use of acidified sodium chlorite solutions as an antimicrobial agent on RAC's in preparing, packing, or holding of such RAC's for commercial purposes, consistent with section 201(q)(1)(B)(i) of the act, and not otherwise included within the definition of "pesticide chemical" under section 201(q)(1)(B)(i)(I), (q)(1)(B)(i)(II), or (q)(1)(B)(i)(III), is subject to regulation by FDA as a food additive.

Although this use of acidified sodium chloride solutions as an antimicrobial agent on raw agricultural commodities is regulated under section 409 of the act (21 U.S.C. 348) as a food additive, the intended use may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to market acidified sodium chlorite solutions for such use should contact the EPA to determine whether this use requires a pesticide registration under FIFRA.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and, therefore, that the regulation in § 173.325 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 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.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

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

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.

Any person who will be adversely affected by this regulation may at any time on or before October 15, 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 173

Food additives.

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 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by redesignating paragraph (e) as paragraph (f) and by adding new paragraph (e) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(e) The additive is used as an antimicrobial agent on raw agricultural commodities in the preparing, packing, or holding of the food for commercial purposes, consistent with section 201(q)(1)(B)(i) of the act, and not applied for use under section 201(q)(1)(B)(i)(I), (q)(1)(B)(i)(II), or (q)(1)(B)(i)(III) of the act, in accordance with current industry standards of good manufacturing practice. Applied as a dip or a spray, the additive is used at levels that result in chlorite concentrations of 500 to 1200 parts per million (ppm), in combination with any GRAS acid at levels sufficient to achieve a pH of 2.3 to 2.9. Treatment of the raw agricultural commodities with acidified sodium chlorite solutions shall be followed by a potable water rinse, or by blanching, cooking, or canning.

* * * * *

Dated: September 8, 1999.

L. Robert Lake,

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

[FR Doc. 99-23969 Filed 9-14-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

21 CFR Part 1308

[DEA-182F]

Schedules of Controlled Substances: Placement of Zaleplon Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance, zaleplon, including its salts, into Schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, importation and exportation of zaleplon and products containing zaleplon.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT:

Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Zaleplon is a central nervous system (CNS) depressant that will be marketed under the trade name SONATA™ for the short-term treatment of insomnia.

On March 31, 1999, the Assistant Secretary for Health and Surgeon General, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA letter recommending that zaleplon, and its salts, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.*). Enclosed with the March 31, 1999, letter was a document prepared by the Food and Drug Administration (FDA) entitled "Basis for the Recommendation for Control of Zaleplon in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811 (b)].

The correspondence from the Assistant Secretary for Health and Surgeon General to the DEA dated March 31, 1999, confirmed that FDA had determined that the New Drug Application (NDA) for zaleplon was "approvable" and had issued an approvable letter to the NDA sponsor on January 6, 1999. According to the March 31, 1999, letter from DHHS, "upon full approval of the NDA, zaleplon will have a currently accepted medical use in treatment in the United States."

After a review of the available data, including the DHHS recommendation,

the Deputy Administrator of the DEA, in a May 5, 1999, **Federal Register** Notice (63 FR 24094), proposed placement of zaleplon into Schedule IV of the CSA, if and when the zaleplon NDA is approved by the FDA. The notice provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing in writing to be received by the DEA on or before June 4, 1999. The DEA did not receive any comments regarding the proposal.

On August 16, 1999, the FDA notified the DEA that the zaleplon NDA was approved by the FDA on August 13, 1999. Relying on the scientific and medical evaluation and the recommendation of the DHHS Assistant Secretary for Health and Surgeon General received in accordance with section 201(b) of the Act [21 U.S.C. 811(b)], and the independent review of the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act [21 U.S.C. 811(a) and 811(b)], finds that:

- (1) Based on information now available, zaleplon has a low potential for abuse relative to the drugs or other substances in Schedule III;
- (2) Zaleplon has a currently accepted medical use in treatment in the United States; and
- (3) Abuse of zaleplon may lead to limited physical dependence and psychological dependence relative to the drugs or other substances in Schedule III.

Based on these findings, the Deputy Administrator of the DEA concludes that zaleplon, including its salts, warrants control in Schedule IV of the CSA.

In order to make zaleplon pharmaceutical products available for medical use as soon as possible, the Schedule IV controls of zaleplon will be effective September 15, 1999. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule IV regulations regarding zaleplon. The applicable regulations are as follows:

1. **Registration.** Any person who manufactures, distributes, dispenses, imports or exports zaleplon or who engages in research or conducts instructional activities with zaleplon, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations.

2. **Security.** Zaleplon must be manufactured, distributed and stored in

accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. **Labeling and Packaging.** All labels on commercial containers of, and all labeling of, zaleplon shall comply with the requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

4. **Inventory.** Registrants possessing zaleplon are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

5. **Records.** All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

6. **Prescriptions.** All prescriptions for zaleplon are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulations.

7. **Importation and Exportation.** All importation and exportation of zaleplon shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. **Criminal Liability.** Any activity with zaleplon not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking on the record after opportunity for a hearing. Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1).

The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this final rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. Zaleplon is a new drug in the United States; recent approval of the product and its labeling by the FDA will allow it to be marketed once it is placed into Schedule IV of the CSA. This final rule will allow these entities to have access to a new pharmaceutical product.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule 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 E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescriptions drugs, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by redesignating the existing paragraph (c)(48) to (c)(49) and by adding a new paragraph (c)(48) to read as follows:

§ 1308.14 Schedule IV

* * * * *

(c) * * *

(48) Zaleplon 2781

* * * * *

Dated: September 7, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–23968 Filed 9–14–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 1**

[T.D. ATF-416]

RIN 1512-AB94

Delegation of Authority (99R-159P)**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.**ACTION:** Treasury Decision, final rule.

SUMMARY: This final rule places most ATF authorities contained in part 1, title 27 Code of Federal Regulations (CFR), with the "appropriate ATF officer" and requires that persons file documents required by part 1, title 27 Code of Federal Regulations (CFR), with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. Concurrently with this Treasury Decision, ATF Order 1130.6 is being published. Through this order, the Director has delegated most of the authorities in 27 CFR part 1 to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports that are not ATF forms are filed.

DATES: This rule is effective September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202-927-8210).

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to Treasury Order 120-01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of the Federal Alcohol Administration (FAA) Act. The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under the FAA Act, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each

of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in part 1 that were previously delegated and places those authorities with the "appropriate ATF officer." Most of the authorities of the Director that were not previously delegated are also placed with the "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.6, Delegation Order—Delegation of the Director's Authorities in Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 1 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 1 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.6. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes three various technical amendments to Subpart A—Scope of 27 CFR part 1. First, a new section is added to recognize the authority of the Director to delegate regulatory authorities in part 1 and to identify ATF Order 1130.6 as the instrument reflecting such delegations. Second, § 1.3 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it

must be filed. Third, references to ATF Form 5100.18 are amended to remove its previous form number cited in parentheses.

ATF has begun to make similar changes in delegations to other parts of Title 27 of the Code of Federal Regulations through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (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 Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting information. The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 1

Administrative practices and procedures, Alcohol and alcoholic beverages, Authority delegations, Imports, Liquors, Warehouses, Wine.

Authority and Issuance

Title 27, part 1 of the Code of Federal Regulations is amended as follows:

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT, NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE, AND BULK SALES AND BOTTLING OF DISTILLED SPIRITS

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

Authority: 27 U.S.C. 203, 204, 206, and 211 unless otherwise noted.

2. In Section 1.3 paragraph (a) is amended by removing the word “Director” and adding, in substitution, the phrase “appropriate ATF officer”, and by adding a sentence at the end of paragraph (a) and paragraph (b) is revised to read as follows:

§ 1.3 Forms prescribed.

(a)* * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

3–4. Redesignate § 1.4 as § 1.10.

5. A new § 1.4 is added to Subpart A and reads as follows:

§ 1.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 1 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.6, Delegation Order—Delegation of the Director’s Authorities in Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits. ATF delegation orders, such as ATF Order 1130.6, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

6. Section 1.10 is amended by removing the definitions of “ATF

officer” and “Regional director (compliance)”, by revising the definitions of “Applicant” and “Basic permit”, and by adding a new definition of “Appropriate ATF officer” to read as follows:

§ 1.10 Meaning of terms.

* * * * *

Applicant. Any person who has filed an application for a basic permit under the Federal Alcohol Administration Act with the appropriate ATF officer.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.6, Delegation Order—Delegation of the Director’s Authorities in 27 CFR Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits.

* * * * *

Basic permit. A document issued under the Act authorizing a person to engage in activities at a particular location.

* * * * *

§§ 1.24, 1.27, 1.31, 1.42, 1.50, 1.51, 1.52, and 1.55

7. In part 1 remove the words “regional director (compliance)” each place it appears and add, in substitution, the words “appropriate ATF officer” in the following places:

- (a) Section 1.24 introductory text;
- (b) Section 1.27;
- (c) Section 1.31;
- (d) Section 1.42;
- (f) Section 1.50;
- (g) Section 1.51;
- (h) Section 1.52; and
- (i) Section 1.55.

8. Section 1.25 is revised to read as follows:

§ 1.25 General.

Applications for basic permits to engage in any of the operations set forth in §§ 1.20 to 1.22 must be made on ATF Form 5100.24, 5170.4 or 5100.18, verified as required by § 1.56, and will be accompanied by such affidavits, documents, and other supporting data, as the appropriate ATF officer may require. The application will include all data, written statements, affidavits, documents, or other evidence submitted in support of the application, or upon a hearing.

9. Section 1.29 is revised to read as follows:

§ 1.29 Individual plant or premises.

An application for a basic permit must be filed, and permit issued, to

cover each individual plant or premises where any of the businesses specified in section 103 of the Act is engaged in.

10. The last sentence of § 1.30 is amended by removing the comma after “(1534)” and “in triplicate, and submitted to the regional director (compliance)” and by adding in its place a period.

11. Section 1.35 is revised to read as follows:

§ 1.35 Authority to issue, amend, deny, suspend, revoke, or annul basic permits.

The authority and power of issuing, amending, or denying basic permits, or amendments thereof, is conferred upon the appropriate ATF officer except as to agency initiated curtailment. The Director, upon consideration of appeals on petitions for review in part 200 of this chapter, may order the appropriate ATF officer to issue, deny, suspend, revoke, or annul basic permits.

§§ 1.40, 1.41 Amended

12. Part 1 is further amended by removing “(1643), with the regional director (compliance),” each place it appears in the following places:

- (a) Section 1.40; and
- (b) Section 1.41.

13. Section 1.56 is revised to read as follows:

§ 1.56 Oaths and affirmations.

A document must be verified by an oath or affirmation taken before a person authorized by the laws of the United States or by State or local law to administer oaths or affirmations in the jurisdiction where the document is executed when required by:

- (a) Regulation; or
- (b) An appropriate ATF officer.

14. Section 1.58 is amended by adding the word “appropriate” before the words “ATF officers.”

15. The introductory text and paragraph (c) of § 1.59 are amended by removing the words “regional director (compliance)” and “regional director’s (compliance)” each place they appear and adding, in substitution, the words “appropriate ATF officer” and “appropriate ATF officer’s”, respectively.

Signed: July 7, 1999.

John W. Magaw,
Director.

Approved: August 13, 1999.

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

[FR Doc. 99–23618 Filed 9–14–99; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in October 1999. Interest assumptions are also published on the PBGC's web site (<http://www.pbgc.gov>).

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans

covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefit to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during October 1999.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions are unchanged from those in effect for September 1999. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefits is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for September 1999.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that

the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for valuation of benefits in plans with valuation dates during October 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 72 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1 , i_2 , * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—			The values of i_t are:			
			i_t	for $t =$	i_t	for $t =$
*	*	*	*	*	*	*
October 1999			.0630	1–20	.0525	>20 N/A N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)					
	On or after	Before		i_1	i_2	i_3	n_1	n_2	
*	*		*	*	*		*		*
72	10-1-99	11-1-99	5.00	4.25	4.00	4.00	7		8

Issued in Washington, DC, on this 7th day of September 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99-23849 Filed 9-14-99; 8:45 am]

BILLING CODE 7708-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-6437-3]

Notice of Direct Final Rule Revisions to Emissions Budgets Set Forth in EPA's Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone for the States of Connecticut, Massachusetts and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 27, 1998, EPA published a final action requiring 22 States and the District of Columbia to submit State implementation plan (SIP) revisions to prohibit specified amounts of emissions of oxides of nitrogen (NO_x)—one of the precursors to ozone (smog) pollution—for the purpose of reducing NO_x and ozone transport across State boundaries in the eastern half of the United States. This action is referred to as the NO_x SIP Call.

Subsequent to that rulemaking, three States, Connecticut, Massachusetts and Rhode Island, approached EPA with concerns about the distribution of the emission reduction requirements to the three States. While the States agreed that the amount of the overall emission reductions that EPA was requiring from the three State region was appropriate, the States had concerns about the specific emission reductions that EPA was requiring from each of the three

individual States. In particular, the States were concerned that the emission reduction requirements were inconsistent with the emission reductions that those States were requiring in connection with an existing multi-state effort to reduce NO_x and ozone transport across State boundaries in the northeastern portion of the United States.

In response to these concerns, EPA and the States of Connecticut, Massachusetts and Rhode Island signed a memorandum of understanding (MOU) in February 1999. This MOU required EPA to take action to redistribute the NO_x emission reduction requirements among the three States. In the MOU, the three States and EPA agreed that EPA would propose a specific redistribution of the combined electric generating stationary source (EGU) portion of the budget for the three States.

Subsequent to the signing of the MOU, EPA took a final action that changed the EGU portion of the budget for the three States in a Technical Amendment to the NO_x SIP Call published on May 14, 1999. EPA is now taking direct final action to redistribute the States' budgets. The final redistribution that EPA is promulgating is slightly different than the redistribution as stated in the MOU to reflect and remain consistent with the May 14, 1999 changes to the budgets.

DATES: This rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comment by October 5, 1999. If such comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Any written comments must be identified with Docket No. A-99-13, must be identified as comments on the direct final rule and companion proposal and must be submitted in

duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Kathryn Petrillo, Acid Rain Division (6204J) U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460, telephone number (202) 564-9093; e-mail: petrillo.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because EPA views this redistribution of the EGU portions of Connecticut, Massachusetts and Rhode Island's NO_x budgets as noncontroversial and anticipates no adverse comment. EPA believes this rule is not controversial for the following reasons: (1) Connecticut, Massachusetts, Rhode Island and EPA signed an MOU agreeing to the action taken by this rule; (2) the rule does not result in an overall increase in NO_x emissions; (3) the rule is consistent with the final State budgets published in the May 14, 1999 Technical Amendment to the NO_x SIP Call; and (4) the rule is consistent with the goals of the NO_x SIP Call. However, in the "Proposed Rules" section of today's **Federal Register** EPA is publishing a separate document that will serve as a proposed rule to redistribute the EGU portions of these States' budgets if EPA receives any timely adverse comment. If EPA receives timely adverse comment, EPA will publish a withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. EPA will then address all significant public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time.

The information in this preamble is organized as follows:

- I. Background
- II. Determination of Budgets
- III. Changes to the EGU Budgets for the States of Connecticut, Massachusetts and Rhode Island
- IV. Administrative Requirements
 - A. Executive Order 12866: Regulatory Impact Analysis
 - B. Regulatory Flexibility Act: Small Entity Impacts
 - C. Unfunded Mandates Reform Act
 - D. Paperwork Reduction Act
 - E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - F. Executive Order 12898: Environmental Justice
 - G. Executive Order 12875: Enhancing the Intergovernmental Partnerships
 - H. Executive Order 13016: Consultation and Coordination with Indian Tribal Governments
 - I. National Technology Transfer and Advancement Act
 - J. Judicial Review
 - K. Congressional Review Act

I. Background

On October 27, 1998, EPA published a final action finding that NO_x emissions from emitting activities (sources) in 23 jurisdictions (22 States, including the States of Connecticut, Massachusetts and Rhode Island, and the District of Columbia) significantly contribute to nonattainment of the 1-hour and 8-hour ozone NAAQS or will interfere with maintenance of the 8-hour NAAQS, in one or more downwind States throughout the Eastern United States (63 FR 57356, October 27, 1998). Each of these jurisdictions (referred to hereinafter as "States") is required to adopt and submit a SIP revision containing control measures that will assure that sources in the State reduce their NO_x emissions sufficiently to eliminate the amounts of NO_x emissions that contribute significantly to nonattainment or that will interfere with maintenance in a downwind State. By eliminating these amounts of NO_x emissions, the control measures will assure that the remaining NO_x emissions will meet the States' NO_x emissions budget, as prescribed to each

State in the amended May 14, 1999 Technical Amendments to the State's budgets. See 64 FR 26298, May 14, 1999. In today's action, EPA is promulgating adjusted State NO_x emissions budgets for Connecticut, Massachusetts and Rhode Island. While this adjustment will lead to different emission budgets for each of the three States, the combined budgets for the three States will remain the same as the combined budgets for the three States finalized in the May 14, 1999 Technical Amendments to the NO_x SIP Call.

Following EPA's finalization of the NO_x SIP Call in the fall of 1998, numerous parties filed petitions for review of the rule with the D.C. Circuit. The petitions were consolidated into case no. 98-1497 and briefing of the case is now under way. On May 25, 1999, the D.C. Circuit issued a stay of the requirement that States submit revised SIPs in accordance with the NO_x SIP call. That stay continues pending further order of the Court. EPA is taking action today to revise the budgets of Connecticut, Massachusetts, and Rhode Island in anticipation of the lifting of the stay at some time in the future.

II. Determination of Budgets

The EPA determined the overall NO_x emission budgets for each State by projecting the total amount of NO_x emissions that sources in each covered State would emit, in light of expected growth, in 2007 taking into account measures required under the CAA. The EPA then projected the total amount of NO_x emissions that all of the sources in each of those States would emit in 2007 if each such State applied control measures that EPA determined to be highly cost effective. The total amount of NO_x emissions remaining after application of EPA's assumed control measures is the State's "budget." Each State budget consists of smaller sector budgets, including budgets for mobile sources, area sources, EGUs, and non-EGU stationary sources. The smaller sector budgets exist only for purposes of calculating the larger State budget; they are not enforceable against a State. The specific methodologies used to calculate these budgets are explained in section III of the final NO_x SIP Call rule. (63 FR 57405-439)

III. Changes to the EGU Budgets for the States of Connecticut, Massachusetts and Rhode Island

After finalization of the NO_x SIP Call, the State of Connecticut approached EPA with concerns about the size of the EGU portion of its State budget under the NO_x SIP Call. These concerns related to differences between the State's EGU budget under the NO_x SIP Call and the State's budget under Phase III of the Ozone Transport Region's (OTR) program.

The OTR is comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia. The OTR was created in 1990, under section 184 of the Clean Air Act, to address the problems associated with ozone transport in the Northeast. On September 27, 1994, 11 of the States in the OTR and the District of Columbia signed a Memorandum of Understanding agreeing to a regional strategy to reduce NO_x from power plants and other large fuel combustion sources. This strategy involved a multi-phased approach and allowed sources to demonstrate compliance through the use of a region-wide trading program. Phase II of the program began on May 1, 1999, and Phase III is scheduled to begin on May 1, 2003. Under Phase III of the OTR strategy, Connecticut's budget for sources similar to the EGU sources under the NO_x SIP Call is larger than it is under the EGU portion of the State's NO_x SIP Call budget. Conversely, the budgets for Massachusetts and Rhode Island are smaller under Phase III of the OTR than the budgets are under the NO_x SIP Call.

The following table shows for the three States: the OTC Phase III budgets, EGU budgets for sources similar to EGUs; the EGU budgets under the NO_x SIP call; the EGU budgets under the February 1999 MOU, and the EGU budgets under today's rule; and the compliance supplement pool (a pool of 200,000 tons divided among the 23 affected States according to their emission reduction responsibilities under the NO_x SIP Call) under the NO_x SIP call and today's rule.

TABLE 1

	OTC phase III budget	5/14/99 EGU portion of the NO _x SIP call budget	EGU budget under MOU	EGU budget under direct final rule	5/14/99 compliance supplement pool	Compliance supplement pool under direct final rule
CT	4,477	2,652	4,549	4,564	549	473

TABLE 1—Continued

	OTC phase III budget	5/14/99 EGU portion of the NO _x SIP call budget	EGU budget under MOU	EGU budget under direct final rule	5/14/99 compliance supplement pool	Compliance supplement pool under direct final rule
MA	13,789	15,145	13,203	13,245	397	473
RI	626	997	982	985	15	15
CT, MA and RI	18,892	18,794	18,734	18,794	961	961

Because Connecticut raised concerns, EPA and Connecticut, Massachusetts and Rhode Island initiated discussions about reallocating the EGU budgets for all three States. All parties agreed that any reallocation of the budgets should not result in a higher combined overall EGU budget for the three States. In fact, Connecticut, Massachusetts and Rhode Island agreed that any reallocation of the budget should actually be accompanied by an agreement among the three States to meet a more stringent budget. In February 1999, the parties signed an MOU.

In that MOU, EPA committed to propose a rulemaking to change the EGU portion of the budgets for the three States. EPA also committed to propose changes to the size of the compliance supplement pools for the three States. In the MOU, EPA and the States agreed upon EGU budgets and the compliance supplement pools for all three States. This agreement was based on redistributing, among the three States, the EGU portion of the combined budget for the three States and the combined compliance supplement pool for the three States. These redistributions were based upon the budgets and the compliance supplement pool as finalized on October 27, 1998. In the October 27, 1998 action, the final combined EGU budget for the three States was 18,734 tons and the combined compliance supplement pool was 844 tons. On May 14, 1999, EPA promulgated a Technical Amendment to the NO_x SIP Call amending the State budgets and the compliance supplement pool (64 FR 26298–306). The combined EGU budget for the three States in this amendment was 18,794 tons and the combined compliance supplement pool was 961 tons. In redistributing both the combined EGU budgets and the combined compliance supplement pool, EPA started by distributing to each of the three States, the number of tons agreed to in the MOU. This resulted in State EGU budgets of 4,549 tons for Connecticut, 13,203 tons for Massachusetts and 982 tons for Rhode Island. EPA then redistributed the remaining 60 tons in the combined States EGU budgets using the same

percentages used to distribute the original EGU portion of the budget in the MOU (i.e., 24.3% for Connecticut, 70.5% for Massachusetts and 5.2% for Rhode Island). EPA used a similar methodology in redistributing the compliance supplement pool. First, EPA distributed 422 tons to both Connecticut and Massachusetts because this was what was agreed to in the MOU. Then EPA distributed 15 tons to Rhode Island. EPA did this because Rhode Island did not receive any compliance supplement pool allowances under the original budgets promulgated on October 27, 1998 notice or in the MOU, but Rhode Island did receive 15 tons of compliance supplement pool allowances under the amended budgets finalized on May 14, 1999. Finally, EPA distributed the remaining 102 tons based on the percentages used to distribute the original compliance supplement pool in the MOU (50% for Connecticut and 50% for Massachusetts). The redistributed budgets and the redistributed compliance supplement pools are also found in Table 1. Furthermore, all three States agreed to further reduce their combined EGU budgets by at least 5% and to retire that 5% to the benefit of the environment.

EPA believes that these revisions are consistent with the goals of the NO_x SIP Call. The NO_x SIP Call specifically allows, and in fact encourages, States to consider emissions trading as a cost-effective means of achieving NO_x reductions from EGUs. The effect of the redistribution of the EGU portion of the overall budget being promulgated in today's rule is no different than the effect of a redistribution of similar magnitude of the EGU portion of the budget that could occur if a State chose to participate in a multi-State trading program. Furthermore, the magnitude of the changes in the EGU budgets for the three States (i.e., 1,912 tons for Connecticut, –1,900 tons for Massachusetts and –12 tons for Rhode Island) is within a range that EPA found did not interfere with the goal of the NO_x SIP Call to reduce transport of significant amounts of NO_x to downwind non-attainment areas when

analyzing whether inter-State trading was an effective tool to use under the NO_x SIP Call. In that analysis, EPA saw fluctuations of up to 9,500 tons for a given State (Docket # A–96–56).

In addition, as noted in the MOU, Connecticut, Massachusetts and Rhode Island all belong to the same power pool. Since dispatch is determined on the power pool level rather than the State level, dispatch itself may result in redistribution of generation and resulting emissions among the States in the power pool. EPA therefore believes that a redistribution, based on the MOU, of budgets within that power pool is appropriate if the same overall budget results. Finally, the additional reductions that the three States have committed to result in an additional reduction of 940 tons, which represents 0.17% of the region-wide EGU budget.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: 1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, 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.

EPA determined that the October 27, 1998 NO_x SIP Call rulemaking was significant. Therefore, EPA submitted

the final rulemaking to OMB for review and prepared a Regulatory Impact Analysis (RIA) entitled "Regulatory Impact Analysis for the Regional NO_x SIP Call (September 1998)." See 63 FR 57477.

This RIA assesses the costs, benefits, and economic impacts associated with potential State implementation strategies for complying with the NO_x SIP Call rulemaking. Any written comments from OMB to EPA and any written EPA response to those comments are included in the NO_x SIP Call docket (A-96-56 and A-9-35). The RIA is available in hard copy by contacting the EPA Library at the address under **ADDRESSES**.

Today's direct final rule requires the same overall emission reductions as under the October 27, 1998 NO_x SIP Call. Because the direct final rule does not impose any new regulatory burdens and makes only minor changes to the October 27, 1998 NO_x SIP Call, the direct final rule is not significant.

B. Regulatory Flexibility Act: Small Entity Impacts

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. No. 104-121) (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, the agency must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the final direct rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See *Motor and Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Mid-Tex Elec. Co-op, Inc. v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule).

EPA determined that the October 27, 1998 NO_x SIP Call does not establish requirements applicable to small entities. Instead, the NO_x SIP Call requires States to develop, adopt, and submit SIP revisions that will achieve the necessary NO_x emissions reductions, and leaves to the States the task of determining how to obtain those reductions, including which entities to regulate. Moreover, because affected States have discretion to choose which sources to regulate and how much emissions reductions each selected

source has to achieve, EPA could not predict the effect of the rule on small entities.

For these reasons, EPA certified that the October 27, 1998 NO_x SIP Call would not have a significant impact on a substantial number of small entities. Nevertheless, the Agency conducted a more general analysis of the potential impact on small entities of possible State implementation strategies. This analysis is documented in the RIA. See 63 FR 57478.

Since today's direct final rule does not change the regulatory burdens under, and makes only minor changes to, the October 27, 1998 NO_x SIP Call, the RIA analysis and the basis for the NO_x SIP Call certification are applicable to the final direct rule. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

For several reasons, EPA did not reach a final conclusion as to the applicability of the requirements of UMRA to the October 27, 1998 NO_x SIP Call. First, EPA stated that it is questionable whether a requirement to submit a SIP revision would constitute a federal mandate in any case. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

However, notwithstanding these issues, EPA prepared the statement that would be required by UMRA if its statutory provisions applied to the October 27, 1998 NO_x SIP Call and consulted with governmental entities as would be required by UMRA for the NO_x SIP Call. Consequently, EPA determined that it is not necessary to reach a conclusion as to the applicability of the UMRA requirements to the October 27, 1998 NO_x SIP Call. See 63 FR 57478.

Today's direct final rule does not change the regulatory burdens under, and makes only minor changes to, the October 27, 1998 NO_x SIP Call. Further, the written statement prepared for, and the consultations conducted in connection with, the October 27, 1998 NO_x SIP Call are fully applicable to the final direct rule. Consequently, for the reasons set forth in the preamble of the October 27, 1998 NO_x SIP Call, it is not necessary to reach a conclusion as to the applicability of the UMRA requirements.

D. Paperwork Reduction Act

Today's direct final rule does not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The three States subject to this rule, Connecticut, Massachusetts and Rhode Island, will be subject to the same reporting requirements that they are subject to under the October 27, 1998 NO_x SIP Call.

E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The Executive Order 13045 applies to any rule that EPA determines (1) "economically significant" as defined

under Executive Order 12866 and (2) the environmental health or safety risk addressed by the rule has 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. EPA determined that the October 27, 1998 NO_x SIP Call is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. However, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels experienced by children as a result of the October 27, 1998 NO_x SIP Call; these findings are presented in the RIA. See 63 FR 57479.

Today's direct final rule does not change the overall emission reductions under the October 27, 1998 NO_x SIP Call. Consequently, the determination concerning Executive Order 13045 and the RIA analysis are fully applicable to the final direct rule.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the October 27, 1998 NO_x SIP Call; these findings are presented in the RIA. See 63 FR 57479.

Today's direct final rule does not change the overall emission reductions under the October 27, 1998 NO_x SIP Call. Consequently, the RIA analysis is fully applicable to the final direct rule.

G. Executive Order 12875: Enhancing The Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If

EPA complies by consulting, 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. As explained in the discussion of UMRA, the direct final rule does not impose an enforceable duty on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule applies only to certain States and does not require Indian tribal governments to

take any action. Moreover, EPA does not, by today's rule, call on States to regulate NO_x sources located on tribal lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub L. No. 104-113, section 12(d), 15 U.S.C. 272 note) (NTTAA), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's direct final rule does not include any environmental monitoring and measurement provisions. Therefore, section 12(d) of the NTTAA does not apply.

J. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

As discussed in the preamble to the NO_x SIP Call, any final action related to the NO_x SIP Call is "nationally applicable" and "of nationwide scope or effect" within the meaning of section 307(b)(1). See 63 FR 57480. Thus, any petitions for review of final actions regarding the NO_x SIP Call must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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 action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 1, 1999.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: September 7, 1999.

Carol M. Browner,
Administrator.

40 CFR part 51 is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, 7602.

Subpart G—Control Strategy [Amended]

2. Section 51.121 is amended to revise paragraphs (e)(2) and (e)(3)(iii) to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(e) * * *

(2) The State-by-State amounts of the NO_x budget, expressed in tons, are as follows:

State	Budget
Alabama	172,037
Connecticut	44,993
Delaware	22,789
District of Columbia	6,672
Georgia	189,634
Illinois	274,799
Indiana	238,970
Kentucky	155,619
Maryland	81,625
Massachusetts	83,396

State	Budget
Michigan	224,582
Missouri	128,146
New Jersey	100,133
New York	240,123
North Carolina	168,373
Ohio	250,930
Pennsylvania	257,441
Rhode Island	9,798
South Carolina	124,211
Tennessee	197,664
Virginia	185,027
West Virginia	91,216
Wisconsin	136,172
Total	3,384,350

(3) * * *

(iii) The State-by-State amounts of the compliance supplement pool are as follows:

State	Compliance supplement pool (tons of NO _x)
Alabama	11,350
Connecticut	473
Delaware	127
District of Columbia	0
Georgia	11,179
Illinois	17,586
Indiana	20,390
Kentucky	14,495
Maryland	3,840
Massachusetts	473
Michigan	11,103
Missouri	10,783
New Jersey	1,479
New York	2,370
North Carolina	10,544
Ohio	22,320
Pennsylvania	15,662
Rhode Island	15
South Carolina	5,122
Tennessee	10,557
Virginia	6,914
West Virginia	16,410
Wisconsin	6,808
Total	200,000

* * * * *

[FR Doc. 99–23914 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6432–1]

Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline Beyond December 31, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule the EPA continues to exempt refiners, importers, and blenders of gasoline subject to the State of California's reformulated gasoline regulations from certain enforcement provisions in the Federal reformulated gasoline regulations. Current exemptions applicable under the Federal Phase I reformulated gasoline program will expire after December 31, 1999, when the Federal Phase II reformulated gasoline program begins. Today's direct final rule extends the California enforcement exemptions beyond that date. The Agency is publishing this action as a direct final rule because it does not expect it to be controversial. An accompanying notice of proposed rulemaking is being published in today's **Federal Register**.

DATES: This final rule is effective on January 1, 2000 unless adverse or critical comments are received by October 15, 1999. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (6406J), Washington, D.C. 20460. Materials relevant to this direct final rule have been placed in docket [A–99–04] located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this direct final rule, contact Anne Pastorkovich, Attorney/Advisor, Fuels & Energy Division, at (202) 564–8987. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Anne Pastorkovich, (202) 564–8987.

SUPPLEMENTARY INFORMATION: The remainder of this direct final rule is organized in the following sections:

- I. Background
 - A. Regulated Entities
 - B. Current Status and Basis for California Exemptions
- II. Applicability of Exemptions Beginning in 2000 (Description of This Rule)
- III. Administrative Designation and Regulatory Analysis

- A. Executive Order 12866
- B. Executive Order 12875: Enhancing Intergovernmental Partnerships
- C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
- D. Regulatory Flexibility
- E. Paperwork Reduction Act
- F. Unfunded Mandates Reform Act
- G. Submission to Congress and the General Accounting Office
- H. Children's Health Protection
- I. National Technology Transfer and Advancement Act of 1995 (NTTAA)
- J. Statutory Authority

I. Background

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers, and oxygenate blenders of California gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult

the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Current Status and Basis for California Exemptions

Section 211(k) of the Federal Clean Air Act (the Act) directs the EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas, as well as "anti-dumping" requirements for conventional gasoline used in the rest of the country, beginning in January 1995. The areas covered by the Federal RFG program in California are Los Angeles, San Diego, and Sacramento.¹ The Act requires EPA to reduce the emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from motor vehicles through the RFG program. It also requires that there be no increase in the emission of oxides of nitrogen (NO_x) as a result of the RFG program. Finally, RFG must meet certain content standards for oxygen, benzene and heavy metals.

The RFG program is implemented in two phases. The Phase II program, which will begin on January 1, 2000, is similar to the Phase I program, but will require even greater emissions benefits. The relevant regulations for RFG and conventional gasoline may be found at 40 CFR Part 80, Subparts D, E, and F.²

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations requiring reformulation of California "Phase 2" gasoline.³ The CARB regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NO_x, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles. The CARB regulations

set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T-50 and T-90, respectively). These regulations became effective on March 1, 1996 for all gasoline in the California distribution network (except for gasoline being exported from California). The CARB regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.

During the Federal RFG rulemaking, and in response to comments by California refiners, we concluded (1) that VOC and toxics emission reductions resulting from the California Phase 2 standards would be equal to or greater than the Federal Phase I RFG standards (applicable from January 1, 1995 through December 31, 1999), (2) that the content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase I content standards,⁴ and (3) that the CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase I requirements would be met.⁵ Consequently, while the Federal RFG and conventional gasoline standards continue to apply in California, refiners, importers, and oxygenate blenders of gasoline sold in California (referred to collectively as "California refiners") are exempt in most cases from various enforcement-related provisions, including the following:

Requirement exempted	Citation at 40 CFR § 80.xx
Compliance Surveys ⁶	80.68
Independent Sampling & Testing	80.65(f).
Designation of Gasoline	80.65(d).
Marking of Conventional Gasoline	80.65(g) and 80.82.
Downstream Oxygenate Blending	80.69.
Recordkeeping	80.74 and 80.104.
Reporting	80.75 and 80.105.
Product Transfer Documents	80.77.
Parameter Value Reconciliation Requirements	80.65(e)(2).
Reformulated Gasoline and Reformulated Gasoline Blendstock for Oxygenate Blending (RBOB) Compliance Requirements.	80.65(c).
Annual Compliance Audit Requirements	80.65(h).

¹ See 40 CFR § 80.70 for a complete list of covered areas.

² See 59 FR 7812 (February 16, 1994), as amended at 59 FR 36964 (July 20, 1994); 60 FR 2699 (January 11, 1995); 60 FR 35491 (July 10, 1995); 60 FR 65574 (December 20, 1995); and 62 FR 68196 (December 31, 1997).

³ See Title 13, California Code of Regulations §§ 2250–2272 (as last amended December 11, 1998).

California has amended its regulations since they were first promulgated in September, 1992. The most recent amendments, adopted December 11, 1998, raise the oxygen "cap" limit for California gasoline from 2.7 weight % to 3.5 weight %. As discussed below, this direct final rule is based on the current state of California's Phase 2 gasoline program, including the December 11, 1998 amendments.

⁴ As is discussed in the section entitled "Oxygen Standard", below, this is not now the case.

⁵ See 59 FR 7758, 7759 (February 16, 1994) and 40 CFR § 80.81.

⁶ 40 CFR § 80.81(e)(2) was amended to include a limited oxygen survey provision. See "Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners—Final Rule," 63 FR 34818 (June 26, 1998).

Requirement exempted	Citation at 40 CFR § 80.xx
Compliance attest Engagement Requirements	subpart F.

California refiners are not exempt from these Federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover RFG exported from California. EPA has made reasonable allowances to minimize complications for gasoline exported from California, including permitting the use of California test methods for conventional gasoline that is produced in California for sale outside the state.⁷

II. Description of the Direct Final Rule

The enforcement exemptions which expire on December 31, 1999 were based on a comparison of California Phase 2 gasoline and Federal Phase I RFG. The enforcement exemptions, which were included in the final RFG rule (see fn. 5), were only applicable during the Phase I RFG program. It would have been premature for EPA to have made an equivalency determination comparing California Phase 2 and Federal Phase II gasolines upon publication of the final RFG rule. However, we indicated in the rulemaking that, if an appropriate and timely demonstration was made in the future, showing that California Phase 2 gasoline could be expected to provide emission benefits equivalent to Federal Phase II RFG, then we might extend the enforcement exemptions beyond December 31, 1999. For the reasons discussed below, we believe that California Phase 2 gasoline provides emissions benefits equivalent to Federal

Phase II RFG, and that it is appropriate for us to extend the California enforcement exemptions to Federal Phase II RFG. Specifically, the Agency believes that:

(1) VOC, toxics, and NO_x emission reductions resulting from the California Phase 2 standards would be equal to or greater than the reductions from the Federal Phase II RFG standards,

(2) The content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase II content standards, and

(3) The CARB's compliance and enforcement program is designed to be sufficiently rigorous.

We have received a detailed comparison of California Phase 2 and Federal Phase II blends, entitled, "Comparing the Equivalency of California and Federal Reformulated Gasoline," from the Western States Petroleum Association (hereafter referred to as "the WSPA analysis"). A copy of the WSPA analysis, and an EPA staff memorandum describing the Agency's evaluation of the WSPA analysis, has been placed in public docket at the location listed in the ADDRESSES section of this notice⁸.

The WSPA analysis evaluated the performance of the California program (1) by comparing the average performance of actual California RFG to the averaged parameter limits of federal RFG, and (2) by analyzing the performance of a set of "virtual fuels" using computer modeling. While the average fuel performance analysis establishes that the overall air quality

objective of the federal RFG program will be met, the virtual fuels analysis provides assurances that there will be no temporal spikes in the emission of ozone forming VOCs.

The WSPA analysis utilized data from two separate surveys of actual California gasoline to compare the emissions performance of California gasoline with the EPA Phase II complex model averaging standards. See 40 CFR § 80.41(f). One survey was prepared by the California Energy Commission (CEC).⁹ The other survey was prepared by the American Petroleum Institute/National Petroleum Refiners Association (API/NPRA).¹⁰ Both surveys collected data on the properties of RFG actually produced by California refiners in an effort to evaluate the emissions performance of actual, in use California gasoline. The API/NPRA and CEC surveys represented about 85% and 100% of the RFG produced in California, respectively. The surveys each occurred over periods of about four months during the summertime, and were weighted by production volume. Producers were not aware that the surveys were being conducted.

Both surveys support the conclusion that average fuel property values and average emissions reductions of in-use California gasolines comply with Federal Phase II averaged standards. Additionally, the two surveys, performed one year apart, were remarkably consistent. The results of the surveys are shown in the following table:¹¹

Properties	Federal phase II averaged standards	1990 Base-line fuel	California survey results	
			API-96	CEC-97
Oxygen (wt%)	>=2.1 average, 1.5 per gal. min	0	2.1	2.1
SULFUR (ppm)		339	20	19
RVP (psi)		8.7	6.8	6.8
E200 (%)		41	51.3	50.5
E300 (%)		83	88.8	88.4
AROMATICS (vol%)		32	23.0	23.0
OLEFINS (vol%)		9.2	3.9	4.1
BENZENE (vol%)	<=0.95 average, 1.3 per gal. max.	1.53	0.55	0.57

⁷ See 40 CFR 80.81(h)(1).

⁸ The WSPA analysis and an EPA staff memorandum entitled "Equivalency Determination of California and Federal Reformulated Gasoline," (March 8, 1999) have been placed in docket A-99-04.

⁹ Final Report, 1996 American Petroleum Institute/National Petroleum Refiners Association Survey of Refining Operations and Product Quality (July, 1996).

¹⁰ California Energy Commission, Supply and Cost of Alternatives to MTBE in Gasoline—

Technical Appendices, Refinery Modeling—Task 2 Calibration of Refinery Model, Table 5.3.

¹¹ WSPA analysis, at 7.

Properties	Federal phase II averaged standards	1990 Base-line fuel	California survey results	
			API-96	CEC-97
Phase II Complex Model Absolute emissions Calculations		Absolute emissions (milligrams/mile)		
Exhaust VOC .....	.....	907.0	733.0	734.2
Nonexhaust VOC .....	.....	559.3	294.1	294.1
Total VOC .....	.....	1466.3	1027.2	1028.4
Exhaust benzene .....	.....	53.5	28.8	28.9
Nonexhaust benzene .....	.....	6.2	1.3	1.4
Acetaldehyde .....	.....	4.4	3.6	3.6
Formaldehyde .....	.....	9.7	11.8	11.8
Butadiene .....	.....	9.4	6.4	6.5
POM .....	.....	3.0	2.5	2.5
Total exhaust toxics .....	.....	80.1	53.0	53.2
Total toxics .....	.....	86.3	54.3	54.6
NO _x .....	.....	1340.0	1144.5	1143.2
Phase II Complex Model Reductions from 1990 Baseline		Percent change from baseline emissions		
Total VOC	>=29.0% average, 25.0% per gal. min.	- 29.9	- 29.9	
Total toxics	21.5% average		- 37.1	- 36.8
NO _x	6.8% average		- 14.6	- 14.7

The WSPA analysis also compares the emissions performance of the survey average in-use fuel with the emissions performance of fuels that meet California's "regulatory recipe". The regulatory recipe specifies limits for various emission-related fuel parameters (e.g. sulfur content, aromatics content).

Certain of these parameters in the regulatory recipe have two sets of limits; a "flat" (per gallon) limit and an average limit with a cap. A California refiner may choose, on a property by property basis, to produce a blend that complies with a flat or an average (with cap) regulatory recipe limit. However, a refiner may produce a blend with parameters that differ from the regulatory recipe specifications if they can demonstrate, using the predictive model, that the emissions performance of their blend is comparable. In order to use the predictive model to compare the emissions performance of its blend to the performance of the regulatory recipe, refiners must decide whether certain parameters in their blend will be averaged or flat-limited.

The WSPA analysis compares the survey results to the regulatory recipe by plugging the average survey data into the predictive model and generating emissions numbers. These numbers are then compared against an all-average and all-flat emissions baseline. The results demonstrate that the emissions performance of in-use gasoline approximates the emissions performance of a fuel with average regulatory recipe limits. Therefore, it is reasonable to use the average, rather than the flat, regulatory recipe limits to determine which of the computer-generated virtual fuels meet California

standards under the predictive model. This virtual fuels analysis, discussed later, demonstrates compliance of California fuel with the Federal VOC per-gallon minimum performance requirement.

Finally, the WSPA analysis demonstrates that the fuels represented by the two surveys meet the average performance requirements of the federal RFG program. To make this determination the WSPA analysis evaluates the averaged fuels from the two surveys using the federal Complex Model.¹²

The WSPA analysis also examined a computer-generated set of emissions data to evaluate the performance of a large number of possible California gasoline blends against the Federal per-gallon minimum reduction requirements for VOCs. This set of virtual fuels consisted of fuels whose properties vary discretely within ranges constrained by California or Federal regulations. Specifically, the virtual fuels analysis defined the properties of the virtual fuels using the appropriate limits of California Phase 2—for RVP, sulfur, aromatics, olefins, T50, T90, and benzene, the upper and lower limits are defined by California's regulations. For oxygen, the lower limit is defined by the Federal RFG program¹³ and the upper

limit is defined by the California regulations.

For VOC compliance, the virtual fuels analysis looked at possible combinations of fuel properties within the limits of what could be certified under the California predictive model. Although the virtual fuels analysis does not reflect each and every possible fuel formulation, the discrete properties chosen accurately approximate the full range of possible, "real world" fuels. These virtual fuel formulations were then submitted to the EPA's complex model. In all there were 18,048 virtual fuels that met the California standards. Of these fuels, all met the 25% minimum Federal Phase II VOC reduction requirement.

As discussed in greater detail in the staff paper, the virtual fuels analysis supports the conclusion that any possible "real world" fuel will comply with the Federal Phase II complex model minimum VOC reduction requirement.

We are satisfied that the CARB enforcement program, which employs several full-time inspectors and a mobile laboratory facility, and which conducts year round inspections of retail facilities, terminals, and refineries, is designed to be sufficiently stringent to ensure the emissions benefits and content requirements of the program are met.

In the absence of the enforcement exemptions at 40 CFR § 80.81, California refiners would be required to comply with duplicative enforcement requirements at a significant added cost. We believe that California Phase 2 gasoline, as required by the current regulations (see footnote 3), and as

¹² *Id.* at 9.

¹³ The limited oxygen survey option was added to 40 CFR § 80.81 (e)(2)(ii) to ensure that compliance with a 2.0 wt % standard is met in Federally covered areas, as defined by § 80.70. Since for an averaging party, the minimum oxygen content of any gallon of gasoline is 1.5 wt % (with all production over the compliance period meeting 2.1 wt%, on average), the appropriate minimum oxygen content for analysis purposes is 1.5 wt %.

described in this analysis, will achieve VOC, toxic and NO_x emission reductions that are equal to or greater than those achieved by Federal Phase II gasoline, and will comply with the oxygen and benzene content requirements of the Federal program. We also believe that the CARB enforcement program is sufficiently stringent to ensure that the expected benefits will continue to be met. Therefore, we are proposing to extend the California enforcement exemptions at 40 CFR § 80.81 beyond December 31, 1999.

On March 26, 1999, California Governor Gray Davis issued Executive Order D-5-99, which directed that methyl tertiary butyl ether (MTBE) be phased out of gasoline as soon as possible. Because, California refiners must still provide gasoline in the state that complies with the federal oxygen content requirement, the appropriateness of extending the enforcement exemptions is preserved. A copy of the executive order has been placed in the public docket at the location indicated in the **ADDRESSES** section of this notice.

On April 12, 1999, Governor Davis submitted a letter to EPA Administrator Carol Browner, requesting that EPA grant a waiver from the Federal 2.0 weight % oxygen requirement for all California areas covered by the Federal RFG program. The governor's request is currently being evaluated by EPA, but is outside the scope of today's direct final rule. Today's action, in finding that the emission reduction benefits of California gasoline are equivalent to Federal Phase II RFG based on a comparison of current California Phase 2 gasoline and Federal Phase II RFG, includes an analysis demonstrating that such California gasoline will comply with the Federal content standards, including the 2.0 weight % oxygen standard. If California amends its current reformulated gasoline regulations (or issues new regulations), EPA will re-examine these regulations to determine whether enforcement exemptions continue to be appropriate.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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 entitlement, 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.

EPA has determined that this rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review. The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose any mandatory obligations on the regulated community beyond those specified in the current regulations.

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

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

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

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

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, 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 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. Today's direct final rule does not create a mandate for any tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060-0277 (EPA ICR No. 1951.08).

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule 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 rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Today's direct final rule extends the existing exemption for California gasoline from many of the regulatory compliance requirements of the RFG program, relieving potentially duplicative obligations.

G. Submission to Congress and the General Accounting Office

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

H. Executive Order 13045: Children's Health Protection

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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045, entitled

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Statutory Authority

Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, California exemptions, Gasoline, Motor vehicle pollution, Reformulated gasoline.

Dated: August 27, 1999.

Carol M. Browner,
Administrator.

For the reasons described in the preamble, part 80 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

§ 80.81 [Amended]

2. Section 80.81 is amended by removing paragraph (i).

[FR Doc. 99-23707 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 271****[FRL-6437-9]****Tennessee: Final Authorization of
State Hazardous Waste Management
Program Revision****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Immediate final rule.

SUMMARY: Tennessee has applied for Final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revision consists of the provisions contained in rules promulgated between July 1, 1994 through June 30, 1995, otherwise known as RCRA Cluster V and July 1, 1996 through June 30, 1997, otherwise known as RCRA Cluster VI. The EPA has reviewed Tennessee's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. EPA is authorizing the state program revision through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize Tennessee's hazardous waste program revision will take effect as provided below.

DATES: This Final authorization for Tennessee will become effective without further notice on November 15, 1999, unless EPA receives adverse comment by October 15, 1999. Should EPA receive such comments, EPA will publish a timely withdrawal informing the public that the rule will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; (404) 562-8440. Copies of the Tennessee program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:00 a.m. to 4:30 p.m. at the following addresses: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1535; and EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; (404) 562-8190.

FOR FURTHER INFORMATION CONTACT: Narinda Kumar, (404) 562-8440.

SUPPLEMENTARY INFORMATION:**A. Background**

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be

necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. Tennessee

Tennessee initially received Final Authorization on January 22, 1985, effective February 5, 1985 (50 FR 2820) to implement its base hazardous waste management program. Tennessee received authorization for revisions to its program on January 30, 1998, effective March 31, 1998 (63 FR 4587), on May 23, 1996, effective July 22, 1996 (61 FR 25796), on August 24, 1995, effective October 23, 1995 (60 FR 43979), on May 8, 1995, effective July 7, 1995 (60 FR 22524), on June 1, 1992, effective July 31, 1992 (57 FR 23063), and on June 12, 1987, effective August 11, 1987 (52 FR 22443).

On May 15, 1998, Tennessee submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Tennessee's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Tennessee's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Tennessee Final Authorization for the program modifications contained in the revision. Today, Tennessee is seeking authority to administer the following Federal requirements promulgated between July 1, 1994 and June 30, 1996:

Description of Federal requirement	Federal Register date and page	Analogous State authority ¹
135—Recovered Oil Exclusion	07/28/94, 59 FR 38536	Tennessee Code Annotated (TCA) 68-212-104(7), 86-212-106(a)(1), and 68-212-107(d)(1), Tennessee Revised Code (TRC) 1200-1-11-.02(1)(c)3(ii)(II)II, .02(1)(d)1(xii), .02(1)(f)1(iii)(III)-(V), .09(8)(a)2(iii).
136—Removal of the Conditional Exemption for Certain Slag Residues.	08/24/94, 59 FR 43496	Tennessee Code Annotated (TCA) 68-212-04(7), 68-212-106(a)(1), 68-212-107(a), (d)(1), and (d)(9), Tennessee Revised Code (TRC) 1200-1-11-09(3)(a)3, .10(3)(a).
137—Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	09/19/94, 59 FR 47982	Tennessee Code Annotated (TCA) 68-212-106(a)(1), 68-212-107(d)(1) and (3).

Description of Federal requirement	Federal Register date and page	Analogous State authority ¹
	01/03/95, 60 FR 242	Tennessee Code Annotated (TCA) 68-212-104(7), 68-212-106(a)(1), 68-212-107(d)(1), (d)(6), and (d)(9) .01(4)(a) intro., .01(4)(a)2, .01(4)(b)1, .01(5)(a) intro., .01(5)(b) intro., .01(5)(b)1-2, .02(1)(b)5(i)(III), .06(1)(b)2(v)-(vi), .09(3)(d)1, .09(8)(a)3(i) and (iii), .09(8)(a)3(iii)(I), .09(8)(a)3(iii)(II), .09(8)(a)3 (iii)(II), .09(9) Appendix XIII, .10(1)(a)3(iii)(II)-(III), .10(1)(a)5(iv)-(v), .10(1)(b)7 and 9, .10(1)(g)1, .10(1)(g)1(i), .10(1)(g)1(i)(I)-(VI), .10(1)(g)1(ii), .10(1)(g)1(ii)(I), .10(1)(g)1(ii)(I)-IV, .10(1)(g)1(ii)(II), .10(1)(g)1(iii), .10(1)(g)1(iii)(I)-(V), .10(1)(g)1(iii)(V)-II, .10(1)(g)1(iii)(VI)-(VII), .10(1)(g)1(iv), .10(1)(g)1(iv)(I)-(III), .10(1)(g)1(v)-(x), .10(1)(g)2(iv)(II).
139—Testing and Monitoring Activities Amendment I.	01/13/95, 60 FR 3089	Tennessee Code Annotated (TCA) 68-212-104(7), 68-212-106(a)(1), and 68-212-107(d)(1) and Tennessee Revised Code (TRC) 1200-1-11-.01(2)(b).
140—Carbamate Production Identification and Listing of Hazardous Waste.	02/09/95, 60 FR 7824	Tennessee Code Annotated (TCA) 68-212-104(7), 68-212-106(a)(1), and 68-212-107 (d)(1); Tennessee Revised Code (TRC) 1200-1-11-.02(1)(c)1(iii)(IV)-VII, .02(1)(c)3(ii)(I)IV, .02(4)(c), .02(4)(d)5-6, .02(5) Appendix VII-VIII.
141—Testing and Monitoring Amendment II.	04/04/95, 60 FR 17001	Tennessee Code Annotated (TCA) 68-212-104(7), 68-212-106(a)(1), and 68-212-107 (d)(1); Tennessee Revised Code (TRC) 1200-1-11-.01(2)(b)1.
142A—Universal Waste: General Provisions.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68-212-104(7) and 18, 68-212-106(a)(1), and 68-212-107 (a) and (d); Tennessee Revised Code (TRC) 1200-1-11-.01(2)(a), .02(1)(e)3, .02(1)(e)3(i)-(vi), .02(1)(e)6(iii), .02(1)(e)6(iii)(I)-(V), .02(1)(e)6(iii)(V)-II, .02(1)(e)6(iii)(VI), .02(1)(e)7(iii), .02(1)(e)7(iii)(I)-(V), .02(1)(e)7(iii)(I)-(V)-II, and VI, .02(1)(j) intro., .03(1)(a)2-7, .03(1)(b)4, .06(1)(b)2(x)-(xii), .10(1)(a)5(vi), .07(1)(b)4(ix), .12(1)(a)-(b), .12(1)(e)1, .12(1)(e)1(i)-(ii), .12(1)(e)2, .12(1)f, .12(2)(a), .12(2)(b)intro, .12(2)(b)1-2, .12(2)(c), .12(2)(e) intro, .12(2)(f)1-3, .12(2)(f)3(i)-(vi), .12(2)(g), .12(2)(h)1-2, .12(2)(i)1-5, .12(2)(i)5(i)-(ii), .12(2)(i)6, .12(2)(i)6(i)-(ii), .12(2)(i)7-8, .12(2)(j)-(k), .12(2)(k)1-3, .12(3)(a), .12(3)(b)1-2, .12(3)(c)1(i)-(ii), .12(3)(c)2, .12(3)(c)2(i)-(v), .12(3)(e) intro, .12(3)(f)1-3, .12(3)(f)3(i)-(vi), .12(3)(g), .12(3)(h)1-2, .12(3)(i)1-5, .12(3)(i)5(i)-(ii), .12(3)(i)6, .12(3)(i)6(i)-(ii), .12(3)(i)7-8, .12(3)(j)1, .12(3)(j)1(i)-(iii), .12(3)(j)2, .12(3)(j)2(i)-(iii), .12(3)(j)3(i)-(ii), .12(3)(k)intro, .12(3)(k)1-3, .12(4)(a), .12(4)(b), .12(4)(b)1-2, .12(4)(b)1-2, .12(4)(c)1-2, .12(4)(d)1-2, .12(4)(e)1-2, .12(4)(f)1-2, .12(4)(g)intro, .12(4)(g) 1-2, .12(5)(a)1-2, .12(5)(b)1-2, .12(5)(b)2(i)-(ii), .12(5)(b)3-4, .12(5)(c)1, .12(5)(c)1(i)-(iii), .12(5)(c)2, .12(6)(a) intro, .12(6)(a)1-3.
142B—Universal Waste Rule: Specific Provisions for Batteries.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68-212-104(7) and 18, 68-212-106(a)(1), and 68-212-107 (a) and (d), Tennessee Revised Code (TRC) 1200-1-11-.01(2)(a), .02(1)(f)1(iii)(II)-(V), .02(1)(j)1, .06(1)(b)2(x)(I), .05(1)(b)2(xii)(I), .09(7)(a)1-2, .10(1)(a)5(vi)(I), .07(1)(b)4(ix)(I), .12(1)(a)1, .12(1)(b)1(i)-(ii), .12(1)(b)2, .12(1)(b)2(i)-(iii), .12(1)(b)3(i)-(ii), .12(1)(f), .12(2)(d)1, .12(2)(d)1(i)-(ii), .12(2)(d)1(ii)(I)-(VII), .12(2)(d)1(iii), .12(2)(d)1(iii)(I)-(II), .12(2)(e), .12(3)(d)1, .12(3)(d)1(i)-(ii), .12(3)(d)1(ii)(I)-(VII), .12(3)(d)1(iii), .12(3)(d)1(iii)(I)-(II), .12(3)(e)1.
142C—Universal Waste Rule: Specific Provisions for Pesticides.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68-212-104(7) and 18, 68-212-106(a)(1), and 68-212-107 (a) and (d); Tennessee Revised Code (TRC) 1200-1-11-.01(2)(a), .02(1)(j)2, .12(1)(c)1(ii), .12(1)(c)2, .12(1)(c)2(i)-(iv), .12(1)(c)3(i), .12(1)(c)3(i)(I)-(II), .12(1)(c)3(ii), .12(1)(c)4, .12(1)(c)4(i), .12(1)(c)4(i)(I)-(II), .12(1)(c)4(ii), .12(1)(f), .12(2)(d)2, .12(2)(d)2(i)-(iv), .12(2)(e)2, .12(2)(e)2(i)-(ii), .12(2)(e)3, .12(2)(e)3(i)(I)-(III), .12(2)(e)3(ii), .12(3)(c)1(i) and (iii), .12(3)(d)2, .12(3)(d)2(i)-(iv), .12(3)(e)2, .12(3)(e)2(i)-(ii), .12(3)(e)3, .12(3)(e)3(i)(I)-(III), .12(3)(e)3(ii), .10(1)(a)5(vi)(II), .07(1)(b)4(ix)(ii), .12(1)(a)1(ii), .12(1)(c)1, .12(1)(c)1(i), .12(1)(c)1(i)(I)-(II).
142D—Universal Waste Rule: Specific Provisions for Thermostats.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68-212-104(7) and 18, 68-212-106(a)(1), and 68-212-107 (a) and (d); Tennessee Revised Code (TRC) 1200-1-11-.01(2)(a), .02(1)(j)3, .06(1)(b)2(x)(III), .05(1)(b)2(xii)(III), .10(1)(a)5(vi)(III), .07(1)(b)4(ix)(III), .12(1)9a)1(iii), .12(1)(d)1-2, .12(1)(d)2(i)-(ii), .12(1)(d)3(i)-(ii), .12(1)(f)1, .01(2)(a), .12(2)(d)3, .12(2)(d)3(i)-(ii), .12(2)(d)3(ii)(I)-(VIII), .12(2)(d)3(iii)(I), .12(2)(d)3(iii)(I)I, .12(2)(d)3(iii)(I)II, .12(2)(d)3(iii)(II)-(III), .12(2)(e)4, .12(3)(d)3, .12(3)(d)3(i)-(ii), .12(3)(d)3(ii)(I)-(VIII), .12(3)(d)3(iii)(I), .12(3)(d)3(iii)(I)I-II, .12(3)(d)3(iii)(II)-(III), .12(3)(e)4.

Description of Federal requirement	Federal Register date and page	Analogous State authority ¹
142E—Universal Waste Rule: Petition Provisions to Add a New Universal Waste.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68–212–104(7) and 18, 68–212–106(a)(1), and 68–212–107 (a) and (d); Tennessee Revised Code (TRC) 1200–1–11–.01(3)(a)1, .01(3)(d)1–4, .12(7)(a)1–3, .12(7)(b)1–8.
144—Removal of Legally Obsolete Rules.	06/29/95, 60 FR 33912	Tennessee Code Annotated (TCA) 68–212–104(2), (7), and (11), 68–212–107(a) and (d)(3), and 68–212–108(a)(1); Tennessee Revised Code (TRC) 1200–1–11–.2(4)(b), .09(8)(d)3(v), .09(8)(e)6–8, .07(2)(b)5, .07(2)(c)2, .07(2)(d)1, .07(2)(d)1(i)–(ii).
145—Liquids in Landfills III	07/11/95, 60 FR 35703	Tennessee Revised Code (TRC) 1200–1–11–.06(14)(o)5(ii)(II) and (III), .05(14)(o)6(ii)(II) and (III).
148—RCRA Expanded Public Participation.	12/11/95, 60 FR 63417	Tennessee Code Annotated (TCA) 68–212–106(a)(2), 68–212–107(d)(4) and (6), 68–212–108(a)(1) and (e); TRC 1200–1–11–.07(2)(c)3(i)(I)–(IV), .07(2)(c)3(i)(IV)I, .07(2)(c)3(i)(IV)I(A)–(D), .07(2)(c)3(i)(IV)II, .07(2)(c)3(i)(IV)II.A–E, .07(7)(e)4(iv)(I)–(II), .07(5)(a)1(xxii), .07(8)(a)13, .07(1)(d)2(v)–(vi), .07(1)(e)2(vi)(I)–(II), .07(1)(e)2(vi)(II)(I)–(IV), .07(1)(e)2(vii)–(xi), .07(1)(e)4, .07(1)(j)4(iii), .07(1)(j)4(iii)(I)–(II), .07(1)(j)4(iii)(II)–IV, .07(1)(j)4(iv)–(vi), .07(1)(j)7.
150—Amendments to the Definition of Solid Waste; Amendment II.	03/26/96, 61 FR 13103	Tennessee Revised Code 1200–1–11 –.02(1)(d)1(xii).
151—Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	04/08/96; 04/30/96; 06/28/96; 07/10/96; 08/26/96; 02/19/97, 61 FR 15566.	TCA 68–212–104(7) and (16), 68–212–106(a)(1) and (2), 68–212–107(a) and (d)(1), (3), and (9); Tennessee Revised Code (TRC) 1200–1–11–.10(1)(a)(3)(iii), .10(1)(a)(3)(iii)(I) –(II), .10(1)(a)(3)(iv), .10(1)(a)(3)(iv)(I)–(VI), .10(1)(a)5(iii)–(iv), .10(1)(b)6, .10(1)(b)9–12, .10(1)(c)1–3, .10(1)(c)3(i)–(vi), .10(1)(g)1, .10(1)(g)1(i)(II)–(V), .10(1)(g)1(ii)(I)II, .10(1)(g)1(iii)(II), .10(1)(g)2(iv)(II), .10(1)(g)2(v)(IV)–(V), .10(1)(h), .10(1)(i)1, .10(1)(i)4, .10(1)(i)4(i)(I)–(II), .10(1)(i)4(iii)(I)–(IV), .10(2)(j)1–6, .10(2)(j)6(i)–(iv), .10(2)(j)7, .10(3)(a)1, 5 and (7), .10(3)(a)/Table, .10(c)/Table 1, .10(3)(i)1 Table UTS, .10(5) App. XI .10(1)(c)3(i)–(vi), .10(1)(g)1, .10(1)(g)1(i)(II)–(V), .10(1)(g)1(ii)(I)II, .10(1)(g)1(iii)(II), .10(1)(g)2(iv)(II), .10(1)(g)2(v)(IV)–(V), .10(1)(h), .10(1)(i)1, .10(1)(i)4.
152—Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.	04/12/96, 61 FR 16290	Tennessee Revised Code (TRC) 1200–1–11–.03(1)(a)5–8, .03(6)(d)2, .03(6)(g)2, .04(3)(a)1, .06(2)(c)1(i), .05(2)(c)1(i), .09(6)(a)2(ii), .12(2)(k), .12(3)(k), .12(4)(g), .12(6)(a).

¹ The Tennessee provisions are from the Tennessee Hazardous Waste Management Regulations adopted December 6, 1994, August 6, 1996, June 3, 1997, and February 3, 1998.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

The State of Tennessee's Hazardous Waste Management Program is not being authorized to operate in Indian Country.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial program revision and do not anticipate adverse comment. However, in the Proposed Rules' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to authorize the revision if we receive adverse comments. This authorization will become effective without further notice on November 15, 1999, unless EPA receives adverse comment by October 15, 1999. Should EPA receive such comments it will publish a timely

withdrawal informing the public that the rule will not take effect. We will address all public comments in a subsequent final action based on the proposed rule. EPA may not provide additional opportunity for comment. Any parties interested in commenting must do so at this time.

The public may submit written comments on EPA's immediate final decision until October 15, 1999. Copies of Tennessee's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document. The **ADDRESSES** section also indicates where to send written comments on this action.

C. Decision

I conclude that Tennessee's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Tennessee Final Authorization to operate its hazardous waste program as revised. Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its

borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Tennessee's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart RR until a later date.

Unfunded Mandates Reform Act

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

sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Tennessee program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small

governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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. The 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 today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With 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 with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management

and Budget determines is "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, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With 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 with 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 rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Tennessee is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden

imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99-23912 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 64

[CC Docket No. 98-81, ASD File No. 98-64, CC Docket No. 96-150, RM-9341, FCC 99-106]

1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document streamlines the accounting requirements for mid-sized incumbent local exchange carriers (LECs) whose aggregate annual revenues are less than \$7 billion by allowing these companies, currently required to use Class A accounts, to use the more streamlined Class B accounts. The Commission also permits the mid-sized incumbent LECs to submit their cost allocation manuals (CAMs) based on the Class B system of accounts. In addition, mid-sized incumbent LECs will now only be required to obtain an attestation every two years, instead of an annual financial audit requiring a positive opinion. The Commission also eliminates several accounting requirements for all incumbent LECs. The Commission's objective in modifying the accounting and cost allocation rules is to minimize the reporting burden on incumbent LECs and improve the quality of the reported information.

DATES: This rule is effective November 15, 1999, except § 32.2000(b) which contains information collection requirements and will not become effective until approved by the Office of Management and Budget. The Commission will publish a document announcing the effective date of this section.

ADDRESSES: Federal Communications Commission, 445-12th Street, SW, TW-A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418-0384 or Andy Multz, Chief, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418-0827.

SUPPLEMENTARY INFORMATION: This *Report and Order* in CC Docket No. 98-81, ASD File No. 98-64, CC Docket No. 96-150, RM-9341, adopted on May 18, 1999 and released on June 10, 1999, is available for inspection and copying during normal business hours in the FCC Reference Information Center (RIC), 445 12th Street, SW, TW-A325, Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800.

Synopsis of Report and Order

I. Background

1. As part of the biennial review under section 11 of the Communications Act, the Commission proposed to raise the threshold significantly for required Class A accounting, allowing mid-sized

incumbent LECs currently required to use Class A accounts to use the more streamlined Class B accounts. In addition, the Commission proposed to establish less burdensome CAM procedures for the mid-sized incumbent LECs and to reduce the frequency with which independent audits of the cost allocations based upon the CAMs are required. The Commission also proposed several changes to the Uniform System of Accounts (USOA) to reduce accounting requirements and to eliminate or consolidate accounts for all carriers. Finally, the Commission sought proposals for other accounts or filing requirements that could be reduced or eliminated.

II. Report and Order

A. Revenue Threshold for Determining Level of Reporting for Mid-Sized Incumbent LECs

2. Under the Commission's rules there are two classes of incumbent LECs for accounting purposes: Class A and Class B. Carriers with annual operating revenues from regulated telecommunications operations equal to or above a designated indexed revenue threshold, currently \$112 million, are classified as Class A; those with annual operating revenues below the threshold are considered Class B. Generally, Class A accounts provide more detailed records of investment, expense, and revenue than the Class B accounts. In the *Notice of Proposed Rulemaking* (NPRM), 63 FR 45208 (Aug. 25, 1998), the Commission proposed to streamline accounting requirements for certain mid-sized incumbent LECs based on the aggregate revenues of the LEC and any LEC that it controls, is controlled by, or with which it is under common control. The Commission proposed that if the aggregate revenues of these affiliated incumbent LECs are less than \$7 billion, then each incumbent LEC within that group would be eligible for Class B accounting, even if the annual operating revenue of any individual incumbent LEC equals or exceeds \$112 million. The Commission adopts the proposal in the NPRM. Among incumbent LECs, this revision would limit Class A accounting to the Bell operating companies (BOCs) and GTE. All other incumbent LECs may use the Class B system of accounts. Carriers that qualify for Class B accounting may, at their discretion, maintain a Class A accounting structure upon the submission of written notification to the Commission. See 47 CFR 32.11.

3. *Pole Attachment Fees.* In reviewing the rates charged by incumbent LEC owners of poles, ducts, conduits and

rights-of-way, the Commission applies data taken from the Automated Reporting Management Information Systems (ARMIS) reports. Under the Class B accounting structure adopted for mid-sized incumbent LECs, detailed accounts needed to calculate pole attachment fees using the pole attachment formulas would no longer be reported in their ARMIS reports. Mid-sized incumbent LECs are therefore required to maintain subsidiary record categories to provide the pole attachment data currently provided in the Class A accounts, and must report the information necessary for the Commission to calculate pole attachment rates based on their ARMIS reports.

4. *Application of Threshold.* In the NPRM, the Commission proposed eliminating the difference between the application of the indexed revenue threshold for Parts 32 and 64 because the difference provided unnecessary complexity. The Commission adopts the proposal and eliminates the difference between the application of the indexed revenue threshold for Part 32 and 64 cost allocation purposes. Carriers will be classified as Class A or Class B at the start of the calendar year following the first time their annual operating revenues equal or exceed the indexed revenue threshold. The \$7 billion threshold will not be indexed for inflation annually, but instead will be a fixed threshold that the Commission will monitor on a regular basis. If the Commission determines that the \$7 billion threshold is no longer appropriate due to inflation or any other change in market conditions, it will revise the threshold to reflect those changes.

B. Reduced Cost Allocation Manual Procedures for Mid-Sized Incumbent LECs

5. In the NPRM, the Commission proposed to reduce CAM requirements for mid-sized incumbent LECs. The proposal would allow these companies to submit their CAMs based upon the Class B system of accounts and would relax the current annual audit requirements for cost allocations related to the CAM by permitting mid-sized incumbent LECs to obtain an attestation every two years. Each such attestation would cover the previous two years. The Commission adopts this proposal. Mid-sized incumbent LECs may submit their CAMs based upon the Class B system of accounts. The Commission also concludes that mid-sized incumbent LECs may obtain an audit every two years, instead of an annual

financial audit requiring a positive opinion.

C. Revising the Uniform System of Accounts for All Carriers

6. *Combining Accounts 2114, 2115, and 2116, 47 CFR 32.2114–32.2116.* In the *Notice*, the Commission proposed combining Account 2114, Special purpose vehicles, Account 2115, Garage work equipment, and Account 2116, Other work equipment, into a single new account. The assets recorded in these accounts are similar in nature, have similar prescribed depreciation rates, and are treated identically under the jurisdictional separations rules set forth in Part 36 of the Commission's rules. The Commission adopts this proposal and combines these accounts into a single account entitled Account 2114, Tools and other work equipment.

7. *Combining Accounts 6114, 6115, and 6116, 47 CFR 32.6114–32.6116.* In the *Notice*, the Commission proposed combining Account 6114, Special purpose vehicles expense, Account 6115, Garage work equipment expense, and Account 6116, Other work equipment expense, into a single new account entitled Account 6114, Tools and other work equipment expense. The Commission concludes that these accounts should be combined into a single account because combining these accounts would reduce the carriers' accounting and reporting burdens, would not affect the amounts separated between the interstate and intrastate jurisdictions, and would not affect our ability to protect the public interest. The Commission adopts this proposal and combines these accounts into a single account entitled Account 6114, Tools and other work equipment expense.

8. *Accounting for Nonregulated Revenues.* In the *Notice*, the Commission proposed amending §§ 32.23(c) and 32.5280, 47 CFR 32.23(c) and 32.5280, to allow carriers to record revenues from all nonregulated activities in Account 5280, Nonregulated operating revenue. Such an amendment would modify the current rule that instructs carriers to record revenue from nonregulated activities in Account 5280 only if there is no other operating revenue account to which the revenue relates. The Commission concludes that combining revenues for all nonregulated activities into one account would continue to protect the public interest by ensuring that nonregulated revenues are segregated from the carriers' regulated revenues. Therefore, the Commission eliminates Account 5010 and revises the language in sections 32.23(c) and 32.5280(a), to require that all

nonregulated revenues be recorded in Account 5280.

9. *Revision to Section 32.16, Changes in Accounting Standards.* Section 32.16 of the Commission's rules, 47 CFR 32.16, requires carriers to revise their records and accounts to reflect new accounting standards prescribed by the Financial Accounting Standards Board (FASB). This section provides that Commission approval of a change in an accounting standard shall automatically take effect 90 days after a carrier notifies the Commission of its intention to follow a new standard. In the notification to the Commission, carriers are required to provide a revenue requirement study that analyzes the effects of the accounting change for the current year and a projection for three years into the future. In the *Notice*, the Commission proposed to relieve carriers of the requirement to file the projected future effects of an accounting change in their notifications. The Commission adopts this proposal. If projections are needed in the future, the Commission will obtain them on an *ad hoc* basis.

10. *Revision to Section 32.2000(b), Telecommunications Plant Acquired.* Section 32.2000(b)(4) of the Commission's rules, 47 CFR 32.2000(b)(4), requires carriers to submit for Commission approval the journal entries made to record acquisitions from other entities of telecommunications plant that cost more than \$1 million for Class A carriers and \$250,000 for Class B carriers. In the *NPRM*, the Commission proposed to eliminate this filing requirement. The Commission concludes that this requirement, which was established to ensure that plant acquired from other carriers is recorded at original cost as required in section 32.2000(b), is no longer necessary. The Commission adopts the proposal in the *NPRM* and eliminates the requirement for routine filing of these journal entries.

D. Order on Reconsideration in CC Docket No. 96-150—Section 274(f) Reporting Requirements

11. In the *Accounting Safeguards Order*, the Commission addressed the accounting safeguards necessary to satisfy the requirements of sections 260 and 271 through 276 of the Communications Act. Section 274(a) prohibits any "Bell operating company or any affiliate [from] engag[ing] in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service," other than through "a separated affiliate or electronic publishing joint venture." 47 U.S.C. 274(a). Section 274(f) establishes a reporting requirement for separate

electronic publishing affiliates created pursuant to section 274. 47 U.S.C. 274(f). In the *Accounting Safeguards Order*, the Commission concluded that those section 274 affiliates that already file an SEC Form 10-K must file a copy with this Commission and section 274 affiliates that were not required to file a Form 10-K with the SEC, must file an identical form with this Commission. SBC Communications, Inc. (SBC) filed a Petition for Reconsideration of the *Accounting Safeguards Order*, asserting, among other things, that a simplified report for "separated entities" not already subject to the SEC's Form 10-K requirements will satisfy the intent of section 274(f) because the phrase "substantially equivalent," as used in the statute, does not mean "identical."

12. The SEC Form 10-K is a voluminous report that contains a description of the company filing the report and its operations, financial statements with supporting financial data and major legal and financial disclosures concerning the company. The SEC Form 10-K is comprised of the following items: Item 1, Business; Item 2, Properties; Item 3, Legal Proceedings; Item 4, Submission of Matters to a Vote of Security Holders; Item 5, Market for Registrant's Common Equity and Related Stockholder Matters; Item 6, Selected Financial Data; Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations; Item 8, Financial Statements and Supplementary Data; Item 9, Changes in and Disagreements with Accountants on Accounting and Financial Disclosure; Item 10, Directors and Executive Officers of the Registrant; Item 11, Executive Compensation; Item 12, Security Ownership of Certain Beneficial Owners and Management; Item 13, Certain Relationships and Related Transactions; and Item 14, Exhibits, Financial Statement Schedules and Reports on Form 8-K. The SEC also has a limited version of the Form 10-K for wholly owned subsidiaries. The limited version of the Form 10-K omits Items 4, 10, 11, 12, and 13. The limited version also streamlines Items 6 and 7.

13. The Commission concludes that the information contained in the limited version of SEC Form 10-K, with certain modifications, is sufficient to monitor the electronic publishing affiliate's compliance with the section 274 requirements. The Commission modifies the limited Form 10-K filing requirements to exclude Item 5 and include Item 10. Item 5 is related to stockholder matters that are not relevant to section 274. The Commission retains Item 10 for section 274 affiliates because Item 10 contains information on

directors and officers that would assist in monitoring the prohibition against sharing directors and officers.

E. Accounting for Computer Software Costs

14. *Generally accepted accounting principles (GAAP).* Since 1985, the Commission has followed a policy of conforming regulatory accounting for carriers to GAAP, unless the principle or practice conflicts with the Commission's regulatory objectives. Accordingly, several parties have taken the Commission up on its request for the submission of additional proposals for accounting changes by suggesting the adoption of GAAP accounting in lieu of current Commission accounting for various purposes. While a wholesale replacement of the Commission's accounting rules with GAAP is not warranted at this time, the Commission modifies the accounting rules relating to the use of GAAP in one respect in this Report and Order. On March 4, 1998, the American Institute of Certified Public Accountants issued Statement of Position 98-1 ("SOP 98-1") to provide authoritative guidance on accounting for the costs of computer software effective for financial statements for fiscal years beginning after December 15, 1998. See American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use, Issued by the Accounting Standards Executive Committee, March 4, 1998, at Summary. SOP 98-1 generally requires the capitalization of software costs. SOP 98-1 also requires the cost of upgrades and enhancements to be capitalized if they result in additional functionality. Petitioners requested that the Commission amend the existing Part 32 rules in order to accommodate this recent change in GAAP and change its rules governing the treatment of software costs to conform with SOP 98-1. The Commission concludes that the facts and circumstances differ in each situation regarding types of software, and thus, it would not be appropriate to adopt a rule strictly requiring all software costs to be capitalized to a plant account or an intangible account. Instead, the Commission finds that SOP 98-1 and current authoritative accounting guidance (*i.e.*, GAAP) are sufficient to determine whether capitalizable software costs should be treated as an intangible asset recorded in the intangible asset account or treated as a tangible asset classified to the same account as the associated hardware. Accordingly, the Commission holds that all carriers must now account for

computer software costs in accordance with GAAP.

15. In order to monitor the recording and reporting of capitalizable software costs in the intangible asset account for regulatory purposes, the Commission requires that carriers establish and maintain subsidiary record categories for general purpose computer ("GPC") software and network software within the intangible asset account. The cost of software upgrades and enhancements will continue to be expensed or capitalized in accordance with GAAP. The Commission will also allow non-price cap carriers to capitalize software upgrades and enhancements that may cause large one-time expense "spikes" regardless of whether such upgrades or enhancements result in additional functionality required for capitalization under SOP 98-1.

III. Conclusion

16. In this Report and Order, the Commission streamlines the accounting requirements for mid-sized incumbent LECs whose aggregate revenues are less than \$7 billion. The Commission also permits mid-sized incumbent LECs to submit their CAMs based on the Class B system of accounts. Mid-sized incumbent LECs will also be required to obtain an attestation every two years instead of an annual financial audit requiring a positive opinion. The Commission reduces or eliminates a number of accounting requirements for all carriers subject to the Commission's accounting rules. In addition, the Commission modifies the holding in the *Accounting Safeguards Order* and concludes that the information contained in the limited version of the SEC Form 10-K, with certain modifications, is sufficient to monitor electronic publishing affiliates' compliance with the section 274 requirements. Finally, the Commission amends the requirements regarding the accounting for computer software costs: the cost of all software must be recorded in conformance with GAAP.

IV. Procedural Issues

A. Regulatory Flexibility Act

17. *Final Regulatory Flexibility Certification—Report and Order in CC Docket No. 98-81, RM-9341.* The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule

will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). In the *NPRM*, 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements, CC Docket No. 98-81, *Notice of Proposed Rulemaking*, 63 FR 45208 (Aug. 25, 1998) (*NPRM*), the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities because such rules would reduce certain reporting requirements for mid-sized incumbent local exchange carriers (ILECs) and the changes would be easy and inexpensive for mid-sized ILECs to implement. With respect to the Petition for Rulemaking filed by Bell Atlantic and BellSouth to amend the Commission's existing part 32 rules in order to accommodate recent changes in generally accepted accounting principles (GAAP), see Petition for Rulemaking to Amend Part 32 of the Commission's Rules, Uniform System of Accounts for Class A and Class B Telephone Companies, to Adopt the Accounting for Software Required by Statement of Position 98-1, filed August 3, 1998, the Commission concluded in the Report and Order that all carriers must account for computer software costs in accordance with GAAP. See 47 CFR 32.12(a), requiring financial records to be "kept in accordance with generally accepted accounting principles to the extent permitted by this system of accounts." This rule modification does not impose any additional compliance burden on small entities. No comments were received concerning this certification. The Commission now reaffirms this certification with respect to the rules adopted in this Report and Order. The Commission anticipates that the rule changes adopted here will reduce regulatory and procedural burdens on small entities. The rule modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Accordingly, the Commission certifies, pursuant to section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA.

18. *Supplemental Final Regulatory Flexibility Analysis—Order on Reconsideration in CC Docket No. 96-150.* As required by the Regulatory Flexibility Act (RFA), as amended, 47 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated into Accounting Safeguards under the

Telecommunications Act of 1996, CC Docket No. 96-150, *Report and Order*, 62 FR 02918 (Jan. 21, 1997) (*Accounting Safeguards Order*).

19. In the RFA, the Commission certified that the rules adopted in the *Accounting Safeguards Order* would not have a significant economic impact on a substantial number of small entities. For the reasons stated below, the Commission certifies that the rule adopted herein in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). 5 U.S.C. 601-611.

20. *Need for, and Objectives of, this Order on Reconsideration:* In this Order on Reconsideration the Commission grants, in part, a petition for reconsideration regarding filing a "substantially equivalent" report for electronic publishing affiliates not already subject to Security and Exchange Commission (SEC) Form 10-K requirements. The Commission finds that the reporting requirements can be streamlined for such entities, and concludes that the information contained in the limited version of SEC Form 10-K, with certain modifications, will enable monitoring of electronic publishing affiliate's compliance with section 274 of the Communications Act. The Commission therefore permits the limited SEC Form 10-K, with the exclusion of Item 5 and inclusion of Item 10, to satisfy the section 274 requirements for electronic publishing affiliates not already subject to SEC Form 10-K requirements.

21. *Summary of Significant Issues Raised by Reconsideration Petitions.* No petitions were received in direct response to the FRFA in the *Accounting Safeguards Order*, nor were small business issues raised.

22. *Description and Estimate of the Number of Small Entities to which the Rules Will Apply.* The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field

of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632. Section 121.201 of the SBA regulations defines a small telecommunications entity in SIC code 4812 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level. 13 CFR 121.201. As explained below, the terms "small entities" and "small businesses" do not encompass the Bell operating companies (BOCs), the parties affected by this Order in Reconsideration.

23. As noted in the associated Final Regulatory Flexibility Certification in CC Docket No. 96–150, the RFA directs agencies to provide a Regulatory Flexibility Analysis in notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The Commission's action on reconsideration in CC Docket No. 96–150 affects only BOCs' affiliate entities engaged in electronic publishing. These rules do not apply to small entities because all entities subject to this rule are BOCs or entities associated or affiliated with BOCs. None of the BOCs is a small entity, since each BOC is an affiliate of a Regional Holding Company (RHC), and all the BOCs or their RHCs have more than 1,500 employees. Moreover, the entities affected by this rule that are associated or affiliated with the BOCs are not independently owned and operated, and therefore do not meet the definition of small entities. The Commission therefore certifies that the SEC Form 10–K filing requirement adopted in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

24. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* As discussed above, in this Order on Reconsideration the Commission concludes that the information contained in the limited version of SEC Form 10–K, with the exclusion of Item 5 and inclusion of Item 10, will satisfy the section 274 requirements for electronic publishing affiliates not already subject to SEC Form 10–K requirements. This reduces the reporting burden for BOC affiliates while providing sufficient information to the Commission to satisfy section 274 of the Communications Act.

25. *Report to Congress.* The Commission's Office of Public Affairs, Reference Operations Division, shall provide a copy of this certification and

Supplemental Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress. The certification and Supplemental Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Paperwork Reduction Act

26. *Final Paperwork Reduction Act Analysis.*

C. Authority

This action is authorized under sections 1, 4, 11, 201–205, 215, 218, 228, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 201–205, 215, 218, 219, 220 and 403.

D. Ordering Clauses

27. Accordingly, *It is Ordered* that, pursuant to Sections 1, 2, 4, 11, 201–205, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 161, 201–205, and 218–220, Parts 32 and 64 of the Commission's rules, 47 CFR Parts 32 and 64, is *Amended*, as shown below. With the exception of 47 CFR 32.2000(b), these rule changes are effective six months after date of publication in the **Federal Register**. Affected parties may elect to implement the changes with respect to accounting for computer software costs effective January 1, 1999.

28. *It is further ordered* that, pursuant to Sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 220, and Section 1.401 of the Commission's rules, 47 CFR 1.401, the Petition for Rulemaking of the United States Telephone Association is *Granted* to the extent indicated herein.

29. *It is further ordered* that, pursuant to Sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 220, and Section 1.401 of the Commission's rules, 47 CFR 1.401, the Petition for Reconsideration of the *Accounting Safeguards Order* of SBC Communications, Inc. is *granted* in part and *denied* in part. This rule change regarding compliance with 47 U.S.C. 274 Electronic publishing by Bell Operating Companies is effective November 15, 1999.

30. *It is further ordered* that, pursuant to Sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 220, and Section 1.401 of the Commission's rules, 47 CFR 1.401, the Petition for Rulemaking of Bell Atlantic and BellSouth is *granted* in part, to the

extent indicated herein, and *denied* in part.

31. It is further ordered that the Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this Final Regulatory Flexibility Certification and supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Parts 32 and 64 of Title 47 of the CFR are amended to read as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended, unless otherwise noted.

2. Section 32.11 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 32.11 Classification of companies.

* * * * *

(b) Class A companies, except mid-sized incumbent local exchange carriers, as defined by § 32.9000, shall keep all the accounts of this system of accounts which are applicable to their affairs and are designated as Class A accounts. Class A companies which include mid-sized incumbent local exchange carriers shall keep Basic Property Records in compliance with the requirements of §§ 32.2000(e) and (f) of this part.

(c) Class B companies shall keep all accounts of this system of accounts which are applicable to their affairs and are designated as Class B accounts. Class B companies shall keep Continuing Property Records in compliance with the requirements of §§ 32.2000(e)(7)(A) and 32.2000(f) of this part.

(d) Class B companies and mid-sized incumbent local exchange carriers, as defined by § 32.9000 of this part, that

desire more detailed accounting may adopt the accounts prescribed for Class A companies upon the submission of a written notification to the Commission. Mid-sized incumbent local exchange carriers shall maintain subsidiary record categories necessary to provide the pole attachment data currently provided in the Class A accounts.

(e) The classification of a company shall be determined at the start of the calendar year following the first time its annual operating revenue from regulated operations equals, exceeds, or falls below the indexed revenue threshold.

3. Section 32.16 is amended by revising paragraph (a) to read as follows:

§ 32.16 Changes in accounting standards.

(a) The company's records and accounts shall be adjusted to apply new accounting standards prescribed by the Financial Accounting Standards Board or successor authoritative accounting standard-setting groups, in a manner consistent with generally accepted accounting principles. The change in an accounting standard will automatically take effect 90 days after the company informs this Commission of its intention to follow the new standard, unless the Commission notifies the company to the contrary. Concurrent with informing this Commission of its intent to adopt an accounting standards change, the company shall also file a revenue requirement study for the current year analyzing the effects of the accounting standards change. Furthermore, any change subsequently adopted shall be disclosed in annual reports to this Commission.

* * * * *

4. Section 32.23 is amended by revising paragraph (c) to read as follows:

§ 32.23 Nonregulated activities.

* * * * *

(c) When a nonregulated activity does involve the joint or common use of assets and resources in the provision of regulated and nonregulated products and services, carriers shall account for these activities within accounts prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Carriers shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission.

Nonregulated revenue items not qualifying for incidental treatment as provided in § 32.4999(l) of this part, shall be recorded in separate subsidiary record categories of Account 5280, Nonregulated operating revenue. Amounts assigned or allocated to regulated products or services shall be subject to part 36 of this chapter.

5. Section 32.2000 is amended by revising paragraph (a)(4) and removing and reserving paragraph (i) to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(4) The cost of the individual items of equipment, classifiable to Accounts 2112, Motor vehicles; 2113, Aircraft; 2114, Special purpose vehicles; 2115, Garage work equipment; 2116, Other work equipment; 2122, Furniture; 2123, Office equipment; 2124, General purpose computers, costing \$2,000 or less or having a life of less than one year shall be charged to the applicable expense accounts, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components of \$500 or less, shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

§ 32.2000 [Amended]

6. Section 32.2000(b)(4) is removed.

7. Section 32.2000(j) is amended by revising the table entry "Special Purpose vehicles" to read "Tools and other work equipment" under the heading of Telecommunications Plant In Service (TPIS) and by removing the entries "Garage work equipment 2115 and other work equipment 2116."

8. Section 32.2003(a) is revised to read as follows:

§ 32.2003 Telecommunications plant under construction.

(a) This account shall include the original cost of construction projects (note also § 32.2000(c)) of this part and the cost of software development projects that are not yet ready for their intended use.

* * * * *

9. Section 32.2114 is revised to read as follows:

§ 32.2114 Tools and other work equipment.

This account shall include the original cost of special purpose vehicles

and the original cost of tools and equipment used to maintain special purpose vehicles and items included in Accounts 2112 and 2113. This account shall also include the original cost of power-operated equipment, general purpose tools, and other items of work equipment.

§ 32.2115 [Removed]

10. Section 32.2115 is removed.

§ 32.2116 [Removed]

11. Section 32.2116 is removed.

12. Section 32.2124 is amended by removing and reserving paragraph (c) and revising paragraph (d) as follows:

§ 32.2124 General purpose computers.

* * * * *

(d) This account does not include the cost of computers and their associated peripheral devices associated with switching, network signaling, network operations, or other specific telecommunications plant. Such computers and peripherals shall be classified to the appropriate switching, network signaling, network expense, or other plant account.

13. Section 32.2311(d) is revised to read as follows:

§ 32.2311 Station apparatus.

* * * * *

(d) Operator head sets and transmitters in central offices and at private branch exchanges, and test sets such as those used by wire chiefs, outside plant technicians, and others, shall be included in Account 2114, Tools and other work equipment, Account 2220, Operator systems, or Account 2341, Large Private Branch Exchanges, as appropriate.

* * * * *

14. Section 32.2690(c) is revised to read as follows:

§ 32.2690 Intangibles.

* * * * *

(c) The cost of other intangible assets, not including software, having a life of one year or less shall be charged directly to Account 6564, Amortization Expense—Intangible. Such intangibles acquired at small cost may also be charged to Account 6564, irrespective of their term of life. The cost of software having a life of one year or less shall be charged directly to the applicable expense account with which the software is associated.

15. Section 32.3500 is amended by revising paragraph (c) and adding paragraph (d) as follows:

§ 32.3500 Accumulated amortization—intangible.

* * * * *

(c) When any item carried in Account 2690, other than software, is sold, relinquished, or otherwise retired from service, this account shall be charged with the cost of the retired item.

Remaining amounts associated with the item shall be debited to Account 7360, Other Nonoperating Income.

(d) When software that is classified to Account 2690 is sold, relinquished, or otherwise retired from service, this account shall be credited, and Account 6564, Amortization expense—intangible, shall be charged with the unamortized cost of the existing software.

16. Section 32.4999(l) is revised and the table in paragraph (n) is amended by removing the entry “Public telephone revenue 5010” under the heading Local Network Services Revenues to read as follows:

§ 32.4999 General.

* * * * *

(l) *Nonregulated revenues.* The nonregulated revenue account shall be used for nonregulated operating revenues when a nonregulated activity involves the common or joint use of assets or resources in the provision of regulated and nonregulated products or services as required in § 32.23(c) of this subpart. Revenues from nontariffed activities offered incidental to tariffed services may be accounted for as regulated revenues, provided the activities are outgrowths of regulated operations and the revenues do not exceed, in the aggregate, one percent of total revenues for three consecutive years. Such activities must be listed in the Commission-approved Cost Allocation Manual for any company required to file a Cost Allocation Manual.

§ 32.5010 [Removed]

17. Section 32.5010 is removed.

18. Section 32.5280 is amended by revising paragraph (a) as follows:

§ 32.5280 Nonregulated operating revenue.

(a) This account shall include revenues derived from a nonregulated activity involving the common or joint use of assets or resources in the provision of regulated and nonregulated products or services.

* * * * *

19. Section 32.5999 is amended by revising the first sentence in paragraph (f)(5) and paragraph (h) is amended by revising the table entry “Special purpose vehicles expense” to “Tools and other work equipment expense” and removing the table entries “Garage work equipment expense” and “Other work equipment expense” under the

Account title of Income Statement Accounts to read as follows:

§ 32.5999 General.

* * * * *

(f) * * *

(5) *Clearances.* This subsidiary record category shall include amounts transferred to Construction accounts (see § 32.2000(c)(2)(iii)), other Plant Specific Operations Expense accounts and/or Account 3100, Accumulated Depreciation (cost of removal; see § 32.2000(g)(1)(iii)), as appropriate, from Accounts 6112, Motor Vehicles Expense, 6114, Tools and Other Work Equipment Expense, 6534, Plant Operations and Administration Expense, and 6535, Engineering Expense.

* * * * *

20. Section 32.6110 is amended by revising paragraph (a) as follows:

§ 32.6110 Network support expenses.

(a) This account number shall be used by Class A telephone companies to summarize for reporting purposes the contents of Accounts 6112 through 6114. Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6112 through 6114.

* * * * *

21. Section 32.6114 is revised to read as follows:

§ 32.6114 Tools and other work equipment expense.

(a) This account shall include costs incurred in connection with special purpose vehicles, garage work equipment and other work equipment included in Account 2114, Tools and other work equipment. This account shall be charged with costs incurred in connection with the work equipment itself. This account shall also include such costs as fuel, licenses and inspection fees, washing, repainting and minor accessories. The costs of using garage work equipment to maintain motor vehicles shall be charged to Account 6112, Motor vehicles expense. This account shall not be charged with the costs of operators of special purpose vehicles and other work equipment. The costs of operators of this equipment shall be charged to accounts appropriate for the activities performed.

(b) Credits shall be made to this account for amounts related to special purpose vehicles and other work equipment transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis

of direct labor hours. (See also § 32.5999(f)(5).

§ 32.6115 [Removed]

22. Section 32.6115 is removed.

§ 32.6116 [Removed]

23. Section 32.6116 is removed.

24. Section 32.6124 revised to read as follows:

§ 32.6124 General purpose computers expense.

This account shall include the costs of personnel whose principal job is the physical operation of general purpose computers and the maintenance of operating systems. This excludes the cost of preparation of input data or the use of outputs which are chargeable to the accounts appropriate for the activities being performed. Also excluded are costs incurred in planning and maintaining application systems and databases for general purpose computers. (See also § 32.6724, Information management.) Separately metered electricity for general purpose computers shall also be included in this account.

25. Section 32.6724 is revised to read as follows:

§ 32.6724 Information management.

This account shall include costs incurred in planning and maintaining application systems and databases for general purpose computers.

26. Section 32.9000 is amended by adding the following definition in alphabetical order.

§ 32.9000 Glossary of terms.

* * * * *

Mid-sized incumbent local exchange carrier is a carrier whose operating revenue equals or exceeds the indexed revenue threshold and whose revenue when aggregated with the revenues of any local exchange carrier that it controls, is controlled by, or with which it is under common control is less than \$7 billion. Each of these local exchange carriers would be eligible for Class B accounting, except as noted in § 32.11(b) and (d), even if the annual operating revenue of any individual local exchange carrier exceeds the indexed revenue threshold (see definition for indexed revenue threshold in this section).

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

27. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

28. Section 64.904 is amended by revising paragraph (a) and by redesignating paragraph (b) as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 64.904 Independent audits.

(a) With the exception of mid-sized local exchange carriers each local exchange carrier required to file a cost allocation manual, by virtue of having annual operating revenues that equal or exceed the indexed revenue threshold for a given year or by order by the Commission, shall have an audit performed by an independent auditor on an annual basis, with the initial audit performed in the calendar year after the carrier is first required to file a cost allocation manual. The audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86-111 and the Commission's Accounting Safeguards proceeding in CC Docket No. 96-150 and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter and §§ 64.901 and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

(b) A mid-sized incumbent local exchange carrier, as defined in § 32.9000, required to file a cost allocation manual, shall have an attest engagement performed by an independent auditor every two years covering the two year period, with the initial engagement performed in the calendar year after the carrier is first required to file a cost allocation manual. The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the results reported pursuant to § 43.21(e)(2) of this chapter are an accurate application of the Commission's Joint Cost orders issued in conjunction with CC Docket No. 86-111 and the Commission's Accounting Safeguards proceeding in CC Docket No. 96-150 and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter and §§ 64.901 and 64.903 in force as of the date of the auditor's written report. The written communication shall also express an opinion that the cost methodologies in

place are in conformance with the cost allocation manual filed with the Commission. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Common Carrier Bureau.

* * * * *

[FR Doc. 99-23304 Filed 9-14-99; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99-1791; MM Docket No. 99-210; RM-9629]

Radio Broadcasting Services; Flagstaff, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 279C3 to Flagstaff, Arizona, as that community's fifth local FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 31172, June 10, 1999. Coordinates used for Channel 279C3 at Flagstaff are 35-17-19 NL and 111-38-26 WL.

DATES: Effective October 18, 1999. A filing window for Channel 279C3 at Flagstaff, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-210, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 279C3 at Flagstaff.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-23972 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99-1791; MM Docket No. 99-213; RM-9641]

Radio Broadcasting Services; Kootenai, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 294A to Kootenai, Idaho, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 31174, June 10, 1999. Coordinates used for Channel 294A at Kootenai are 48-18-37 NL and 116-30-45 WL. With this action, the proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 294A at Kootenai, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-213, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

47 PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Kootenai, Channel 294A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-23973 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 99-1791; MM Docket No. 99-205; RM-9624]

Radio Broadcasting Services; Hazelton, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232C3 to Hazelton, Idaho, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 31175, June 10, 1999. Coordinates used for Channel 232C3 at Hazelton are 42-35-54 NL and 114-07-54 WL. With this action, the proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 232C3 at Hazelton, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-205, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington,

DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Hazelton, Channel 232C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-23974 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 99-1791; MM Docket No. 99-203; RM-9621]

Radio Broadcasting Services; Dove Creek, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273C3 to Dove Creek, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 31174, June 10, 1999. Coordinates used for Channel 273C3 at Dove Creek are 37-45-54 NL and 108-54-18 WL. With this action, the proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 273C3 at Dove Creek, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 99-203, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Dove Creek, Channel 273C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-23975 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 99-1793; MM Docket No. 99-155; RM-9606]

Radio Broadcasting Services; Elgin, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary Noel, allots Channel 290A to Elgin, OR, as the community's first local aural service. See 64 FR 28131, May 25, 1999. Channel 290A can be allotted to Elgin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45-33-54 NL; 117-55-00 WL. With this action, this proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 290A at Elgin, OR, will not be opened at this time. Instead, the issue of opening a

filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-155, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Elgin, Channel 290A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99-23977 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 64, No. 178

Wednesday, September 15, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1630

Privacy Act Regulations; Implementation

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed amendment to the Board's Privacy Act regulations. Under the proposed amendment, procedures will be added to cover records maintained for spouses, former spouses, and beneficiaries of Thrift Savings Plan (TSP) participants.

DATES: Comments must be received on or before November 15, 1999.

ADDRESSES: Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005. FAX (202) 942-1676.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942-1662.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99-335, 100 Stat. 514. The provisions governing the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479 (1994). The TSP is a taxdeferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a participant's TSP account are held in trust for the participant. 5 U.S.C. 8437(g).

The Board is an independent agency established in the executive branch of the United States Government that is subject to the Privacy Act, 5 U.S.C. 552a. On May 7, 1990, initial Board regulations implementing the Privacy Act were published in the **Federal**

Register at 55 FR 18851. An amendment to these regulations was published in the May 20, 1994, **Federal Register** at 59 FR 26409, to allow the disclosure of participant records in response to a copy of an authorization signed by the subject of the records, instead of an original signed statement.

In addition to records similar to other Federal agencies, the Board maintains FRTIB-1, Thrift Savings Plan Records, which is a Government-wide system of records of participants in the TSP. For purposes of this part, the definition of TSP participant includes former participants, i.e., participants whose accounts have been closed, unless otherwise noted. The TSP records system may be maintained for the Board by a private contractor or by a Federal agency (record keeper or TSP record keeper). The current record keeper is the National Finance Center, U.S. Department of Agriculture, New Orleans, LA 70161-1500. In addition to writing or calling the TSP record keeper, participants may also determine whether this system contains records about them and may access those records through the TSP Web site and the ThriftLine (the TSP's automated telephone system). Because these features require the use of the participant's TSP Personal Identification Number (PIN), as well as the participant's Social Security number (SSN), they are not available to former participants, whose PINs are canceled when their accounts are closed.

This proposed amendment to the Board's rules is necessary because the Board is updating its computerized data base for the TSP record keeping system. Under the new TSP record keeping system, in addition to records on participants, FRTIB-1 will include records on spouses, former spouses, and beneficiaries of participants. The Privacy Act defines a record as "any item, collection, or grouping of information about an individual that is maintained by an agency * * *." 5 U.S.C. 552a(a)(4). A system of records is defined as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." *Id.* 552a(a)(5).

A spouse or former spouse may be entitled to a payment from a

participant's account as the result of an award made under a qualifying domestic relations court order. Under the new TSP record keeping system, a record that is retrieved by the Social Security number (SSN) of the spouse or former spouse will be created in the FRTIB-1 system of records at the same time that the decision letter is mailed, if the SSN is known. If the individual's SSN is not known, a record will be created as soon thereafter as the SSN is provided to the TSP record keeper.

In addition, following a participant's death, the amount remaining in the account will be paid as a death benefit payment to the participant's beneficiary or beneficiaries in accordance with 5 U.S.C. 8424(d). A record that is retrieved by the SSN of the beneficiary or beneficiaries will be created in the FRTIB-1 system of records at the same time that a notice of pending Thrift Savings Plan payment and tax withholding information is mailed, if the SSN is known (or as soon thereafter as the SSN is provided to the TSP record keeper).

Proposed rule changes to 5 CFR 1630 establish procedures for granting access to records regarding a spouse, former spouse, or beneficiary. In addition, technical changes have been made to conform the regulations to this change and to remove, except where necessary for mailing purposes, the name of the TSP Service Office as the record keeper. This latter change will mean that the regulations do not have to be amended if a new record keeper is appointed.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will affect only spouses, former spouses, and beneficiaries of TSP participants.

Paperwork Reduction Act

I certify that this regulation does not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104-4, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one

year of \$100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Privacy, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1630 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1630—PRIVACY ACT REGULATIONS

1. The authority citation for part 1630 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1630.2 is amended as follows:

a. In paragraph (e) by adding the words “or the record keeper” after the word “Board”; and

b. By redesignating paragraphs (f), (g), (h), (i), (j), (k), (l), (m), and (n) as paragraphs (g), (h), (i), (j), (k), (l), (n), (o), and (p), respectively, and by adding paragraphs (f) and (m) to read as follows:

§ 1630.2 Definitions.

* * * * *

(f) *Record keeper* means the entity that is engaged by the Board to perform record keeping services for the TSP;

* * * * *

(m) *TSP participant* means any individual for whom a TSP account has been established. This includes former participants, *i.e.*, participants whose accounts have been closed;

* * * * *

3. Section 1630.4 is amended by revising paragraph (a)(1) and the chart which follows that paragraph, by redesignating paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4) and

(a)(5), and by adding a new paragraph (a)(2) to read as follows:

§ 1630.4 Request for notification and access.

(a) *TSP records.* (1) Records on TSP participants and the spouses, former spouses, and beneficiaries of TSP participants are maintained in the Governmentwide system of records, FRTIB–1, Thrift Savings Plan Records. A participant or a spouse, former spouse, or beneficiary of a participant must make his or her inquiry in accordance with the chart set forth in this paragraph. The mailing address of the Thrift Savings Plan Service Office is: National Finance Center, PO Box 61500, New Orleans, LA, 70161–1500. Telephone inquiries are subject to the verification procedures set forth in § 1630.7. A written inquiry must include the name and Social Security number of the participant or of the spouse, former spouse, or beneficiary of the participant, as appropriate.

To obtain information about or gain access to TSP records about you

If you want:	If you are a participant who is a current Federal employee:	If you are a participant who has separated from Federal employment or a spouse, former spouse, or beneficiary:
To make inquiry as to whether you are a subject of this system of records.	Call or write to your employing agency in accordance with agency procedures for personnel or payroll records.	Call or write to TSP record keeper.
To gain access to a record about you	Call or write to your employing agency to request access to personnel and payroll records regarding the agency's and the participant's contributions, and adjustments to contributions. Call or write to the TSP record keeper to gain access to loan status and repayments, earnings, contributions allocation elections, interfund transfers, and withdrawal records.	Call or write to TSP record keeper.
To learn the history of disclosures of records about you to entities other than the participant's employing agency or the Board or auditors see § 1630.4(a)(4).	Write to TSP record keeper	Write to TSP record keeper.

(2) Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP Web site and the ThriftLine (the TSP's automated telephone system). The TSP Web site is located at www.tsp.gov. To use the TSP ThriftLine, the participant must have a touch-tone telephone and call the following number (504) 255–8777. The following information is available on the TSP Web site and the ThriftLine: Account balance; available loan amount; the status of a monthly withdrawal payment; the current status of a loan or withdrawal application; and an interfund transfer request. To access

these features the participant will need to provide his or her SSN and PIN.

* * * * *

§ 1630.5 [Amended]

4. Section 1630.5 is amended in paragraphs (a) and (b) by adding the words “or the TSP record keeper” after the word “Board”.

§ 1630.6 [Amended]

5. Section 1630.6 is amended in paragraph (a) by removing at the end of the first sentence the phrase “by the Board”.

6. Section 1630.7 is amended as follows:

a. In paragraph (a), by adding the words “or record keeper designee,” after the words “Privacy Act Officer” in the third sentence;

b. In paragraph (b), by adding the words “or record keeper designee,” after the words “Privacy Act Officer” in the second sentence; and

c. By revising paragraph (c) to read as follows:

§ 1630.7 Identification requirements.

* * * * *

(c) *By telephone.* (1) Telephone identification procedures apply only to requests from participants and spouses, former spouses, or beneficiaries of participants for information in FRTIB–1,

Thrift Savings Plan Records, which is retrieved by their respective Social Security numbers.

(2) A participant or a spouse, former spouse, or beneficiary of a participant must identify himself or herself by providing to the record keeper designee his or her name, Social Security number, and any other information requested. If the record keeper designee determines that any of the information provided by telephone is incorrect, the requester will be required to submit a request in writing.

(3) A participant may also access the TSP Web site or call the TSP ThriftLine to obtain account information. These

systems require the participant's Social Security number and PIN. Because a PIN is required to use these features, they are not available to former participants, whose PINs are canceled when their accounts are closed.

§ 1630.8 [Amended]

7. Section 1630.8 is amended as follows:

a. In paragraph (a), by removing the second sentence;

b. In paragraph (b)(1), by adding the words "or the record keeper" after the word "Board"; and

c. In paragraph (b)(5), by adding the words "or the record keeper" after the word "Board" in the first sentence, and

by adding the words "or record keeper designee" after the words "Privacy Act Officer" in the second sentence.

§ 1630.11 [Amended]

8. Section 1630.11 is amended as follows:

a. In paragraph (a)(1), by adding the following sentence at the beginning of the paragraph:

(a) * * * (1) A spouse, former spouse or beneficiary of a TSP participant who wants to correct or amend his or her record must write to the TSP record keeper. * * *

b. In paragraph (a)(1) by revising the chart to read as follows:

To correct or amend a TSP record		
If the type of record is:	If you are a participant who is a current Federal employee write to:	If you are a participant who has separated from Federal employment write to:
Personnel or personal records (e.g., age, address, Social Security number, date of birth). The agency's and the participant's contributions, and adjustments to contributions.	Write to your employing agency	Write to TSP record keeper.
Earnings, investment allocation, interfund transfers, loans, loan repayments, and withdrawals.	Write to your employing agency	Write to your former employing agency.
	Write to TSP record keeper	Write to TSP record keeper.

c. In paragraph (a)(3), by removing the following language from the first sentence, "the procedures set forth for agencies and the Board (including the TSP Service Office which is the Board's record keeper) in"; and

d. In paragraph (a)(5), by revising the last two sentences to read as follows:

(a) * * *

(5) * * * The employing agency also has custody of the election form (which is maintained in the Official Personnel Folder). Requests for amendment or correction of records described in this paragraph should be made to the employing agency.

* * * * *

§ 1630.14 [Amended]

9. Section 1630.14 is amended in paragraph (c) by adding the words "or the record keeper" after the word "Board" in the first sentence.

§ 1630.16 [Amended]

10. Section 1630.16 is amended in paragraph (d)(1) by adding the words "to be" after the word "amount".

§ 1630.2, 1630.4, 1630.6, 1630.11, 1630.12 and 1630.16 [Amended]

11. The words "Thrift Savings Plan Service Office", "TSP Service Office" and "Head, TSP Service Office" are revised to read "record keeper" in the following sections:

1630.2(n);
1630.4(a)(2) in all three sentences;
1630.6(a) in sentence two;
1630.11(a)(2);
1630.12(a) in sentences one and two;
and
1630.16(c).

§ 1630.6 and 1630.10 [Amended]

12. The words "Head, TSP Service Office, or designee" are revised to read "record keeper designee" in the following sections:

1630.6(a) in sentence one;
1630.10(a); and
1630.10(a)(1).

* * * * *

[FR Doc. 99-23829 Filed 9-14-99; 8:45 am]

BILLING CODE 6760-01-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98-095-2]

Pork and Pork Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; and notice of extension of comment period.

SUMMARY: In a proposed rule published in the **Federal Register** on July 19, 1999, we proposed to amend the regulations to allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country. Although we proposed to allow in-transit movements of pork from the above States under the same conditions currently required under 9 CFR part 94 for pork from the Mexican States of Sonora, Chihuahua, Yucatan, and Baja California, it was also our intent to propose that such movements be allowed via land border ports only. This document amends our proposal accordingly.

DATES: We invite you to comment on Docket No. 98-095-1 as amended by this docket. We will consider all comments that we receive by November 15, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98-095-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238

Please state that your comment refers to Docket No. 98-095-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734-4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) allow fresh (chilled or frozen) pork and pork products from the Mexican States of Sonora, Chihuahua, Yucatan, and Baja California to transit the United States, under certain conditions, for export to another country. The transit provisions are contained in § 94.15(b) of the regulations. In a proposed rule published in the **Federal Register** on July 19, 1999 (64 FR 38599-38603, Docket No. 98-095-1), we proposed to amend the regulations to allow fresh (chilled or frozen) pork and pork products from additional Mexican States (Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo) to transit the United States under the conditions set forth in § 94.15(b) of the regulations.

Although we did not specify that the transit provisions in § 94.15(b) are intended to apply only to pork and pork products that transit the United States via land border ports, it was our intent to do so. Therefore, this document amends our original proposed rule to clarify that the transit provisions in § 94.15(b) would apply only to pork and pork products that transit the United States via land border ports.

The regulations in § 94.15(d) currently allow for the transit of animal products, including fresh (chilled or frozen) pork and products from Mexico, via maritime and air ports, under certain conditions. The conditions in 94.15(d)(3) specify

that animal products transiting the United States via maritime or air ports may not be moved overland outside the airport terminal or dock area of the maritime port. We do not allow such overland movements from maritime and land ports because we do not have the resources available to ensure that such movements are properly documented and that proper safeguards are applied. The provisions in § 94.15(b) are intended to provide safe procedures for overland transit of the United States.

Comments sent to us on our July 19, 1999, proposed rule (Docket No. 98-095-1) were required to be received on or before September 17, 1999. To allow the public enough time to comment on this amendment as it relates to the proposed rule, we are extending the period during which we will accept comments on Docket No. 98-095-1 until November 15, 1999.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.15, paragraph (b) introductory text would be revised to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(b) Pork and pork products from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan, Mexico, that are not eligible for entry into the United States in accordance with this part may transit the United States via land border ports for immediate export if the following conditions are met:

* * * * *

Done in Washington, DC, this 9th day of September 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-24050 Filed 9-14-99; 8:45 am]

BILLING CODE 3410-34-U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Contractor Meeting on Technical Assessments Related to Clearance of Materials and Equipment From Regulatory Control

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff will meet with contractors who are providing technical assistance related to a potential rulemaking addressing clearance of materials and equipment from regulatory control. A portion of the meeting will be opened for the public to observe the processes used for the development of technical information. As space permits, all interested parties may attend as observers. Time will be allocated for brief statements from the public.

DATES: September 23 and 24, 1999, from 8:30 a.m. to 4 p.m.

ADDRESSES: Nuclear Regulatory Commission, Room T10-A1, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Robert A. Meck; e-mail: ram2@nrc.gov, telephone: (301) 415-6205; Office of Nuclear Regulatory Research, USNRC, Washington DC 20555-0001.

SUPPLEMENTARY INFORMATION: The NRC previously announced in a **Federal Register** notice (FRN) on June 30, 1999 (64 FR 35090), that it is considering a rulemaking that would set specific requirements for the release of solid materials. That notice also indicated that NRC is supplementing its standard rulemaking process by conducting enhanced public participatory activities, including facilitated public meetings, before the start of any formal rulemaking process. These public participatory activities are to solicit early and active public input on major issues associated with the release of solid materials, including whether the NRC should proceed with such a rulemaking. The NRC staff is holding a planning meeting with contractors

preparing dose assessments and analyzing trade-offs (benefits and costs) of various potential regulatory actions. As space permits, all interested parties are invited to the portion of the contractor meeting that will summarize the technical approaches and coordination among contractors. Opening this meeting to the public is intended to clarify for interested parties the NRC's development of technical information and to allow observers to comment on the planned development of technical information.

The public meeting will be held at the Nuclear Regulatory Commission offices in Rockville, Maryland, on September 23 and 24, 1999, from 8:30 a.m. to 4:00 p.m. in Room T10-A1, Two White Flint North, 11545 Rockville Pike. For planning purposes, observers from the public are requested to notify Juanda Fletcher at (301) 415-6238 if they plan to attend.

Dated at Rockville, Maryland, this 9th day of September 1999.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection, Environmental Risk & Waste Management Branch, Office of Nuclear Regulatory Research.

[FR Doc. 99-24057 Filed 9-14-99; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-124-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 757-200 series airplanes. This proposal would require repetitive clearing of the drain passage at the aft end of the main landing gear truck beam to ensure moisture and contaminants within the truck beam can properly drain. This proposal is prompted by reports of fracture of main landing gear truck beams. The actions specified by the proposed AD are intended to prevent stress corrosion cracking, leading to fracture of a main landing gear truck beam during ground operations, which could result in either

reduced controllability of the airplane or a fire.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-124-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1153; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-124-AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-124-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports indicating that the main landing gear truck beam on Boeing Model 757-200 series airplanes has fractured due to stress corrosion cracking originating at corrosion pits on the surface of the inside diameter of the truck beam. The inner surface of the truck beam is protected from corrosion by several methods, including coatings over the metal surface and a gravity drain hole in the aft end of the truck beam inner surface that allows any moisture that enters the area to drain out. The drain holes on the fractured truck beams were found to be plugged with coating material, preventing moisture from draining out of the inside of the truck beam, which may result in increased corrosion on the inner surface of the truck beam. The primary cause of the condition may be inadequate adhesion of the coating to the inner surface of the truck beam during manufacture. This condition, if not corrected, could result in stress corrosion cracking, leading to fracture of a main landing gear truck beam during ground operations, which could result in either reduced controllability of the airplane or a fire.

Explanation of Relevant Service Information

The FAA has reviewed Boeing Service Letter 757-SL-32-060, dated March 31, 1999, which describes procedures for repetitive clearing of the drain passage at the aft end of the main landing gear truck beam to ensure moisture and contaminants within the truck beam can properly drain. Accomplishment of the actions specified in the service letter is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Letter

Operators should note that, although the service letter recommends accomplishing the clearing procedure at the next convenient maintenance opportunity, and at planned maintenance intervals thereafter (such as "C" checks), the FAA has determined that the next convenient maintenance opportunity and at "C" checks thereafter would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than one hour). In light of all of these factors, the FAA finds a compliance time of 4 years since the last overhaul of the main landing gear or since the date of manufacture of the main landing gear (for main landing gear that has not been overhauled), or within 90 days after the effective date of this AD, whichever occurs latest, for initiating the required actions to be warranted. For the repetitive clearing procedures, the FAA finds an interval of 6 months, if the drain was previously found to be clogged, or 18 months, if the drain was previously found to be unclogged, to be warranted. The FAA finds that these intervals are warranted in that they represent appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 750 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$18,000, or \$60 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99-NM-124-AD.

Applicability: All Model 757-200 series airplanes, certificated in any category.

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

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking, leading to fracture of a main landing gear truck beam during ground operations, which could result in either reduced controllability of the airplane or a fire, accomplish the following:

Inspection

(a) Within 4 years since the last overhaul of the main landing gear or since the date of manufacture of the main landing gear (for main landing gear which have not been overhauled), or within 90 days after the effective date of this AD, whichever occurs latest: Insert a wooden probe, or similar non-metallic object, into the aft drain hole of the main landing gear truck beam, to clear the drain passage and ensure it can properly drain, in accordance with Boeing Service Letter 757-SL-32-060, dated March 31, 1999.

(1) If the aft drain hole is found unclogged, repeat the clearing procedure thereafter at intervals not to exceed 18 months.

(2) If the aft drain hole is found clogged, repeat the clearing procedure thereafter at intervals not to exceed 6 months.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on September 8, 1999.

D.L. Riggan,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 99-23997 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99-NM-176-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 Series Airplanes**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Raytheon Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 series airplanes. This proposal would require inspection of P1 pitot pipes for chafing or damage, and various follow-on actions. This proposal is prompted by reports of P1 pitot pipes chafing against adjacent flight control cables. The actions specified by the proposed AD are intended to prevent a hole in the P1 pitot pipes, which would lead to erroneous input to the instrumentation and warning systems associated with the pilot's instruments.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-176-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE-116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas

67209; telephone (316) 946-4142; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-176-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-176-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports indicating that the P1 pitot pipes have been found chafing against adjacent flight control cables on Raytheon Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 series airplanes. Such chafing has been attributed to installation with inadequate clearance during manufacture. This condition, if not corrected, could wear a hole through the P1 pitot pipes, which would result in erroneous input to the instrumentation and warning systems associated with the pilot's instruments.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB.34-3028,

dated January 1998, which describes procedures for inspection of P1 pitot pipes for chafing or damage, and various follow-on actions. If no chafing or damage is detected, follow-on actions consist of ensuring that a minimum clearance of 0.25 inch exists between the flight control cables and the adjacent P1 pitot pipes, and repositioning the P1 pitot pipes as necessary to achieve this clearance. If any chafing or damage is detected, follow-on actions include replacing discrepant parts with new parts; ensuring that a minimum clearance of 0.25 inch exists between the flight control cables and the adjacent P1 pitot pipes; inspecting the flight control cables in the area of wear for damage; and testing the P1 pitot system to ensure proper function.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of P1 pitot pipes for chafing or damage, and replacement of discrepant parts with new parts; and checking the installation to ensure a minimum clearance of 0.25 inch exists between the flight control cables and the adjacent pipe, and corrective actions, if necessary. If evidence of chafing is found, the proposed AD also would require a test of the P1 pitot system to ensure proper function, and inspection of the adjacent flight control cables for any sign of damage. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

If the test of the P1 pitot system fails, or if any damage to the flight control cables is found, this proposed AD would require corrective actions in accordance with the Aircraft Maintenance Manual.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing the inspection of P1 pitot pipes for damage, and follow-on actions, if necessary, during the next scheduled hourly airframe inspection, the FAA has determined that a compliance time of 150 flight hours after the effective date of this AD for initiating the required actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to

continue to operate without compromising safety. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (one hour). The FAA finds that a compliance time of 150 flight hours after the effective date of this AD would also closely correspond to the time of the next scheduled hourly airframe inspection.

Cost Impact

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$2,340, or \$60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket 99–NM–176–AD.

Applicability: All Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a hole in the P1 pitot pipes, which would lead to erroneous input to the instrumentation and warning systems associated with the pilot's instruments, accomplish the following:

Inspections and Corrective Actions

(a) Within 150 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect chafing or damage of the P1 pitot pipes, in accordance

with Raytheon Service Bulletin SB.34–3028, dated January 1998.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no chafing or damage is found, prior to further flight, ensure a clearance of 0.25 inch or more exists between the P1 pitot pipes and flight control cables. If clearance is less than 0.25 inch, prior to further flight, reposition the P1 pitot pipes to achieve 0.25-inch clearance, in accordance with the service bulletin.

(2) If a pitot pipe is found to be chafed or damaged, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Replace the discrepant pitot pipe with a new pipe, and ensure that a clearance of 0.25 inch or more exists between the flight control cables and the new pitot pipe, in accordance with the service bulletin. If clearance is less than 0.25 inch, reposition the P1 pitot pipes to achieve 0.25-inch clearance, in accordance with the service bulletin.

(ii) Perform a general visual inspection for damage of the flight control cables adjacent to the area of chafing or damage of the P1 pitot pipes, in accordance with the service bulletin. If damage is found, replace the damaged flight control cables with new cables in accordance with Chapter 20–10–31 of the Aircraft Maintenance Manual.

(iii) Perform a test of the P1 pitot system to ensure proper function, in accordance with the service bulletin. If the P1 pitot system fails the test, perform the corrective actions specified in Chapter 34–11–00 of the Aircraft Maintenance Manual.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Issued in Renton, Washington, on September 8, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-23996 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-76-AD]

RIN 2120-AA64

Airworthiness Directives; International Aero Engines AG V2500-A1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of two existing airworthiness directives (ADs), applicable to International Aero Engines AG (IAE) V2500-A1 series turbofan engines, one of which, AD 98-20-18, currently requires removal from service of affected high pressure turbine (HPT) disks, identified by part number and serial number in the applicability paragraph of that AD, and replacement with a serviceable part. The other current AD, 99-05-05, requires initial and repetitive inspections of certain HPT stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a normal shop visit, and is a subsurface anomaly is found, removal from service and replacement with a serviceable part. This action would require the initial inspection required by AD 99-05-05 to be completed at the next shop visit regardless of the planned maintenance or the reason for shop removal. The repetitive inspection interval would also be redefined to eliminate the cyclic limit and thus be less restrictive. This proposal is prompted by results from further investigation subsequent to the publication of AD 98-20-18 that have revealed that the HPT disks affected by that AD are part of the population addressed by AD 99-05-05. These HPT disks can be safely reintroduced into service after completing the initial inspection requirements mandated by this proposed AD. This proposal is also prompted by further analysis which indicates a reduction in risk if the initial inspection required by AD 99-05-05 is completed sooner and that the subsequent required inspections can be

redefined to eliminate the cyclic limit creating less burden on operators.

The actions specified by the proposed AD are intended to prevent HPT disk fracture, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-76-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Commercial Aero Engine Limited, P.O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL-TP; telephone +44-1-33-22-4653, fax +44-1-33-22-46302. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7133, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-ANE-76-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-76-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On November 4, 1998, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 98-20-18, Amendment 39-10871 (63 FR 63398, November 13, 1998), applicable to International Aero Engines AG (IAE) V2500-A1 series turbofan engines, to require removal from service of affected high pressure turbine (HPT) disks, identified by part number (P/N) and serial number (S/N) in the applicability paragraph of that AD, and replacement with a serviceable part. That action was prompted by a report of an uncontained HPT disk failure. That condition, if not corrected, could result in an HPT disk fracture, an uncontained engine failure, and damage to the airplane.

On February 19, 1999, the FA issued AD 99-05-05, Amendment 39-11053 (64 FR 9910, March 1, 1999), applicable to IAE V2500-A1 series turbofan engines, to require initial and repetitive inspections of certain HPT stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a normal shop visit, and if a subsurface anomaly is found, removal from service and replacement with a serviceable part. That action was prompted by the results of a stage 1 HPT disk fracture investigation which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed as a result of the processes used to manufacture the part. That condition, if not corrected, could result in HPT disk fracture, which could result in an uncontained engine failure and damage to the airplane.

Since the issuance of AD 98-20-18, further investigation have revealed that the HPT disks affected by that AD are part of the population addressed by AD

99-05-05. These HPT disks can be safely reintroduced into service after completing the initial inspection requirements mandated by this proposed AD.

In addition, the manufacturer has performed analysis which indicates a reduction in risk if the initial inspection required by AD 99-05-05 is completed sooner and that the subsequent inspections can be redefined to eliminate the cyclic limit creating less burden on operators.

Service Information

Subsequent to the publication of AD 99-05-05, IAE has issued Revision 1 to Service Bulletin (SB) No. V2500-ENG-72-0344, dated February 12, 1999, that describes procedures for ultrasonic inspections for subsurface anomalies. For the purpose of this AD, the original issue of that SB, dated December 18, 1998, is also acceptable for performing the required inspections.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede ADs 98-20-18 and 99-05-05 to require the initial ultrasonic inspection to be completed at the next shop visit regardless of the planned maintenance or the reason for shop removal. However, the repetitive inspection interval would become less restrictive by eliminating the cyclic limit and requiring inspections whenever the HPT stage 1 or stage 2 disks are disassembled from the HPT module.

In addition, this AD allows the disks identified by S/N that were retired by AD 98-20-18 to be reintroduced into service following an initial ultrasonic inspection required by this AD.

Cost Impact

Since this AD only adjusts the timing of inspections already required, there is no additional adverse economic impact.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-10871 (63 FR 63398, November 13, 1998) and amendment 39-11053 (6 FR 9910, March 1, 1999) and by adding a new airworthiness directive to read as follows:

International Aero Engines AG: Docket No. 98-ANE-76-AD. Supersedes AD 98-20-18, Amendment 39-10871, and AD 99-05-05, Amendment 39-11053.

Applicability: International Aero Engines AG (IAE) V2500-A1 series turbofan engines, installed on but not limited to Airbus Industrie A320 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of

compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk fracture, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Perform initial and repetitive ultrasonic inspections of HPT stage 1 and 2 disks for subsurface anomalies, identified by serial numbers (S/Ns) in Table 1 of IAE Service Bulletin (SB) V2500-ENG-72-0344, Revision 1, dated February 12, 1999, in accordance with the Accomplishment Instructions of SB V2500-ENG-72-0344, dated December 18, 1998, or Revision 1, dated February 12, 1999, as follows:

(1) Initially inspect at the first opportunity when the engine is at a maintenance base after the effective date of this AD regardless of the planned maintenance or the reason for engine removal.

(2) Thereafter, inspect whenever the HPT stage 1 or stage 2 disks are disassembled from the HPT module.

(3) Remove disks from service if a subsurface anomaly is found, and replace with serviceable parts.

(b) HPT stage 1 disks, part number (P/N) 2A1801, S/Ns P100421, P100430, P100618, and P100621, may return to service following a successful inspection in accordance with paragraph (a) of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished. Issued in Burlington, Massachusetts, on September 8, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.
[FR Doc. 99-24092 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-114-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400 and 767 Series Airplanes Powered by Pratt & Whitney PW4000 Series Engines**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 and 767 series airplanes. This proposal would require replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components. This proposal is prompted by reports of partial deployment of deactivated thrust reversers during landing. The actions specified by the proposed AD are intended to prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2684; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-114-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports of partial deployments of deactivated thrust reversers during landing on Boeing Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines. Subsequent investigation revealed that, in each event, the thrust reverser had been improperly deactivated. This allowed hydraulic pressure to be available to the actuators when the reverse thrust levers were activated on landing. The pin insert for the deactivation pin was not able to withstand the load of a powered deployment and failed. The deactivation pin, as well as the pin insert flange, are subject to adverse tolerance stack-up, which minimizes their load carrying capability, and the pin and insert flanges may not prevent a deactivated thrust reverser sleeve from moving during a powered deployment. This

condition, if not corrected, could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane. The deactivation pins, pin bushings, and insert flanges on Model 747-400 series airplanes powered by Pratt & Whitney PW4000 series engines are the same as those on the affected Model 767 series airplanes. Therefore, those Model 747-400 series airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747-78A2165, Revision 1, dated May 13, 1999, which describes procedures for replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components, on Model 747-400 series airplanes powered by Pratt & Whitney PW4000 series engines. The FAA has also reviewed and approved Boeing Alert Service Bulletin 767-78A0080, dated February 25, 1999, which describes procedures for replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components, on Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between The Proposed AD and the Service Bulletins

Boeing Service Bulletin 747-78A2165, Revision 1, and Boeing Alert Service Bulletin 767-78A0080 recommend incorporation of the specified actions on airplanes with the additional thrust reverser locks at the earliest opportunity where facilities and manpower are available. For airplanes without additional thrust reverser locks, the service bulletins recommend incorporation at the earliest opportunity where facilities and manpower are available but no later than 24 months. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's

recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement. In light of all of these factors, the FAA finds a 24-month compliance time for accomplishing the required actions on all affected airplanes to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 201 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 Model 747-400 series airplanes and 54 Model 767 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 6 work hours per engine to accomplish the proposed replacement, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$3,956 per engine. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model 747-400 series airplanes (4 engines per airplane) is estimated to be \$673,296, or \$17,264 per airplane. The cost impact of the proposed AD on U.S. operators of Model 767 series airplanes (2 engines per airplane) is estimated to be \$466,128, or \$8,632 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99-NM-114-AD.

Applicability: Model 747-400 series airplanes powered by Pratt & Whitney PW4000 series engines, as listed in Boeing Service Bulletin 747-78A2165, Revision 1, dated May 13, 1999; and Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines, as listed in Boeing Alert Service Bulletin 767-78A0080, dated February 25, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 24 months after the effective date of this AD, replace the existing deactivation pin, pin bushing in the aft cascade mounting ring, and insert flange on

each thrust reverser half, with new, improved components, in accordance with Boeing Service Bulletin 747-78A2165, Revision 1, dated May 13, 1999 (for Model 747-400 series airplanes); or Boeing Alert Service Bulletin 767-78A0080, dated February 25, 1999 (for Model 767 series airplanes); as applicable.

Note 2: The new, improved insert flange and pin bushing does not preclude use of a deactivation pin having P/N 315T1604-2 or -5. However, use of deactivation pins having P/N 315T1604-2 or -5 may not prevent the thrust reversers from deploying in event of a full powered deployment. Therefore, thrust reversers modified per this AD require installation of the new, longer deactivation pins having P/N 315T1604-6, as specified in the applicable service bulletin.

Note 3: Replacements accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747-78A2165, dated February 25, 1999, are considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on September 9, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-24091 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-31-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes. This proposal would require replacing the thrust reverser control unit selector valve with a new or modified valve and inspecting for proper rigging of the thrust reverser cable drums and thrust reverser control unit selector valve detent, and corrective actions, if necessary. This proposal also would require revising the Airplane Flight Manual to provide the flight crew with procedures to address uncontrolled operation of the thrust reverser system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to provide the flight crew with procedures in the event of uncommanded deployment of the thrust reverser, and to prevent uncommanded deployment of the thrust reverser in flight or on the ground, which could result in reduced controllability of the airplane.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-31-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-31-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-31-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model BAC 1-11 200 and 400 series airplanes. The CAA advises that two uncommanded thrust reverser deployments on the ground have been reported. The cause of the deployments was control cable failure. The control cable in both incidents had been incorrectly routed over a guard pin and had worn through. Also, during investigations of the thrust reverser rigging, instances have been found where the thrust reverser selector valve detent was not rigged properly and was not in the forward idle position. Misrigging of the thrust reverser control pulleys or the thrust reverser selector valve detent could result in uncommanded deployment of the thrust reverser in flight or on the ground, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin 76-A-PM6043, Issue No. 1, dated September 18, 1998, which describes procedures for inspecting the thrust reverser cable drums and pulleys for proper rigging, and adjustment, if necessary.

British Aerospace also has issued Service Bulletin 78-PM6047, Issue No. 1, dated November 27, 1998, which describes procedures for replacing the thrust reverser control unit selector valve with a new or modified selector valve.

British Aerospace also has issued BAC 1-11 Airplane Flight Manual (AFM) Advance Amendment Bulletins No. 12 and No. 16, both dated August 19, 1997, which describe procedures for revising the Emergency and Abnormal Procedure Sections of the British Aerospace BAC 1-11 AFM to provide the flight crew with procedures in the event of thrust reverser uncommanded deployment in flight and when the thrust reverser is indicated to be in the unlocked position during flight.

Rolls-Royce Spey Aero Engine has issued Service Bulletin Sp78-131, dated September 1998, which describes procedures for inspecting the thrust reverser control unit selector valve detent for proper rigging, and adjustment, if necessary.

Accomplishment of the actions specified in the service bulletins and advance amendment bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directives 002-09-08 and 005-11-98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and the Foreign Airworthiness Directive

The proposed AD would differ from the parallel British airworthiness directives in that it would require incorporation of BAC-1-11 AFM Advance Amendment Bulletins No. 12 and No. 16 dated August 19, 1997 into the AFM. The British airworthiness directives do not provide for such a requirement. The FAA has determined that, because of the safety implications, it is necessary to revise the AFM to provide emergency procedures to address uncommanded operation of the thrust reverser system.

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 6 work hours per airplane to accomplish the proposed inspections, and at average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be \$5,760, or \$360 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed replacement, and an average labor rate of \$60 per work hour. Required parts would cost approximately \$16,000 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be \$256,960, or \$16,060 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and at average labor rate of \$60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be \$960, or \$60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 99-NM-31-AD.

Applicability: All Model BAC 1-11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To provide the flight crew with procedures in the event of uncommanded deployment of the thrust reverser and to prevent uncommanded deployment of the thrust reverser in flight or on the ground, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection for proper rigging of the thrust reverser cable drums, in accordance with British Aerospace Alert Service Bulletin 76-A-PM6043, Issue No. 1, dated September 18, 1998. If any drum is found to be improperly rigged, prior to further flight, accomplish the adjustments specified in paragraph 3, "Adjustments," of the service bulletin.

(b) Prior to further flight after accomplishing the inspection required by paragraph (a) of this AD, perform an inspection for proper rigging of the thrust reverser selector valve detent, in accordance with Rolls-Royce Spey Service Bulletin Sp78-131, dated September 1998. If any discrepancy is found, prior to further flight, accomplish the adjustments specified in paragraph 3, "Adjustments," of the service bulletin.

(c) Within 30 days after the effective date of this AD, revise the Emergency and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) by inserting British Aerospace Advance Amendment Bulletins No. 12 and No. 16, both dated August 19, 1997, into the applicable sections of the AFM.

(d) Within 12 months after the effective date of this AD, replace the thrust reverser control unit selector valve with a new or modified selector valve in accordance with British Aerospace Service Bulletin 78-PM6047, Revision 1, dated November 27, 1998.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance who may add comments and then send it to the Manager, International Branch, ANM-116.

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

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directives 002-09-98 and 005-11-98.

Issued in Renton, Washington, on September 9, 1999.

D.L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-24090 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-106004-98]

RIN 1545-AW71

Guidance Under Section 355(d); Recognition of Gain on Certain Distributions of Stock or Securities; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation, which would affect corporations and their shareholders.

DATES: The public hearing originally scheduled for Tuesday, September 21, 1999, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and/or notice of public hearing that appeared in the **Federal Register** on May 3, 1999, (64 FR 23554), announced that a public hearing was scheduled for September 21, 1999, at 10 a.m., room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224. The subject of the public hearing is proposed regulations under section 355 of the Internal Revenue Code. The public comment period for these proposed regulations expired on August 2, 1999.

The notice of proposed rulemaking and/or notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of September 3, 1999,

no one has requested to speak. Therefore, the public hearing scheduled for September 21, 1999, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99-23988 Filed 9-14-99; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AC59

Workshop on Valuation of Federal Geothermal Resources

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshop.

SUMMARY: The Minerals Management Service (MMS) will hold a public workshop on valuing Federal geothermal resources in preparation for proposing amendments to its current royalty valuation rules. The purpose of the workshop is to provide an open forum for discussion of methods to value geothermal resources that are not subject to sales transactions (that is, the "no sales" resources). MMS announced its intent to amend the current valuation rules in the **Federal Register** on August 19, 1999 (Advance Notice of Proposed Rulemaking, 64 FR 45213).

DATES: The workshop will be held on October 7, 1999, beginning at 8:30 a.m. and ending by 5:00 p.m., Pacific Time.

ADDRESSES: The workshop will be held at the Holiday Inn Capitol Plaza, 300 J Street, Sacramento, California 95814; telephone (916) 446-0100.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Brook, Royalty Valuation Division, Minerals Management Service, P.O. Box 25165, MS 3152, Denver, Colorado 80225-0165; telephone (303) 275-7250; or e-mail charles.brook@mms.gov.

SUPPLEMENTARY INFORMATION: The workshop is open to the public to discuss alternative methods of valuing, for royalty purposes, those Federal geothermal resources that are not subject to sales transactions, the so-called "no sales" resources. The workshop is being held in conjunction with MMS's advance notice of proposed rulemaking, which was published in the **Federal Register** on August 19, 1999 (64 FR 45213), announcing our intent to amend the current Federal geothermal valuation regulations in 30 CFR part 206.

We are specifically seeking dialogue on alternatives to the netback procedure currently used to value "no sales" electrical generation resources. In the **Federal Register** notice, we offered three alternatives as a starting point for discussion: (1) Modification of the existing netback valuation procedure, (2) a "rate-of-return" method, and (3) a "percentage-of-revenue" method. In addition to these alternatives, we would like to explore other, new and different valuation methods offered by attendees during the course of the workshop. We are also asking for comments on options to the "alternative fuel" method used to value the "no sales" direct utilization resources. Alternative valuation methods should derive a value for the resource that reflects its market value and should be easy to apply and readily verifiable.

We encourage a workshop atmosphere where attendees can openly discuss alternative valuation methods. Please bring any written descriptions of alternative methods to share with MMS and other workshop attendees. Because space is limited, attendees should make reservations with Charles Brook at (303) 275-7250 or Shelia Dean at (303) 275-7201. We will post minutes of the workshop on the Internet at <http://www.rmp.mms.gov>.

Dated: September 8, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99-24075 Filed 9-14-99; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN-146-FOR; State Program Amendment No. 98-3]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes to add a new section to its rules. The new section requires coal mine operators to submit an annual

report of affected areas to the director of the Indiana Department of Natural Resources (IDNR). Indiana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., October 15, 1999. If requested, we will hold a public hearing on the amendment on October 12, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on September 30, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director,
Indianapolis Field Office, Office of
Surface Mining Reclamation and
Enforcement, Minton-Capehart
Federal Building, 575 North
Pennsylvania Street, Room 301,
Indianapolis, IN 46204, Telephone:
(317) 226-6700.

Indiana Department of Natural
Resources, Bureau of Mine
Reclamation, 402 West Washington
Street, Room W-295, Indianapolis,
Indiana 46204, Telephone: (317) 232-
1291.

Indiana Department of Natural
Resources, Division of Reclamation,
R.R. 2, Box 129, Jasonville, Indiana
47438-9517, Telephone: (812) 665-
2207.

FOR FURTHER INFORMATION CONTACT:
Andrew R. Gilmore, Director,
Indianapolis Field Office. Telephone:
(317) 226-6700. Internet:
INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's

findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Description of the Proposed Amendment

By letter dated August 31, 1999 (Administrative Record No. IND-1668), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment at its own initiative. Indiana proposes to amend the Indiana Administrative Code (IAC) by adding 310 IAC 12-5-159. Below is a summary of the new section proposed by Indiana. The full text of the proposed program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

310 IAC 12-5-159 Annual Report

Indiana proposes the following definition of "mined land" at subsection (a):

As used in this section, "mined land" means the following:

- (1) Land from which coal has been extracted.
- (2) Land from which overburden has been removed.
- (3) Land upon which overburden or spoil has been deposited to facilitate surface coal mining activities. Mined land does not include land where only auger mining has occurred as reported in subsection (c)(3)(D).

Indiana proposes to define "surface disturbed land" at subsection (b). As used in 310 IAC 12-5-159, "surface disturbed land" means land, other than mined land, that is disturbed by surface coal mining and reclamation operations. It includes areas where only topsoil is removed. Various examples of surface disturbed land are listed. When the surface disturbance will be reaffected by future overburden removal or deposition, the permittee need not report surface disturbed land in advance of the highwall.

At subsection (c), permittees must submit an annual report of affected areas for each permit for surface coal mining and reclamation operations. The reporting period is from November 1 through October 31 of each year. The report must be submitted to the Director of IDNR no later than 90 days after October 31 of each year. The report must document the acres affected annually as of October 31 of the reporting year. It must include the name and address of the permittee and, if different from the permittee, the name and address of the person or persons conducting the mining. It must also include the permit number and a

summary of acres mined and disturbed during the reporting period. The acreage summary must include acres of mined land, acres of surface disturbed land, total permit acres, and acres of auger mining and highwall mining.

At subsection (d), Indiana requires a dated aerial photograph of the surface coal mining and reclamation operation taken between September 1 and December 31 of the reporting year to be included with the report. The photograph must be of the same scale as the permit maps. The photograph or a certified map must show the location of the permit boundary; acres reported; section, township, and range lines; all public roads within the permit area that are not permanently closed; all areas where coal has been removed by surface, auger, or highwall mining methods; and the highwall face as of November 1 of the reporting year.

At subsection (e), Indiana requires that the last report, after the permittee has completed all mining, include a summary of pre-mining land use acreage for the mined and surface disturbed area when the acres are available on a computer-aided design (CAD) or other digital data format.

At subsection (f), any associated map, whether separate from or created upon the photograph, must be prepared by or under the direction of and certified by a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields such as land surveying or landscape architecture.

At subsection (g), permits issued and land affected before the effective date of 310 IAC 12-5-159 and for which a Report of Affected Area has not been filed, the initial photograph must show all areas disturbed since permit issuance. No distinction between mined land and surface disturbed land is required on the report form, photograph, or map. When available, the extent of auger areas must be shown.

At subsection (h), no report is necessary after the initial report is submitted if no additional acres have been disturbed during the reporting year.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

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 administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative 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.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IN-146-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226-6700.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on September 30, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We

will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99-24061 Filed 9-14-99; 8:45 am]

BILLING CODE 4310-05-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Agency Records Center Rule

AGENCY: National Archives and Records Administration.

ACTION: Initial Regulatory Flexibility Analysis.

SUMMARY: The National Archives and Records Administration (NARA) is publishing this initial regulatory flexibility analysis to aid the public in commenting upon the small business impact of its proposed rule revising and updating the standards that records center storage facilities must meet to store Federal records.

DATES: Written comments must be received at the address shown in the

ADDRESSES section on or before October 15, 1999. Comments received after this date will not be considered.

ADDRESSES: Submit comments to Regulation Comment Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Alternatively, comments may be faxed to 301-713-7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713-7360, ext. 226.

SUPPLEMENTARY INFORMATION: This notice supplements NARA's initial notice of proposed rulemaking published on April 30, 1999, at 64 FR 23504, to revise and update records storage facility standards in 36 CFR part 1228, subpart K. NARA's notice of proposed rulemaking did not include an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 603), based on a certification that the proposed rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). See 64 FR at 23505. The certification statement in the proposed rule inadvertently omitted the phrase "a substantial number of", although NARA intended that phrase to be part of the statement.

Background

The proposed rule would apply to all records storage facilities Federal agencies use to store, service, and dispose of their records, including records centers operated by NARA and other Federal agencies and those commercial records storage facilities that Federal agencies use to store Federal records. NARA based its certification statement on the following unstated assumptions:

- The proposed rule relies on voluntary industry standards and industry recommended practices as the basis for most of the requirements. NARA made a reasonable assumption that most commercial facilities that would be likely to store Federal records would already conform to the industry standards and recommended practices. Thus, there would not be a significant cost to existing small businesses to upgrade their facilities to meet the proposed general facility standards.

- Environmental control requirements for storage of microfilm, audiovisual, and/or electronic permanent and unscheduled records have been in force elsewhere in NARA regulations for three or more years. Thus re-stating them in this proposed rule was not changing the existing burden on storage facilities. Moreover, at the time

the proposed rule was developed, permanent records comprise only about five to six percent of the NARA's total records center holdings. Because only the specific records storage areas that contain permanent or unscheduled Federal records will require the NARA environmental controls, we assumed that it was unlikely that a significant number of commercial centers, small or large, would need to add air-conditioning equivalent to that required for office space to more than one storage module.

- Certain proposed requirements are imposed by authorities outside NARA: The building security requirements are those established by the Department of Justice for Level III Federal facilities. Seismic safety provisions are required by Executive orders and an integrated pest management program is mandated for Federal agencies by the Food Protection Act of 1996. Any economic burden for complying with these requirements would exist independently of NARA's proposed rule.

- NARA would continue to store Federal records for some agencies, although other agencies might choose private sector or other Federal agency centers to store their records after NARA's records center program becomes fully reimbursable in Fiscal Year 2000. Security classified records and IRS records containing restricted taxpayer information would continue to be stored in NARA or agency records centers, not commercial records storage facilities. As of the end of FY 1998, NARA centers held more than 6 million c.f. in these categories. NARA also expected that the National Personnel Records Center in St. Louis would retain 2.02 million c.f. of military personnel files and 1.4 million c.f. of civilian files, as evidenced in a related proposed rule published the same day (64 FR 23510), Storage of Federal Records.

- Two commercial records storage companies, Iron Mountain and Pierce Leahy, are currently the predominant private sector providers of records storage services to Federal agencies. NARA had no evidence that a substantial number of records centers that qualify as small businesses store Federal records for agencies, or that storage of Federal records comprises a significant percentage of their business receipts.

Accordingly, NARA believed that its certification statement in the proposed rule was appropriate. In response to a request from PRISM International, a not-for-profit trade association that includes off-site storage company members, NARA published a June 7, 1999, notice

of a public meeting on the proposed rule, and extended the comment period to July 7, 1999 (64 FR 30276). At that public meeting on June 18, 1999, several attendees questioned NARA's certification statement. NARA staff stated that NARA had not done any formal cost analysis to support this certification and invited attendees to provide comments on the adequacy of that statement. In response to this invitation, NARA received several comments that the regulation would have a significant impact on small business. Additionally, some records storage facilities wrote to their members of Congress stating that the proposed rule would have a significant impact on them, and those letters were forwarded to NARA for consideration.

The comments on the economic impact appear to be based on two provisions of the proposed rule: A requirement in proposed § 1228.230(b) that records storage areas not exceed 250,000 c.f. of records to protect against catastrophic files and a misinterpretation of § 1228.234(a) that NARA would not allow commercial facilities to store records higher than 15 feet. (Section 1228.234 describes one optional alternative for an acceptable fire detection and suppression system, and is the alternative NARA uses in its own records centers. It is not a mandatory requirement. NARA intends to clarify this further in the final rule by moving the description of this alternative to an appendix and reiterating that other alternatives are acceptable.)

NARA has decided to publish this notice, which includes the following initial regulatory flexibility analysis, to provide further information and opportunity for public comment on the small business impact, if any, of the proposed rule.

Initial Regulatory Flexibility Analysis

Description of the reasons that action by the agency is being considered.

Current records center standards were last issued in 1982. Based upon advancements in technical knowledge and experience gained over the past two decades, NARA believes it is time to update the standards for the storage of Federal records in the legal custody of Federal agencies. Moreover, as more agencies are turning to the private sector for off-site storage, NARA believes that it is necessary to require agencies to ensure that records in their legal custody are stored in appropriate space wherever the records are stored.

Succinct statement of the objectives of, and legal basis for, the proposed rule. Federal records provide essential

documentation of the Federal Government's policies and transactions and protect rights of individuals. These records must be stored in appropriate space to ensure that they remain available for their scheduled life.

NARA is authorized, under 44 U.S.C. 2907, to establish, maintain and operate records centers for Federal agencies. NARA is authorized, under 44 U.S.C. 3103, to approve a records center that is maintained and operated by an agency. NARA is also authorized to promulgate standards, procedures, and guidelines to Federal agencies with respect to the storage of their records in commercial records storage facilities. See 44 U.S.C. 2104(a), 2904 and 3102.

Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposed rule will apply to NARA, to Federal agencies that operate their own records centers, and to any individual commercial records center facilities that a Federal agency uses to store its records. The proposed rule will apply to both aboveground and underground facilities. NARA is unable to estimate the number of small entities to which the proposed rule will apply for the following reasons:

- Under current regulations, agencies do not report to NARA or obtain NARA approval to store their records in commercial records storage facilities. Therefore, NARA has no information on the number of current or past agency contracts with small business records centers. We specifically invite comments from agencies that have such contracts and from records centers that are small businesses on this point.

- At present, the General Services Administration's Multiple Award Schedule (MAS) for Records Center Services (FSS-36-IV sin 51 504) has listed only two qualified companies, both of which are large businesses. The procurement process that an agency must follow when using an MAS or when entering into an interagency agreement with NARA or another Federal agency to provide records center services is much simpler than the process it must use when seeking open market services. For this reason, NARA cannot estimate the volume of records center contracts that agencies may consider awarding to small businesses. We specifically invite comments from agencies on any plans that they have to contract with small businesses for records center services in the next 2 years.

Although we are unable to provide an estimate of the number of small entities to which the proposed rule will apply, we do have estimates of the universe of

small entities. NARA considered records center vendors to be small entities if they met the Small Business Administration (SBA) definition of a small business under Standard Industrial Code (SIC) 4226, Special Warehousing and Storage, Not Elsewhere Classified. For SIC 4226, an SBA small business must have annual gross receipts of \$18.5 million or less. According to census figures furnished to NARA by SBA, there are 1,230 firms in SIC 4226. Most of these firms do not have multiple establishments (the number of SIC 4226 establishments is 1,547).

Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Reporting/recordkeeping requirements: The proposed rule does not directly mandate reporting or recordkeeping within the meaning of the Paperwork Reduction Act. All reporting requirements are placed on Federal agencies, which must secure NARA approval before moving Federal records to a commercial records center. NARA anticipates that the Federal agencies would include 36 CFR part 1228, subpart K (the facility standards) in their contracts with commercial records centers. Proposed § 1228.240(e) states that agency may submit to NARA "a copy of the agency's contract that incorporates this subpart in its provisions or a statement from the agency records officer that certifies that the facility meets the standards in this subpart."

Other compliance requirements: All records centers that store Federal records, including commercial records centers operated by small businesses, must comply with the facility requirements in the proposed rule. Certain specific requirements differ for newly constructed facilities and existing facilities. Also, existing facilities are allowed a 10-year period to become compliant with some of these requirements. The facility compliance requirements are found in the proposed §§ 1228.228, 1228.230, and 1228.236. (See 64 FR 23506-23510.)

Professional skills necessary for preparation of report or record: If the records center owner has maintained the facility design records, no special professional skills would be necessary to provide documentation to the contracting agency that the facility meets the NARA standards. If the design records are not available, the center

would have need for the services of a licensed Fire Protection Engineer to inspect the facility and prepare a report on a one-time basis. We estimate that the inspection and preparation of a report would take no more than 8 hours total.

An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. At the June 18, 1999, public meeting, attendees pointed out that underground storage facilities are subject to regulations issued by the Mine Safety and Health Administration in 30 CFR Chapter I for any working mine. We intend to add a provision to our final rule that if any of the provisions of NARA's regulation conflict with mandatory life safety or ventilation requirements imposed on underground storage facilities by 30 CFR chapter I, 30 CFR chapter I applies.

Also at the public meeting, attendees pointed out that the proposed NARA regulations might conflict with local or regional building codes with which commercial facilities must comply. We stated at the meeting that we intend to add a provision to our final rule that resolves such conflicts by specifying that, following normal rules of precedence, the more stringent fire protection and life-safety provision will apply. If a mandatory NARA requirement cannot be reconciled with a mandatory local or regional requirement, the local or regional code will apply.

Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities. To the extent possible, the proposed rule specifies performance standards and incorporates by reference industry consensus standards. NARA chose this alternative over the other possible regulatory approach—extending the coverage of the existing regulation that governed agency records centers—to provide as much flexibility as possible to all

commercial and agency records centers, including small businesses.

We did not believe that we could adopt any of the other alternatives [(1), (2) or (4)] for minimizing the impact of the proposed rule on small entities, given the objective of ensuring appropriate protection for Federal records when they leave agency office space. We believe that the 10-year period we will provide for complying with certain requirements will moderate the impact on small businesses since they will be able to plan for the necessary modifications and implement them during normal maintenance, e.g., removing roof-mounted equipment when roof repairs or replacement is done. However, we do not believe that it is appropriate to exempt or delay small businesses' compliance with basic fire detection and suppression requirements. It is also not feasible to exempt or delay small businesses' compliance with requirements imposed by other authorities, e.g., DOJ building security requirements.

Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide comment on any or all of the provisions in the proposed rule with regard to

- The impact of the provision(s) including the benefits and costs, if any, on small entities, and
- Other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small entities.

2. Please identify any Federal rules, other than the MSHA regulations discussed in this notice, that may duplicate, overlap, or conflict with the proposed rule. In addition, please identify any industry standards not cited in NARA's proposed rule that would be more appropriate. Please identify such industry standards by name of the organization establishing the standard, formal title, and edition date, and state how the public can get copies of the standard.

3. Please discuss the extent to which existing commercial records centers, especially those that qualify as a small business, have incorporated either the requirements of National Fire Protection Association (NFPA) 232, Standard for the Protection of Records (1995 Edition) for facilities smaller than 50,000 c.f. or the guidance in NFPA 232A, Guide for Fire Protection of Archives and Records Centers (1995 Edition) for larger facilities.

4. How many records centers that are small businesses presently store records for Federal agencies or would be interested in such future business

opportunity? Please include the basis for your response to this question (e.g., industry survey).

Dated: September 10, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99-24013 Filed 9-14-99; 8:45 am]

BILLING CODE 7515-01-P

POSTAL RATE COMMISSION

39 CFR Part 3001, 3002, and 3004

[Docket No. RM99-2; Order No. 1253]

Freedom of Information Act Administrative Rulemaking

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes changes to its rules of practice to implement the Electronic Freedom of Information Act and to reflect improved methods of information management. The proposed changes will establish consistency with current law. They also will improve the Commission's administration of related responsibilities and the public's ability to exercise rights to obtain or review certain information.

DATES: Comments will be accepted until September 30, 1999.

ADDRESSES: Send comments regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268-0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW, Washington, DC 20268-0001, 202-789-6824.

SUPPLEMENTARY INFORMATION: The Commission's rules implementing the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, have not been amended since 1993. Consequently, they do not incorporate changes in applicable law since that time, most notably the requirements added by the Electronic FOIA, Pub. L. 104-231. Additionally, the current rules do not reflect recent changes in the Commission's methods of information management, which have become increasingly computer-based, as well as other administrative changes affecting access to information at the Commission. The proposed rules are intended to address and accommodate these interim changes. They also incorporate a major structural change—transfer of all provisions describing FOIA access and processes at the

Commission to a new part 3004—for the convenience of persons interested in obtaining information by various means.

A. Compliance With Public Inspection and Copying Requirements as Modified by the Electronic FOIA Amendments

Subsection (a)(2) of the FOIA [5 U.S.C. 552(a)(2)] requires an agency to make available for public inspection and copying its final opinions in adjudicated cases, policy statements and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect members of the public. The 1996 Electronic FOIA amendments extended this requirement by directing agencies to make such records created on or after November 1, 1996 available by computer telecommunications or other electronic means.

The proposed rules reflect the actions the Commission has taken to achieve compliance with the amended public inspection and copying requirements. Beginning in 1996, the Commission has operated a website linked to the Internet for the purpose of telecommunication and publication of official information. Recently, the Commission has expanded the material available on its website to include all its decisions issued on or after January 1, 1996; orders, notices and other documents issued in proceedings pending before the Commission; the domestic mail classification schedule, which is a compilation of all provisions that define the categories of mail and postal services available in the national postal system; and the rules of practices which govern the conduct of proceedings before the Commission. All these materials are now available for viewing and downloading from the Commission's website at www.prc.gov. Accordingly, proposed 3004.2(c) identifies that domain as the location of the Commission's electronic reading room, and describes generally the categories of information available from the website.

B. Transfer of FOIA Procedural Rules to New Part 3004

Currently, the rules describing public information available at the Commission and procedures for obtaining access are contained in 39 CFR 3001.42 and 3001.42a, within the rules of general applicability included in part 3001, which is a compilation of all the Commission's rules of practice and procedure. For the convenience of persons interested primarily in obtaining access to public information, the Commission proposes rules which incorporate a major structural change.

Rules describing the procedures for obtaining access to public information at the Commission, fees associated with some retrieval and copying services, and procedures relating to the submission and disclosure of sensitive business information would be transferred to a new part 3004, to be entitled "Freedom of Information Rules." Rules describing the Commission's public information resources generally would be retained in § 3001.42, with additional detailed information in part 3002, the organizational description of the Commission.

In addition, the rules proposed for inclusion in the new part 3004 would revise and update the provisions transferred from 3001.42 and 42a to conform to current FOIA legal requirements and practices. Proposed 3004.1 and 3004.2 describe the purpose of the rules and the sources of the Commission's public information, including the physical and electronic reading rooms. Proposed 3004.3 provides both for regular FOIA requests and requests for expedited processing based on a demonstration of compelling need. The time limit specified in proposed 3004.4 for responding to requests would be changed from 10 days to 20 days, in accordance with the 1996 amendments. The period for filing an appeal of a denial of a request with the Commission, currently 20 days, would be extended to one year under proposed 3004.4(a)(2).

C. Provisions Relating to Submission of Sensitive Business Information

Proposed 3004.8 would adopt procedures for the Commission's treatment of materials containing sensitive business information that are considerably more detailed than those incorporated in current 3001.42a. Proposed 3004.8(a) would direct any person who submits information believed to be exempt from disclosure under 5 U.S.C. 552(b)(4) to designate the exempt information by appropriate markings, and provide a brief written statement explaining why the information is exempt. Any such designation would expire 10 years after the date of submission, unless the submitter requests and justifies a longer duration.

Should the Commission receive an FOIA request seeking business information that has been properly designated under 3004.9(a), or that the Commission believes may be exempt from disclosure under 552(b)(4), under proposed 3004.8(b) the Commission would notify the submitter that such a request has been made, and provide a copy of the notice to the requester.

Under proposed 3004.8(c), the submitter would have 7 days to submit written objections to the information's disclosure, specifying the grounds for withholding it under the FOIA. The submitter would be considered to have no objection to disclosure if it submits no response by the end of the 7-day period.

If the submitter has objected to disclosure, the Commission would then decide whether to disclose the information. If the Commission decides to disclose, under 3004.8(d) it would provide the submitter written notice of that decision and a brief explanation for not sustaining its objections. Actual disclosure would not be made until 5 days after the submitter's receipt of the notice. Proposed 3004.8(e) provides that the Commission may not notify the submitter if it determines not to disclose the information; if the information has been lawfully published or officially made publicly available; or if disclosure is required by a regulation or statute other than the FOIA.

Finally, proposed 3004.8(f) would specify that protection of business information made available in formal Commission proceedings, and under the periodic reporting requirements in subpart G of 39 CFR part 3001, is provided under the terms of 3001.31a. Thus, the procedures to be adopted in proposed 3004.8 would not apply to the potential disclosure of commercially sensitive materials in the course of the Commission's performance of its primary jurisdictional responsibilities.

D. Updated Information Responsive to Publication Requirements

Subsection (a)(1) of the FOIA specifies five categories of information that agencies are required to "currently publish in the **Federal Register** for the guidance of the public." The proposed rules are designed to comply fully with these publication requirements, and also to carry out the intent of the Electronic FOIA Amendments of 1996 to increase the public availability of information through computer telecommunications.

The proposed rules address the Act's publication requirements by incorporating several amendments to existing rules that would enhance the information provided regarding the Commission's docket room, physical reading room, and electronic reading room on its website, as directed in 5 U.S.C. 552(a)(1)(A). Proposed § 3002.4(e) would provide additional detail concerning the information available on the Commission's website, as well as clarifying the responsibility of the Commission's administrative office to maintain it and the other public

information resources of the agency. Proposed § 3002.2 would add a description of the Commission's statutory functions, including its jurisdictional responsibilities and the means by which the public may participate in Commission proceedings, in response to 5 U.S.C. 552(a)(1)(B).

Ordering paragraphs. Ordering paragraph No. 1 directed interested persons to submit comments on the proposed revisions, which were set out in Appendix A to this order, no later than July 26, 1999. [Changes set out in the referenced appendix appear in this **Federal Register** notice in a style that conforms to Office of the Federal Register publication requirements.] Ordering paragraph No. 2 directed the Secretary of the Commission to arrange for publication of the notice and order in the **Federal Register** in a manner consistent with applicable requirements. [The order was distributed to the Docket No. R97-1 service list upon issuance (June 15, 1999).

List of Subjects in 39 CFR Parts 3001, 3002 and 3004

Administrative practice and procedure, Archives and records, Freedom of information, Organization, Privacy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 39 CFR chapter III is proposed to be amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662.

2. In § 3001.42, remove paragraph (c) in its entirety, and redesignate paragraph (d) as (c).

3. Remove § 3001.42a in its entirety.

PART 3002—ORGANIZATION

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

Authority: 39 U.S.C. 3603; 5 U.S.C. 552.

5. Redesignate §§ 3002.2, 3002.3 and 3002.4 as §§ 3002.3, 3002.4 and 3002.5, respectively.

6. In redesignated § 3002.3, add a new paragraph (c) to read as follows:

§ 3002.3 The Commission and its offices.

* * * * *

(c) The Commission's offices are located at 1333 H Street, NW., Suite 300, Washington, DC 20268. On these premises, the Commission maintains offices for Commissioners and the staff

components described in 3002.4, 3002.5, 3002.6 and 3002.7; a docket room where documents may be filed with the Commission pursuant to 3001.9 and examined by interested persons; a public reading room where the Commission's public records are available for inspection and copying; a library containing legal and technical reference materials; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its website at www.prc.gov.

7. In redesignated § 3002.4, add new paragraph (e) to read as follows:

§ 3002.4 Administrative Office.

* * * * *

(e) The Administrative Office is also responsible for the maintenance of the Commission's public information resources, including the docket room, the physical reading room, and the library on the premises of the Commission's offices, as well as the electronic reading room accessible on the Commission's website at www.prc.gov. The information available on the Commission's website is, in general, coextensive with that available from the Commission's docket room and physical reading room, and includes: Commission decisions, rules, orders and notices; testimony, pleadings and reference materials filed in Commission proceedings; and current information concerning Commission activities, employment opportunities, and a calendar of upcoming events.

8. Add new § 3002.2 to read as follows:

§ 3002.2 Statutory functions.

(a) *Areas of jurisdiction.* The Commission has jurisdiction over changes in postal rates and fees under 39 U.S.C. 3622, and over mail classifications under 39 U.S.C. 3623. It issues recommended decisions to the Governors of the Postal Service on these matters. It also acts on postal patrons' appeals from Postal Service decisions to close or consolidate post offices under 39 U.S.C. 404(b). Further, the Commission investigates complaints of substantial national scope concerning postal rates, fees, mail classifications or services under 39 U.S.C. 3662. It also responds to requests of the Postal Service for advisory opinions on changes in the nature of postal services under 39 U.S.C. 3661. Because of the Commission's expertise, Congress occasionally asks it to undertake special studies on postal issues.

(b) *Public participation.* Interested persons may elect to participate in Commission rate and mail classification proceedings as formal intervenors (§ 3001.20), limited participators (§ 3001.20a), or commenters (§ 3001.20b). Interested parties who believe the Postal Service is charging rates which do not conform with the policies of the Postal Reorganization Act, or who believe that they are not receiving postal service in accordance with the policies of title 39, may lodge a complaint with the Commission under § 3001.82. Persons served by post offices that the Postal Service decides to close or consolidate with other post offices may appeal such determinations under § 3001.111.

9. Part 3004 is added to read as follows:

PART 3004—FREEDOM OF INFORMATION RULES

Sec.

- 3004.1 Purpose.
- 3004.2 Reading room.
- 3004.3 Requests for records and for expedited processing.
- 3004.4 Response to requests.
- 3004.5 Appeals.
- 3004.6 Fees.
- 3004.7 Aggregation of requests.
- 3004.8 Submission of business information.

Authority: 39 U.S.C. 3603; 5 U.S.C. 552, 552a.

§ 3004.1 Purpose.

(a) This part is published pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, to describe the procedures by which a person can request copies of Commission records. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b)(4).

(b) An individual seeking access to a record about himself or herself that is subject to the Privacy Act of 1974 should also consult the Commission's Privacy Act rules in part 3003 for the procedures that apply to requests for records under that Act. Requests for first-party access can be made under both the FOIA and the Privacy Act of 1974.

(c) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in part 3002, elsewhere in this chapter, in the **Federal Register**, or on the Commission's website at www.prc.gov. The Commission's guide to the FOIA, all required FOIA indexes, and any available annual FOIA reports, are also available at the website in the

electronic reading room or elsewhere on the site.

(d) Section 3001.42(b) of this chapter identifies records that the Commission has determined to be public.

§ 3004.2 Reading room.

(a) The Commission maintains a public reading room at its offices at 1333 H Street NW., Washington, DC 20268. The reading room is open from 8 a.m. until 4:30 p.m. during business days.

(b) The records available for public inspection and copying in the reading room include: final opinions, statements of policy, administrative staff manuals and instructions that affect a member of the public, copies of selected records released under the FOIA, and indexes required to be maintained under the FOIA, and records described in 39 CFR 3001.42(b) relating to any matter or proceeding before the Commission.

(c) The Commission's electronic reading room is maintained at its website at www.prc.gov. Commission decisions, orders, rules of practice, and other directives affecting the public are available from the electronic reading room. To the extent practicable, other documents available in the reading room are also posted and available on the website.

§ 3004.3 Requests for records and for expedited processing.

(a) A request for records must be in writing and must reasonably describe the records sought. A request should be addressed or delivered to the Secretary of the Commission at the offices of the Commission at 1333 H Street NW., Washington, DC 20268. A request should be clearly identified as "Freedom of Information Act Request" both in the text of the request and on the envelope. A requester should include a daytime telephone number.

(b) A request for expedited processing may be made in cases in which the requester demonstrates a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v). The Commission may otherwise grant requests for expedited processing at its discretion. A request for expedited processing should be clearly identified as "Expedited Freedom of Information Act Request" both in the text of the request and on the envelope.

(c) A demonstration of compelling need by a requester seeking expedited processing must be made by a statement certified by the requester to be true and correct to the best of the requester's knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

(d) A request for expedited processing may be made at the time of an initial request (or appeal) or at a later time.

§ 3004.4 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for a Commission record, the Secretary of the Commission will:

(1) Determine to comply with the request and immediately notify the requester of the determination and of any fees that must be paid; or

(2) Deny the request in writing. The denial letter will explain the reason for the denial, including each exemption used as a basis for withholding of the records sought. The denial letter will include an estimate of the volume of requested matter that was denied. If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible. If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information may be withheld. The denial letter will inform the requestor that he/she may, within one year, appeal the denial to the Commission.

(b) A denial is any form of adverse determination, including: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; an adverse decision on any disputed fee matter, including a denial of a requested fee waiver; and a denial of a request for expedited treatment.

(c) Within ten days after the receipt of a request for expedited processing, the Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny a request for expedited processing in writing. Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing. The denial letter will inform the requestor that he/she may, within five days, appeal the denial to the Commission.

(d) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Secretary may extend the time for a response for up to ten working days. The Secretary will

notify the requester of any extension, and the reason for the extension, in writing. The Secretary will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.5 Appeals.

(a) A requester who seeks to appeal any denial must file an appeal in writing with the Commission. The Commission may review any decision of the Secretary on its own initiative. The Commission will grant or deny the appeal in writing, within 20 days (excluding Saturdays, Sundays and legal public holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission will notify the person making such request of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c). The Commission will expeditiously consider an appeal of a denial of expedited processing.

(b) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Commission may extend the time for a response to an appeal for up to ten working days. The Commission will notify the requester of any extension, and the reason for the extension, in writing. The Commission will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.6 Fees.

(a) Definitions pertaining to fees:

(1) *Direct costs* means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(2) *Search* includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(3) *Duplication* means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(4) *Review* means examining documents located in response to a commercial-use request to determine whether any portion is exempt from

mandatory disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(5) *Commercial use request* means a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(6) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* means an institution, not operated on a "commercial" basis (as referenced in paragraph (a)(5) of this section), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. News means information about current events or that would be of current interest to the public. Freelance journalists will be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

(b) Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time are provided without charge. A *page* for these purposes is a letter-or legal-size sheet, or the equivalent amount of information in a medium other than paper copy. *Search time* for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the

allowance for two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(c) Fees will be charged in accordance with the following provisions:

(1) The level of fee charged depends on the category of requester:

(i) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(ii) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(iii) A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(iv) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(v) A request from a record subject for records about himself or herself filed in a Commission Privacy Act system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3003 of this chapter.

(2) Fees will be calculated as follows:

(i) Manual search: At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(ii) Computer search: At the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) Review (commercial-use requests): At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(iv) Duplication: At 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) Additional services: Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(d) Interest at the rate prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(e) Advance payment may be required only when the allowable fees are likely to exceed \$250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act begin only after such payment has been received.

(f) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

§ 3004.7 Aggregation of requests.

Should the Secretary or the Commission reasonably believe that a requester or a group of requesters acting in concert, have attempted to evade fees or to seek a procedural advantage over other requesters by breaking down a request into a series of requests, the Commission may aggregate the separate requests and treat them as a single request. Multiple requests involving unrelated subjects will not be aggregated.

§ 3004.8 Submission of business information.

(a) Any person who submits to the Commission a trade secret or commercial or financial information that the submitter reasonably believes to

be exempt from disclosure under 5 U.S.C. 552(b)(4) must designate the exempt information by appropriate markings at the time of submission or at a reasonable time after submission. The submission should be accompanied by a brief written statement explaining why the information is exempt. Any designation will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(b) Before disclosing, in response to a FOIA request, any information properly designated under this part, the Commission will provide the submitter with written notice that a request seeks disclosure of the information. The Commission may also provide notice when it has reason to believe that business information possibly exempt from disclosure may fall within the scope of any FOIA request. The requester will be provided a copy of any notice sent to the submitter.

(c) A submitter has seven days to submit written objections to the disclosure specifying all grounds for withholding the information under the FOIA. If the submitter fails to respond to the notice, the submitter will be considered to have no objection to the disclosure of the information.

(d) If, after considering the submitter's objections to disclosure, the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before five days after the submitter has received the notice.

(e) A submitter may not receive notice if the Commission determines that the information should not be disclosed; if the information has been lawfully published or officially made available to the public; or if a statute (other than the FOIA) or a regulation requires disclosure.

(f) Protection of information made available pursuant to proceedings subject to the rules in 39 CFR part 3001, including information provided pursuant to that subpart requiring the filing of periodic reports, is provided upon request to the Commission as described in 39 CFR 3001.31a.

Dated: August 31, 1999.

Margaret P. Crenshaw,
Secretary.

[FR Doc. 99-23135 Filed 9-14-99; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 51**

[FRL-6437-4]

Notice of Proposed Rule Revisions to Emissions Budgets Set Forth in EPA's Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone for the States of Connecticut, Massachusetts and Rhode Island**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: On October 27, 1998, EPA published a final action requiring 22 States and the District of Columbia to submit State implementation plan (SIP) revisions to prohibit specified amounts of emissions of oxides of nitrogen (NO_x)—one of the precursors to ozone (smog) pollution—for the purpose of reducing NO_x and ozone transport across State boundaries in the eastern half of the United States. This action is referred to as the NO_x SIP Call.

Subsequent to that rulemaking, three States, Connecticut, Massachusetts and Rhode Island, approached EPA with concerns about the distribution of the emission reduction requirements to the three States. While the States agreed that the amount of the overall emission reductions that EPA was requiring from the three State region was appropriate, the States had concerns about the specific emission reductions that EPA was requiring from each of the three individual States. In particular, the States were concerned that the emission reduction requirements were inconsistent with the emission reductions that those States were requiring in connection with an existing multi-state effort to reduce NO_x and ozone transport across State boundaries in the northeastern portion of the United States.

In response to these concerns, EPA and the States of Connecticut, Massachusetts and Rhode Island signed a memorandum of understanding (MOU) in February 1999. This MOU required EPA to take action to redistribute the NO_x emission reduction requirements among the three States. With this rule EPA is proposing to redistribute the total combined electricity generating stationary source (EGU) budget for the three States.

Subsequent to the signing of the MOU, EPA took a final action that changed the EGU portion of the budgets for the three States in a Technical Amendment to the NO_x SIP Call

published on May 14, 1999. EPA is now proposing action to redistribute the States' budgets. The redistribution that EPA is proposing is slightly different than the redistribution stated in the MOU to reflect and remain consistent with the May 14, 1999 changes to the budgets.

DATES: *Comments:* Written comments must be received by October 5, 1999.

ADDRESSES: Any written comments must be identified with Docket No. A-99-13, must be identified as comments on the direct final rule and companion proposal and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kathryn Petrillo, Acid Rain Division (6204J) U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460, telephone number (202) 564-9093; e-mail: petrillo.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to redistribute the EGU portions of the Connecticut, Massachusetts and Rhode Island NO_x Budgets in accordance with the Memorandum of Understanding that was signed by the three States and EPA in February 1999. In a direct final action that is located in the "Rules and Regulations" section of today's **Federal Register**, we are promulgating the revisions to the State budgets of Connecticut, Massachusetts and Rhode Island without prior proposal because we view the revisions as noncontroversial and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no timely adverse comment, we will not take further action on this proposed rule. If we receive timely adverse comment, we will withdraw the direct final rule, and the direct final rule will not take effect.

We will then address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of today's **Federal Register**.

Dated: September 7, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99-23915 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 80**

[FRL-6431-9]

Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline Beyond December 31, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this document, EPA proposes to continue to exempt refiners, importers, and blenders of gasoline subject to the State of California's reformulated gasoline regulations from certain enforcement provisions in the Federal reformulated gasoline regulations. Current exemptions applicable under the Federal Phase I reformulated gasoline program will expire after December 31, 1999, when the Federal Phase II reformulated gasoline program begins. Today's proposed rule would extend the California enforcement exemptions beyond that date. The Agency is publishing a separate direct final rule in today's **Federal Register**, because it does not expect this action to be controversial.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW. (6406J), Washington, DC 20460. Materials relevant to this have been placed in docket [A-99-04] located at U.S. Environmental Protection Agency, Air Docket Section, Room M-1500, 401 M Street, SW., Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Anne Pastorkovich, Attorney/Advisor, Fuels & Energy Division, at (202) 564-8987. To notify EPA of an intent to submit an adverse

comment or public hearing request, contact Anne Pastorkovich, (202) 564-8987.

SUPPLEMENTARY INFORMATION: The remainder of this proposed rule is organized in the following sections:

- I. Background
 - A. Regulated Entities
 - B. Current Status and Basis for California Exemptions
- II. Applicability of Exemptions Beginning in 2000 (Description of This Proposed Rule)
- III. Administrative Designation and Regulatory Analysis
 - A. Executive Order 12866
 - B. Executive Order 12875: Enhancing Intergovernmental Partnerships
 - C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
 - D. Regulatory Flexibility
 - E. Paperwork Reduction Act
 - F. Unfunded Mandates Reform Act
 - G. Children's Health Protection
 - H. National Technology Transfer and Advancement Act of 1995 (NTTAA)
 - I. Statutory Authority

I. Background

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers, and oxygenate blenders of California gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an

entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Current Status and Basis for California Exemptions

Section 211(k) of the Federal Clean Air Act (the Act) directs the EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas, as well as "anti-dumping" requirements for conventional gasoline used in the rest of the country, beginning in January 1995. The areas covered by the Federal RFG program in California are Los Angeles, San Diego, and Sacramento.¹ The Act requires EPA to reduce the emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from motor vehicles through the RFG program. It also requires that there be no increase in the emission of oxides of nitrogen (NO_x) as a result of the RFG program. Finally, RFG must meet certain content standards for oxygen, benzene and heavy metals.

The RFG program is implemented in two phases. The Phase II program, which will begin on January 1, 2000, is similar to the Phase I program, but will require even greater emissions benefits. The relevant regulations for RFG and conventional gasoline may be found at 40 CFR Part 80, Subparts D, E, and F.²

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations requiring reformulation of California "Phase 2" gasoline.³ The CARB regulations established a comprehensive set of gasoline specifications designed to achieve

reductions in emissions of VOCs, NO_x, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles. The CARB regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T-50 and T-90, respectively). These regulations became effective on March 1, 1996 for all gasoline in the California distribution network (except for gasoline being exported from California). The CARB regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.

During the Federal RFG rulemaking, and in response to comments by California refiners, we concluded (1) that VOC and toxics emission reductions resulting from the California Phase 2 standards would be equal to or greater than the Federal Phase I RFG standards (applicable from January 1, 1995 through December 31, 1999), (2) that the content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase I content standards,⁴ and (3) that the CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase I requirements would be met.⁵ Consequently, while the Federal RFG and conventional gasoline standards continue to apply in California, refiners, importers, and oxygenate blenders of gasoline sold in California (referred to collectively as "California refiners") are exempt in most cases from various enforcement-related provisions, including the following:

Requirement exempted	Citation at 40 CFR § 80.xx
Compliance Surveys ⁶	80.68.
Independent Sampling & Testing	80.65(f).
Designation of Gasoline	80.65(d).
Marking of Conventional Gasoline	80.65(g) and 80.82.
Downstream Oxygenate Blending	80.69.
Recordkeeping	80.74 and 80.104.
Reporting	80.75 and 80.105.
Product Transfer Documents	80.77.
Parameter Value Reconciliation Requirements	80.65(e)(2).

¹ See 40 CFR 80.70 for a complete list of covered areas.

² See 59 FR 7812 (February 16, 1994), as amended at 59 FR 36964 (July 20, 1994); 60 FR 2699 (January 11, 1995); 60 FR 35491 (July 10, 1995); 60 FR 65574 (December 20, 1995); and 62 FR 68196 (December 31, 1997).

³ See Title 13, California Code of Regulations §§ 2250-2272 (as last amended December 11, 1998).

California has amended its regulations since they were first promulgated in September, 1992. The most recent amendments, adopted December 11, 1998, raise the oxygen "cap" limit for California gasoline from 2.7 weight % to 3.5 weight %. As discussed below, this direct final rule is based on the current state of California's Phase 2 gasoline program, including the December 11, 1998 amendments.

⁴ As is discussed in the section entitled "Oxygen Standard", below, this is not now the case.

⁵ See 59 FR 7758, 7759 (February 16, 1994) and 40 CFR § 80.81.

⁶ 40 CFR § 80.81(e)(2) was amended to include a limited oxygen survey provision. See "Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners—Final Rule," 63 FR 34818 (June 26, 1998).

Requirement exempted	Citation at 40 CFR § 80.xx
Reformulated Gasoline and Reformulated Gasoline Blendstock for Oxygenate Blending (RBOB) Compliance Requirements	80.65(c).
Annual Compliance Audit Requirements	80.65(h).
Compliance attest Engagement Requirements	Subpart F.

California refiners are not exempt from these Federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover RFG exported from California. EPA has made reasonable allowances to minimize complications for gasoline exported from California, including permitting the use of California test methods for conventional gasoline that is produced in California for sale outside the state.⁷

II. Description of This Proposed Rule

The enforcement exemptions which expire on December 31, 1999 were based on a comparison of California Phase 2 gasoline and Federal Phase I RFG. The enforcement exemptions which were included in the final RFG rule (see fn. 5) were only applicable during the Phase I RFG program. It would have been premature for EPA to have made an equivalency determination comparing California Phase 2 and Federal Phase II upon publication of the final RFG rule. However, we indicated in that rulemaking that, if an appropriate and timely demonstration was made in the future, showing that California Phase 2 gasoline could be expected to provide emission benefits equivalent to Federal Phase II RFG, then we might extend the enforcement exemptions beyond December 31, 1999. For the reasons discussed below, we believe that California Phase 2 gasoline provides emissions benefits equivalent to Federal

Phase II RFG, and that it is appropriate for the us to extend the California enforcement exemptions to Federal Phase II RFG. Specifically, the Agency believes that:

- (1) VOC, toxics, and NO_x emission reductions resulting from the California Phase 2 standards would be equal to or greater than the reductions from the Federal Phase II RFG standards,
- (2) the content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase II content standards, and
- (3) the CARB's compliance and enforcement program is designed to be sufficiently rigorous.

We have received a detailed comparison of California Phase 2 and Federal Phase II blends from the Western States Petroleum Association ("WSPA"), entitled "Comparing the Equivalency of California and Federal Reformulated Gasoline" (hereafter referred to as "the WSPA analysis"). A copy of the WSPA analysis, and an EPA staff memorandum describing the Agency's evaluation of the WSPA analysis, has been placed in public docket at the location listed in the ADDRESSES section of this notice.⁸

The WSPA analysis evaluated the performance of the California program (1) by comparing the average performance of actual California RFG to the averaged parameter limits of federal RFG, and (2) by analyzing the performance of a set of "virtual fuels" using computer modeling. While the average fuel performance analysis establishes that the overall air quality

objective of the federal RFG program will be met, the virtual fuels analysis provides assurances that there will be no temporal spikes in the emission of ozone forming VOCs.

The WSPA analysis utilized data from two separate surveys of actual California gasoline to compare the emissions performance of California gasoline with the EPA Phase II complex model averaging standards. See 40 CFR § 80.41(f). One survey was prepared by the California Energy Commission (CEC).⁹ The other survey was prepared by the American Petroleum Institute/National Petroleum Refiners Association (API/NPRA).¹⁰ Both surveys collected data on the properties of RFG actually produced by California refiners in an effort to evaluate the emissions performance of actual, in use California gasoline. The API/NPRA and CEC surveys represented about 85% and 100% of the RFG produced in California, respectively. The surveys each occurred over periods of about four months during the summertime, and were weighted by production volume. Producers were not aware that the surveys were being conducted.

Both surveys support the conclusion that average fuel property values and average emissions reductions of in-use California gasolines comply with Federal Phase II averaged standards. Additionally, the two surveys, performed one year apart, were remarkably consistent. The results of the surveys are shown in the following table:¹¹

Properties	Federal phase II averaged standards	1990 baseline fuel	California survey results	
			API-96	CEC-97
Oxygen (wt%)	>=2.1 average, 1.5 per gal. min	0	2.1	2.1
SULFUR (ppm)		339	20	19
RVP (psi)		8.7	6.8	6.8
E200 (%)		41	51.3	50.5
E300 (%)		83	88.8	88.4
AROMATICS (vol%)		32	23.0	23.0
OLEFINS (vol%)		9.2	3.9	4.1

⁷ See 40 CFR 80.81(h)(1).

⁸ The WSPA analysis and an EPA staff memorandum entitled "Equivalency Determination of California and Federal Reformulated Gasoline," (March 8, 1999) have been placed in docket A-99-04.

⁹ Final Report, 1996 American Petroleum Institute/National Petroleum Refiners Association Survey of Refining Operations and Product Quality (July, 1996).

¹⁰ California Energy Commission, Supply and Cost of Alternatives to MTBE in Gasoline—

Technical Appendices, Refinery Modeling—Task 2 Calibration of Refinery Model, Table 5.3.

¹¹ WSPA analysis, at 7.

Properties	Federal phase II averaged standards	1990 baseline fuel	California survey results	
			API-96	CEC-97
BENZENE (vol%)	<=0.95 average, 1.3 per gal. max.	1.53	0.55	0.57
Phase II Complex Model Absolute Emissions Calculations		Absolute emissions (milligrams/mile)		
Exhaust VOC .....	.....	907.0	733.0	734.2
Nonexhaust VOC .....	.....	559.3	294.1	294.1
Total VOC .....	.....	1466.3	1027.2	1028.4
Exhaust benzene .....	.....	53.5	28.8	28.9
Nonexhaust benzene .....	.....	6.2	1.3	1.4
Acetaldehyde .....	.....	4.4	3.6	3.6
Formaldehyde .....	.....	9.7	11.8	11.8
Butadiene .....	.....	9.4	6.4	6.5
POM .....	.....	3.0	2.5	2.5
Total exhaust toxics .....	.....	80.1	53.0	53.2
Total toxics .....	.....	86.3	54.3	54.6
NO _x .....	.....	1340.0	1144.5	1143.2
Phase II Complex Model Reductions from 1990 Baseline		Percent change from baseline emissions		
Total VOC	>=29.0% average, 25.0% per gal. min..	.....	-29.9	-29.9
Total toxics	21.5% average .....	.....	-37.1	-36.8
NO _x	6.8% average .....	.....	-14.6	-14.7

The WSPA analysis also compares the emissions performance of the survey average in-use fuel with the emissions performance of fuels that meet California's "regulatory recipe". The regulatory recipe specifies limits for various emission-related fuel parameters (e.g. sulfur content, aromatics content).

Certain of these parameters in the regulatory recipe have two sets of limits; a "flat" (per gallon) limit and an average limit with a cap. A California refiner may choose, on a property by property basis, to produce a blend that complies with a flat or an average (with cap) regulatory recipe limit. However, a refiner may produce a blend with parameters that differ from the regulatory recipe specifications if they can demonstrate, using the predictive model, that the emissions performance of their blend is comparable. In order to use the predictive model to compare the emissions performance of its blend to the performance of the regulatory recipe, refiners must decide whether certain parameters in their blend will be averaged or flat-limited.

The WSPA analysis compares the survey results to the regulatory recipe by plugging the average survey data into the predictive model and generating emissions numbers. These numbers are then compared against an all-average and all-flat emissions baseline. The results demonstrate that the emissions performance of in-use gasoline approximates the emissions performance of a fuel with average regulatory recipe limits. Therefore, it is

reasonable to use the average, rather than the flat, regulatory recipe limits to determine which of the computer-generated virtual fuels meet California standards under the predictive model. This virtual fuels analysis, discussed later, demonstrates compliance of California fuel with the Federal VOC per-gallon minimum performance requirement.

Finally, the WSPA analysis demonstrates that the fuels represented by the two surveys meet the average performance requirements of the federal RFG program. To make this determination the WSPA analysis evaluates the averaged fuels from the two surveys using the federal Complex Model.¹²

The WSPA analysis also examined a computer-generated set of emissions data to evaluate the performance of a large number of possible California gasoline blends against the Federal per-gallon minimum reduction requirements for VOCs. This set of virtual fuels consisted of fuels whose properties vary discretely within ranges constrained by California or Federal regulations. Specifically, the virtual fuels analysis defined the properties of the virtual fuels using the appropriate limits of California Phase 2—for RVP, sulfur, aromatics, olefins, T50, T90, and benzene, the upper and lower limits are defined by California's regulations. For oxygen, the lower limit is defined by the

Federal RFG program¹³ and the upper limit is defined by the California regulations.

For VOC compliance, the virtual fuels analysis looked at possible combinations of fuel properties within the limits of what could be certified under the California predictive model. Although the virtual fuels analysis does not reflect each and every possible fuel formulation, the discrete properties chosen accurately approximate the full range of possible, "real world" fuels. These virtual fuel formulations were then submitted to the EPA's complex model. In all there were 18,048 virtual fuels that met the California standards. Of these fuels, all met the 25% minimum Federal Phase II VOC reduction requirement.

As discussed in greater detail in the staff paper, the virtual fuels analysis supports the conclusion that any possible "real world" fuel will comply with the Federal Phase II complex model minimum VOC reduction requirement.

We are satisfied that the CARB enforcement program, which employs several full-time inspectors and a

¹³The limited oxygen survey option was added to 40 CFR § 80.81 (e)(2)(ii) to ensure that compliance with a 2.0 wt % standard is met in Federally covered areas, as defined by § 80.70. Since for an averaging party, the minimum oxygen content of any gallon of gasoline is 1.5 wt % (with all production over the compliance period meeting 2.1 wt %, on average), the appropriate minimum oxygen content for analysis purposes is 1.5 wt %.

¹²Id. at 9.

mobile laboratory facility, and which conducts year round inspections of retail facilities, terminals, and refineries, is designed to be sufficiently stringent to ensure the emissions benefits and content requirements of the program are met.

In the absence of the enforcement exemptions at 40 CFR § 80.81, California refiners would be required to comply with duplicative enforcement requirements at a significant added cost. We believe that California Phase 2 gasoline, as required by the current regulations (see footnote 3), and as described in this analysis, will achieve VOC, toxic and NO_x emission reductions that are equal to or greater than those achieved by Federal Phase II gasoline, and will comply with the oxygen and benzene content requirements of the Federal program. We also believe that the CARB enforcement program is sufficiently stringent to ensure that the expected benefits will continue to be met. Therefore, we are proposing to extend the California enforcement exemptions at 40 CFR § 80.81 beyond December 31, 1999.

On March 26, 1999, California Governor Gray Davis issued Executive Order D-5-99, which directed that methyl tertiary butyl ether (MTBE) be phased out of gasoline as soon possible. Because California refiners must still provide gasoline in the state that complies with the federal oxygen requirement, the appropriateness of extending the enforcement exemptions is preserved. A copy of the executive order has been placed in the public docket at the location indicated in the ADDRESSES section of this notice.

On April 12, 1999, Governor Davis submitted a letter to EPA Administrator Carol Browner, requesting that EPA grant a waiver from the Federal 2.0 weight % oxygen requirement for all California areas covered by the Federal RFG program. The governor's request is currently being evaluated by EPA, but is outside the scope of today's direct final rule. Today's action, in finding that the emission reduction benefits of California gasoline are equivalent to Federal Phase II RFG based on a comparison of current California Phase 2 gasoline and Federal Phase II RFG, includes an analysis demonstrating that such California gasoline will comply with the Federal content standards, including the 2.0 weight % oxygen standard. If California amends its current reformulated gasoline regulations (or issues new regulations), EPA will re-examine these regulations to determine whether enforcement exemptions continue to be appropriate.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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 entitlement, 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.

EPA has determined that this proposed rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review. The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose any mandatory obligations on the regulated community beyond those specified in the current regulations.

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

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

elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed 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 proposed rule.

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

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, 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 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule does not create a mandate for any tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060-0277 (EPA ICR No. 1951.08).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205

allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule 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 proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. Today's proposed rule would extend the existing exemption for California gasoline from many of the regulatory compliance requirements of the RFG program, relieving potentially duplicative obligations.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62FR19885, 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62FR19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety

risks that may disproportionately affect children.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Statutory Authority

Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, California exemptions, Gasoline, Motor vehicle pollution, Reformulated Gasoline.

Dated: August 27, 1999.

Carol M. Browner,
Administrator.

[FR Doc. 99-23708 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 97**

[FRL-6439-5]

Notice of Availability of Unit-Specific Information for Affected Sources Under Section 126 and Proposed Section 110 FIP Rulemakings; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment; reopening of comment period.

SUMMARY: EPA is reopening the comment period for the Notice of Availability of Unit-Specific Information for Affected Sources Under Section 126 and Proposed Section 110

FIP Rulemakings, published on August 9, 1999, regarding three sets of data related to the proposed Federal NO_x Budget Trading Program. The August 9, 1999 notice established a 30-day comment period, which ended on September 8, 1999. EPA is reopening the comment period for all information contained within the data files, which were referenced by the notice, to September 24, 1999. In particular, EPA continues to solicit comment on 1997 heat input data for all Electric Generating Units (EGUs), including those EGUs reporting under EPA's Acid Rain Program.

We may use the data in the data files in the future to allocate NO_x allowances under the Federal NO_x Budget Trading Program. We proposed the program in rulemakings under Sections 126 and 110 of the Clean Air Act. The program aims to reduce interstate transport of ozone by controlling emissions of nitrogen oxides (NO_x). NO_x emissions significantly contribute to violations of the National Ambient Air Quality Standard for ozone in downwind states.

Readers should note that we will only consider comments about the data discussed in this notice and the August 9, 1999 notice. We are not soliciting comments on any other topic. In particular, we are not reopening the comment period for the October 21, 1998 proposed rule on the Section 126 rulemaking or the October 21, 1998 proposed rule on the Section 110 Federal Implementation Plans (FIPs) through this Notice of Data Availability. Neither are we soliciting comments on inventory data for 1995 and 1996 that we used to develop Statewide emission budgets.

DATES: The EPA is reopening the comment period to end on September 24, 1999.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket Nos. A-97-43 (section 126 rulemakings) and A-98-12 (section 110 FIP rulemakings), U.S. Environmental Protection Agency, 401 M Street SW, room M-1500, Washington, DC 20460, telephone (202) 260-7548. Identify your comments with these docket numbers. Submit two originals and exact duplicates of your comments to each docket. Please submit your comments on paper, not in electronic format. We request this so that we do not receive multiple versions of the same comment that might contradict each other.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between

8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

General questions concerning today's action should be addressed to Margaret Sheppard, Acid Rain Division, EPA, Mail Code 6204 J, 401 M Street SW, Washington DC, 20460; telephone 202-564-9163, email address sheppard.margaret@epa.gov. For technical questions concerning heat input data, contact Kevin Culligan at telephone 202-564-9172, email address culligan.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline

1. *What is today's action?*
2. *Why is EPA reopening the public comment period?*
3. *When are my comments due?*
4. *What data should I comment on?*
5. *What things is EPA not requesting comment on?*
6. *Where are the data files?*

1. What Is Today's Action?

Today, we are reopening the public comment period on the August 9, 1999 notice of data availability (64 FR 43124), entitled "Notice of Availability of Unit-Specific Information for Affected Sources Under Section 126 and Proposed Section 110 FIP Rulemakings." The public comment period for that notice ended on September 8, 1999. Today's notice reopens the public comment period through September 24, 1999.

In addition, we are emphasizing that you may comment on heat input data for 1997 for units reporting under the Acid Rain Program, as well as the other data in the files referenced in the August 9, 1999 notice.

For further information and background on the data referenced by this notice and EPA's rulemakings related to NO_x transport under Sections 126 and 110 of the Clean Air Act, see the August 9, 1999 notice (64 FR 43124).

2. Why Is EPA Reopening the Public Comment Period?

Just before the September 8, 1999 deadline for submission of comments, we received several requests to extend the public comment period. Some commenters requested more time to understand potential discrepancies between company records and the data in EPA's data files. Further, although EPA has received comments on heat input data for 1997 for units reporting under the Acid Rain Program, some commenters said that it was not clear

whether there had been an opportunity to comment on such heat input data.

EPA agrees that it may improve the quality of the data to provide some additional time to compare the values with company records. Further, EPA notes that many commenters submitted comments on heat input data for 1997 for units under the Acid Rain Program in response to the August 9, 1999 notice of data availability or prior notices. However, because some commenters claim that they were unclear about whether EPA was requesting comment on the 1997 heat input data, we emphasize that they may comment on such data, in addition to the other data in the data files.

Most commenters requesting an extension asked for a thirty-day extension. We are instead reopening the public comment period for approximately two weeks. Many of the commenters requesting the extension are checking data (e.g., 1997 and 1998 heat input data) that they previously reported to EPA or to the Energy Information Administration (EIA). Under the Acid Rain Program, the designated representative for the affected source has certified that the data reported to EPA are accurate. The data we have provided for comment in the data files differ from the original reports in that: (1) we calculated heat input and electric generation values for the ozone season for each year from hourly or monthly data in the reports to EPA or EIA, and (2) we apportioned electric generation data for an entire plant to individual units that would receive NO_x allowance allocations. Reopening the public comment period for approximately two weeks will provide a reasonable, additional period for checking the original reports and submitting any resulting comments. This also provides a reasonable, additional period for commenters to submit any other comments.

3. When Are My Comments Due?

Postmark your comments no later than Friday, September 24, 1999.

4. What Data Should I Comment On?

Comment on any data in the data files "eguburn.txt," "egunonox.txt" and "nonegu.txt" in the compressed file labeled "alldata.zip". We are particularly interested in comments that may change data that we could use to determine NO_x allowance allocations under the Federal NO_x Budget Trading Program. These data include, among other things:

- Electric generation data from EGUs from May through September for the years 1995 through 1998.

- Electric generation data from electric generators that do not burn fuel from May through September for the years 1995 through 1998.

- Nameplate capacity data for electric generators that do not burn fuel.

- Heat rate data for EGUs.

- Heat input data for May through September for the years 1997 and 1998 for EGUs.

- Heat input data for May through September for the year 1995 for non-EGUs. In addition, if you find that the heat input for your non-EQU during May through September for the year 1995 is not representative of your unit's operation over the last several years, then you may comment and provide us heat input data for May through September for the years 1996, 1997, and/or 1998.

See the section entitled "What supporting documentation do I need to provide with my comments?" in the August 9, 1999 notice of data availability for further details on information you should provide with your comments.

If you have already submitted comments on the August 9, 1999 notice of data availability, you may submit supplementary comments.

5. What Things Is EPA Not Requesting Comment On?

EPA is requesting comment only on the data in the data files referenced here and in the August 9, 1999 notice of data availability. We are not requesting comment on any other issue or data.

6. Where Are the Data Files?

The data files are available on the Regional Transport of Ozone webpage at <http://www.epa.gov/ttn/rto/>. You will find links to the data under the "Related Documents and Data" subheadings under the "Transport FIPs" and "Section 126 Petitions" headings on the Regional Transport of Ozone webpage. Look for a WinZip file labeled "a WinZip file containing heat input and electric generation data that EPA or States could use for determining NOx allowance allocations. EPA requests comment on these data." In addition to the data files, the WinZip file also contains a text file describing the fields in the data files, "readme.txt," and a text file describing EPA's method for preparing the electric generation data, "outmethd.txt". In addition, these data are in Docket Nos. A-97-43 (Section 126 rulemaking) and A-98-12 (Section 110 FIP rulemaking).

Dated: September 9, 1999.

Paul Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 99-24038 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300913; FRL-6098-7]

RIN 2070-AB78

Cyromazine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of cyromazine (CAS No. 66215-27-8) in or on mango at 0.3 parts per million (ppm); onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; corn, sweet, (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, roots at 0.5 ppm; radish, tops at 0.5 ppm; lima beans at 1.0 ppm; cotton, undelinted seed at 0.1 ppm; milk at 0.05 ppm; and meat, fat and meat byproducts (of cattle, goats, hogs, horses and sheep) at 0.05 ppm. EPA also proposes to remove melamine, a metabolite of cyromazine from the tolerance expression since it is no longer considered a residue of concern. The Interregional Research Project (IR-4) and Novartis Crop Protection, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: Comments, identified by the docket control number "OPP-300913," must be received by EPA on or before November 15, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300913], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 100, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted

on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300913]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Linda DeLuise, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 202, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5428; e-mail: deluise.linda@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1997 (62 FR 37246) (FRL-5723-1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) announcing the filing of pesticide petitions (PP) for tolerances by Novartis Crop Protection, Inc., 410 Swing Road, Greensboro, NC 27419. The notice included summaries of the petitions prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.414 be amended by establishing tolerances for residues of the insecticide cyromazine and its metabolite melamine, in or on various food commodities as follows:

1. Novartis Corporation PP5E4450 proposes the establishment of a tolerance for mangoes at 0.3 ppm.

2. Novartis Corporation PP5F4576 proposes the establishment of a tolerance for onion, green at 3.0 ppm and onion, dry bulb at 0.3 ppm.

3. Novartis Corporation PP6F4613 proposes the establishment of a tolerance for potato at 1.5 ppm.

4. Novartis Corporation PP5F4546 proposes establishment of a tolerance for cotton, undelinted seed at 0.2 ppm.

5. Novartis Corporation PP6F3332 proposes establishment of tolerances for sweet corn, (kernels plus cob with husks removed), forage and stover at 0.5 ppm; radish roots, and tops at 0.5 ppm; and milk at 0.04 ppm for cyromazine and 0.02 ppm melamine.

6. Novartis Corporation PP6F3332 proposes establishment of a tolerance for meat, fat and meat byproducts (of cattle, goats, hogs, horses and sheep) at 0.05 ppm.

7. IR-4 PP7E4905 proposes the establishment of a tolerance for lima beans at 3.0 ppm.

The tolerance requests for cotton, corn and radish are for indirect or inadvertent residues when these commodities are planted as rotational crops. The tolerance request for mangoes is for a tolerance to enable the importation of mangoes treated in Mexico with cyromazine. There are no U.S. registrations for use of cyromazine on mangoes as of the date of this publication.

There currently exists separate tolerances in 40 CFR 180.414(a) for cyromazine on celery at 10.0 ppm and lettuce, head at 5.0 ppm. Since the crop group leafy vegetables (except Brassica) includes celery and lettuce, (head) these individual tolerances under 40 CFR 180.414(a) are being removed.

EPA has concluded that only residues of the parent compound cyromazine need to be regulated and used for risk assessment and is proposing that melamine, a metabolite of cyromazine, be removed from the tolerance expression as a residue of toxicological concern.

Melamine was initially included in the tolerance expression for cyromazine because of limited evidence of its carcinogenic potential in laboratory animals. At that time EPA agreed with FDA's Cancer Assessment Committee that melamine was not a carcinogen, *per se*, but was indirectly responsible for the induction of urinary bladder neoplasia through production of stones in the bladder. A detailed discussion of the initial risk of melamine can be found in the **Federal Register** of April 27, 1984 (49 FR 18120). Since then EPA has reassessed the weight-of-the evidence for both cyromazine and melamine with particular reference to their carcinogenic potential. Cyromazine is classified as a group "E" carcinogen (no evidence of carcinogenicity) with an chronic RfD of 0.0075 milligram/kilogram/day (mg/kg/day) with an uncertainty factor (UF) of 100 using a no observed adverse effect level (NOAEL) of 0.75 mg/kg/day and a lowest observed adverse effect level (LOAEL) of 7.5 mg/kg/day.

Melamine is a chemical intermediate in the manufacture of amino resins and plastics as well as a contaminant and/or a metabolite of several pesticides including cyromazine. Melamine produced bladder tumors only in the male rat urinary bladder at very high doses i.e., at a threshold effect > 10,000 ppm in the diet. These tumors were due to the accumulation of stones (hard crystalline solids) which caused irritation and secondarily resulted in the

formation of tumors; therefore melamine is not considered to be a direct carcinogen by the Agency.

In addition, only about 10% of cyromazine is converted to melamine *in vivo*. Anticipated human dietary and occupational exposure to the parent compound cyromazine from its current pesticide usage is estimated to result in melamine concentrations far below the NOAEL in rats (500 mg/kg/day) that led to formation of stones in rats. Thus, EPA does not have any toxicological concerns for the minimal amount of melamine residues that could result from the use of the pesticide cyromazine. Also, melamine has been removed from the World Health Organization as a residue of concern for cyromazine, and Codex limits are established for the parent cyromazine only.

EPA determined that the requested tolerances for potatoes at 0.8 ppm, green onions at 2.0 ppm, onion, dry bulb at 0.1 ppm, cotton, undelinted seed at 0.1 ppm, and lima beans at 1.0 ppm are too high based upon the magnitude of the residue studies and removal of the metabolite melamine from consideration. Therefore, EPA is proposing that the tolerance be set at 0.8 ppm, 2.0 ppm, 0.1 ppm, 0.1 ppm, and 1.0 ppm respectively. As a result of the animal feed items, processed potato waste, potato culls and sweet corn forage and stover being added to the animal diet at this time, EPA concluded that the requested milk tolerance of 0.04 ppm was too low and is proposing it be increased to 0.05 ppm. Likewise, as a result of the animal feed items, EPA is proposing establishment of tolerances in meat, fat and meat byproducts of cattle, goats, hogs, horses and sheep at 0.05 ppm.

EPA has reassessed the established cyromazine tolerances in order to determine the tolerance levels without melamine residues. As a result, EPA is proposing the tolerances be adjusted as follows: cucurbit vegetables from 2.0 to 1.0 ppm; leafy vegetables (except Brassica) from 10.0 to 7.0 ppm; mushrooms from 10.0 to 1.0 ppm; pepper from 4.0 to 1.0 ppm and tomato from 1.0 to 0.5 ppm. The tolerances for Chinese cabbage and Chinese mustard should remain at 3.0 ppm since the available field trial data do not support a lowering of the established tolerances. Since melamine is being removed from the tolerance expression EPA is proposing to remove 40 CFR 180.414(a)(2) because it is for melamine only on chicken byproducts.

Cyromazine is an insect growth regulator currently proposed for control of leafminers on lima beans, Colorado

potato beetle and leafminers on potatoes and seed treatment for control of onion maggots on onions.

EPA is issuing this action as a proposal (rather than a final) because after review of the initial petitions and Notices of Filing the Agency has determined that:

1. The metabolite melamine should be removed from the tolerance expression.
2. The proposed tolerance in milk needs to be raised.
3. Additional tolerances on animal commodities (meat, fat and milk byproducts of cattle, goats, hogs, horses and sheep) are needed.
4. A notice of filing was not initially published after receipt of the petition for lima beans.

Interested persons are invited to submit comments on the proposed regulation. Comments must bear a notation indicating the docket control number "OPP-300913."

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the

hazards of cyromazine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of cyromazine in or on mangoes at 0.3 ppm; onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; corn, sweet (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.05 ppm; radish, root at 0.5 ppm; radish, tops at 0.05 ppm; lima beans at 1.0 ppm; cotton, undelinated seed at 0.1 ppm; milk at 0.05 ppm; and meat, fat and meat byproducts (of beef, goat, hogs, horses and sheep) at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by technical cyromazine are discussed in this unit.

A rat acute oral toxicity study with a LD₅₀ of approximately 3,387 milligrams/kilogram (mg/kg). Toxicity Category III (Moderately Toxic).

A rat acute dermal toxicity study with an LD₅₀ greater than 3,100 mg/kg. Toxicity Category III (Moderately Toxic).

A rat acute inhalation study with an LC₅₀ greater than 2.9 mg/kg. Toxicity Category IV (Slightly Toxic).

A primary eye irritation study in the rabbit that showed no eye irritation.

A primary dermal irritation study in the rabbit that showed mild irritation. Toxicity Category IV.

A dermal sensitization study in the guinea pig that showed no sensitization.

In a 6-month feeding study in dogs the NOAEL was 30 ppm (0.75 mg/kg). The LOAEL was 300.0 ppm (7.5 mg/kg) based upon decreased hematocrit and decreased hemoglobin. Groups of male and female beagle dogs (4/sex/dose) were fed diets containing cyromazine at 0, 30, 300, or 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day, respectively) for 6-months. No treatment related effects were observed in survival, clinical signs or body weight parameters. Pronounced effects on hematologic parameters, were manifested as decreases in hematocrit and hemoglobin levels at 300 and 3,000 ppm.

In a 24-month feeding study in rats the NOAEL for the study was 30 ppm

(1.5 mg/kg/day). The LOAEL was 300.0 ppm (15.0 mg/kg) based on decreased body weight.

In a 24-month mouse chronic feeding carcinogenicity study the NOAEL was 50 ppm (7.5 mg/kg/day). The LOAEL was 1,000.0 ppm (150.0 mg/kg) based upon decreased body weight. There was no evidence of carcinogenicity at 3,000.0 ppm (450.0 mg/kg).

In a 24-month rat chronic feeding carcinogenicity study the NOAEL was greater than 3,000.0 ppm (150.0 mg/kg), highest dose tested. There was no evidence of carcinogenicity at 3,000 ppm.

In a rat developmental toxicity study the maternal NOAEL was 100 mg/kg/day. The maternal LOAEL was 300.0 mg/kg based on decreased body weight gain and clinical observations. The developmental NOAEL was 300.0 ppm. The developmental LOAEL was 600.0 mg/kg based upon an increase of minor skeletal variations.

In a rabbit developmental toxicity study the maternal NOAEL was 10.0 mg/kg. The maternal LOAEL was 30.0 mg/kg based upon decreased body weight gain and food consumption. The developmental NOAEL/LOAEL was greater than or equal to 60.0 mg/kg.

In a multi-generation study in rats the systemic NOAEL was 30.0 ppm (1.5 mg/kg). The systemic LOAEL was 1,000.0 ppm (50.0 mg/kg) based upon decreased body weights associated with decreased food consumption. The developmental/offspring systemic NOAEL was 1,000.0 ppm. The developmental/offspring systemic LOAEL was 3,000.0 ppm (150.0 mg/kg) based upon decreased body weight at birth thru weaning. There were no effects on reproductive parameters at the highest dose tested (3,000 ppm).

Studies on gene mutation and other genotoxic effects showed no evidence of point mutation in an Ames test; no indication of mutagenic effects in a dominant lethal test; and no evidence of mutagenic effects in a nucleus anomaly test in Chinese hamsters.

In a dermal absorption study, rats received dermal application of ¹⁴C cyromazine (75W, formulation) in an aqueous solution at 0.10, 1.0 or 10 mg/rat. Absorption was measured at 10 and 24 hours post treatment. Cyromazine was rapidly absorbed into the skin (no peak discernible) in an inverse dose-related manner. The absorption into the skin was followed by a slower release into the body. There was no evidence that the compound was sequestered in the skin permanently. The main route of excretion was via the urine. At 10 hours post treatment, the absorption was 7.57, 5.06 and 1.84% for the low, mid and

high doses, respectively. At 24 hours post exposure, the absorption was 6.87, 2.78 and 2.63% for the low, mid and high doses, respectively. For the 24-hour animals with 48-hour depletion period, the absorption was 16.07, 12.45 and 9.10% for the low, mid and high doses, respectively.

B. Toxicological Endpoints

1. *Acute toxicity.* (1-day) There was no toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats or rabbits. Therefore, a dose and an endpoint was not selected for this acute dietary risk assessment.

2. *Short- and intermediate-term toxicity.* The Agency selected short- and intermediate-term dermal and inhalation endpoints from the 6-month oral toxicity study in dogs, in which pronounced effects on hematological parameters were manifested as decreases in hematocrit and hemoglobin levels at 7.5 (LOAEL) and 75 mg/kg/day. The hematological effects began during the first week of the study and continued throughout the study. The NOAEL is 0.75 mg/kg/day. A margin of exposure (MOE) of 100 or greater is adequate. For dermal inhalation exposure adsorption rates of 8% for dermal and 100% for inhalation are appropriate.

3. *Chronic toxicity.* The Agency selected a chronic RfD for cyromazine of 0.0075 mg/kg/day (NOAEL = 0.75 mg/kg/day; UF = 100). This RfD is based on a 6-month oral toxicity in dogs, in which pronounced effects on hematological parameters were manifested as decreases in hematocrit and hemoglobin levels at 7.5 (LOAEL) and 75 mg/kg/day.

4. *Carcinogenicity.* Cyromazine has been classified a Group E (evidence of non-carcinogenicity for humans) chemical by the Cancer Peer Review Committee.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.414) for the residues of cyromazine, in or on a variety of raw agricultural commodities at levels ranging from 1.0 ppm in tomatoes to 10 ppm in leafy vegetables and including poultry feed. In addition, EPA proposes to establish tolerances for mangoes at 0.3 ppm; onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; cotton, undelinated seed at 0.1 ppm; corn, sweet, (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, root at 0.5 ppm; radish,

tops at 0.5 ppm; lima beans at 1.0 ppm; milk at 0.05 ppm and meat, fat and meat byproducts (of cattle, goat, hogs, horses and sheep) at 0.05 ppm. Risk assessments were conducted by EPA to assess dietary exposures from cyromazine as follows:

The Agency used Dietary Exposure Evaluation Model (DEEMTM) software for conducting a Tier 3 chronic (non-cancer) dietary (food only) exposure analysis. The following assumptions were used in the assessment: (i) Percent crop-treated (PCT) estimates were utilized for cucurbit vegetables, leafy vegetables (except Brassica), onions, peppers and tomatoes; (ii) all other crops 100% crop-treated was assumed; (iii) anticipated residue estimates were used for milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (iv) all other commodities tolerance level residues were assumed. This assessment is considered to be somewhat refined. The chronic DEEMTM analysis indicates that the most highly exposed population subgroup is children (1 to 6 years old), which occupies 34% of the chronic RfD or chronic population adjusted dose (PAD)

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any

estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. With respect to PCT, estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the crop treated, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. As to regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cyromazine may be applied in a particular area.

a. *Acute exposure and risk.* A food-use pesticide is presumed to pose an acute risk if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. There were no toxicological effects attributed to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

b. *Chronic exposure and risk.* The chronic and/or chronic PAD RfD used for the chronic dietary analysis is 0.0075 milligram/kilogram/body weight/day (mg/kg/bwt/day). The following assumptions were used in the dietary risk assessment: (i) PCT estimates were utilized for cucurbit vegetables, leafy vegetables (except Brassica), onions, peppers and tomatoes. All other crops 100% crop-treated was assumed; (ii) anticipated residue estimates were used

for milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (iii) all other commodities tolerance level residues were assumed. The proposed and established cyromazine tolerances result in an exposure estimate that is equivalent to the following percents of the RfD: U.S. population (17% of RfD), non-nursing infants, (1 year old) (13% of RfD), children (1–6 years old) (34%), and children (7–12 years old) 26%. EPA is generally concerned with chronic exposures that exceed 100% of the RfD or PAD.

This chronic analysis for cyromazine is an over-estimate of dietary exposure from food due to the use of tolerance level residues for some commodities and the assumption that 100% of the crop would be treated for some of the commodities in this dietary exposure analysis. Thus in making a safety determination for these tolerances, EPA is taking into account this conservative exposure assessment.

2. *From drinking water.* The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic (non-cancer exposure) to cyromazine in surface and ground water.

i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, EPA does not expect exposure to cyromazine through drinking water to pose an acute risk.

ii. *Chronic exposure and risk.* EPA has calculated DWLOCs for chronic (non-cancer) exposure to cyromazine in surface and ground water. A human health DWLOC is the concentration of a pesticide in drinking water which would result in an acceptable aggregate risk after having factored in all food exposures and other non-occupational exposures for which EPA has reliable data. The DWLOCs are 220, 190, 50, and 210 parts per billion (ppb) for the U.S. population, females 13+, children, and others respectively. To calculate the DWLOCs for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure from DEEMTM was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to cyromazine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures. Although cyromazine may be commercially applied to landscape ornamentals and around residences, EPA believes these uses will not result in any exposure through the oral route; therefore, aggregate exposure is limited only to food plus water.

Estimated maximum concentrations of cyromazine in surface and ground

water are 28.9 and 1.6 ppb, respectively. The modeling conducted was based on the environmental profile and the maximum seasonal application rate proposed for cyromazine (6 applications at 0.125 lbs/A). The estimated average concentrations of cyromazine in surface and ground water are less than the Agency's levels of comparison for cyromazine in drinking water as a contribution to chronic aggregate exposure. Thus, the Agency concludes that there is reasonable certainty of no harm from chronic exposure from drinking water.

The Agency bases this determination on a comparison of estimated concentrations of cyromazine in surface waters and ground waters to back-calculated "levels of comparison" for cyromazine in drinking water. These levels of comparison in drinking water were determined after the Agency has considered all other non-occupational human exposures for which it has reliable data, including all current uses, and uses considered in this action. The estimates of cyromazine in surface and ground waters are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because the Agency considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses (including crop or residential) are added in the future, the Agency will reassess the potential impacts of cyromazine on drinking water as a part of the aggregate risk assessment process.

3. From non-dietary exposure. Cyromazine is currently registered for commercial outdoor use on landscape ornamentals and commercial interiorscapes. There are no lawn or indoor residential uses. Although cyromazine could be commercially applied to ornamentals around residences based upon the large MOE's calculated for occupational use (i.e. > 1,900) and minimal contact anticipated with the active ingredient after application, significant residential exposure is not expected.

4. Cumulative exposure to substances with a common mechanism of toxicity. Cyromazine is a member of the triazine class of pesticides. Other members of this class include atrazine, simazine, cyanazine, prometon, propazine, metribuzin, prometryn, and ametryn.

EPA does not have, at this time, available data to determine whether cyromazine has a common mechanism of toxicity with other substances or how

to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyromazine has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. Acute risk. There were no toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats or rabbits.

2. Chronic risk (food + water). Using the exposure assumptions described above, EPA has concluded that aggregate exposure to cyromazine from food will utilize 17% of the chronic RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 34% for children (1–6 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Based on the chronic dietary (food only) exposures and using default body weights and water consumption figures, chronic DWLOCs for drinking water were calculated. For chronic exposure, based on an adult body weight of 70 kg and 2L consumption of water per day, EPA's level of comparison from chronic dietary exposure in drinking water is 220 µg/L. For children (10 kg and consuming 1 liter water/day) the level of comparison for drinking water is 50 µg/L. The estimated chronic drinking water exposure for cyromazine is 28.9 µg/L. Thus the potential residues in drinking water are not greater than the EPA's level of comparison. Therefore, the combined exposure of chronic dietary food and drinking water exposure to cyromazine would be no greater than 100% of the RfD for children or the general U.S. population. Due to the nature of the non-dietary use, EPA believes that the commercial use of cyromazine on landscape ornamentals will not result in any significant residential exposure. Therefore the chronic risk is the sum of food and water. The Agency concludes that there is reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

3. Short- and intermediate-term risk. These aggregate risk assessments take into account chronic dietary exposure

from food and water (considered to be a background exposure level) plus (acute, intermediate, or chronic, as applicable) indoor and outdoor residential exposure. The Agency selected a dose and toxicological endpoint for assessments of short- and intermediate-term dermal and inhalation risk. However, since there are no significant residential uses for cyromazine (either established or pending) at this time, these risk assessments are not currently required.

4. Aggregate cancer risk for U.S. population. The Cancer Peer Review Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Based upon this determination it can be concluded that cyromazine does not pose a cancer risk.

5. Determination of safety. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. Safety factor for infants and children—i. In general. In assessing the potential for additional sensitivity of infants and children to residues of cyromazine, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or

children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rabbit developmental study, the maternal (systemic) NOAEL was 10 mg/kg/day, the highest dose tested. In the rat developmental study, the developmental NOAEL was identified at 300 mg/kg/day, while the maternal NOAEL was 100 mg/kg/day. Although there were developmental findings at 600 mg/kg/day in rat fetuses, these findings were not severe effects and only occurred in the presence of maternal toxicity.

iii. *Reproductive toxicity study.* In the multi-generation study in rats the systemic NOAEL was 30.0 ppm (1.5 mg/kg). The systemic LOAEL was 1,000.0 ppm (50.0 mg/kg) based upon decreased body weights associated with decreased food consumption. The developmental/offspring systemic NOAEL was 1,000.0 ppm. The developmental/offspring systemic LOAEL was 3,000.0 ppm (150.0 mg/kg) based upon decreased body weight at birth thru weaning. There were no effect on reproductive parameters at the highest dose tested (3,000 ppm).

iv. *Prenatal and postnatal sensitivity.* The results of the rat and rabbit developmental studies did not demonstrate any potential for additional prenatal sensitivity. In the rat reproduction study, the parental and reproductive/developmental NOAELs were established at 1.5 and 50 mg/kg/day respectively which suggests that there is no special postnatal sensitivity to cyromazine.

v. *Conclusion.* Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, the Agency concludes that an additional safety factor of 10 is not necessary to be protective of infants and children.

2. *Acute risk.* There were no toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats or rabbits.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cyromazine from food will utilize a maximum 34% of the RfD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. As noted above potential exposure from

drinking water is at a level below EPA's level of comparisons. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

4. *Short- and intermediate-term risk.* These aggregate risk assessments take into account chronic dietary exposure from food and water (considered to be a background exposure level) plus (acute, intermediate, or chronic, as applicable) indoor and outdoor residential exposure. The Agency selected a dose and toxicological endpoint for assessments of short- and intermediate-term dermal and inhalation risk. However, since there are no significant residential uses for cyromazine (either established or pending) at this time, these risk assessments are not currently required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

III. Other Considerations

A. Metabolism in Plants and Animals

EPA has reviewed the results of plant metabolism studies (celery, lettuce and tomato) and livestock metabolism studies (goat and hen). The metabolism of cyromazine in plants and animals is adequately understood for the purposes of these tolerances. The major residues in plants, milk, meat and meat byproducts (except liver and kidney) are cyromazine and melamine. The major residues in liver and kidney are cyromazine, melamine and 1-methylcyromazine. EPA concluded (see background) that the metabolite melamine was no longer a residue of concern and the metabolite 1-methylcyromazine was only found in ruminants. Provided the dietary burden to animals remains low only the parent compound cyromazine needs to be included in the tolerance expression and used for dietary risk assessment.

B. Analytical Enforcement Methodology

Methods AG-408 and AG-417A are the tolerance enforcement methods as published in PAM, Vol II. These methods combined, and with minor modifications is Method AG-621. The residue data on the treated crops was analyzed by these methods. The limit of quantitation is 0.05 ppm for cyromazine and 0.05 ppm for melamine expressed as cyromazine equivalents. These extraction and cleanup procedures are similar to the Methods AG-408 and AG-417, but AG-621 uses a gas

chromatography for analysis, while the other methods use high pressure liquid chromatography for determination of cyromazine and melamine levels in the crop matrix.

Methods AG-408 and AG-417 as listed in FDA's Pesticide Analytical Manual (PAM), Vol-II are adequate to enforce the proposed tolerance. AG-621 is acceptable to support the crop field trial residue data for cyromazine on RAC's.

The PAM II enforcement method for the determination of cyromazine residues limit of quantitation (LOQ) is 0.05 ppm in meat, fat, and meat byproducts.

C. Magnitude of Residues

Adequate residue data were provided to support permanent tolerances of mangoes at 0.3 ppm; onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; corn, sweet (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, root at 0.5 ppm; radish, tops at 0.5 ppm; lima beans at 1.0 ppm; milk at 0.05 ppm; meat, fat and meat byproducts (of beef, goat, hogs, horses and sheep) at 0.05 ppm and in cotton, undelinted seed at 0.1 ppm. There were no data available for cotton gin products (commonly called cotton gin trash). The petitioner has committed to conduct the additional residue trials and obtain data for cotton gin byproducts. Although residue data for lima beans were conducted per the EPA guidance that was in effect at the time of the field trials, EPA now requires residue data for the succulent beans without the pods. EPA will issue a conditional registration for these uses while the petitioner generates the additional data.

Processing data provided for potatoes did not show any concentration of residues for potato chips above the tolerance level. For potato granules the concentration factor is below 1.5x value that is generally used for setting tolerances for processed commodities. Thus no tolerances are required for processed potato commodities.

The only significant animal feed items from either published or proposed tolerances are potato culls, processed potato waste and sweet corn forage and stover. Since none of these items are fed to poultry the established poultry tolerances are adequate.

A ruminant feeding study was submitted. Based upon the results of this study the data support permanent tolerances in milk at 0.05 ppm and meat, fat and meat byproducts (of cattle, goat, hogs, horses and sheep) at 0.05

ppm resulting from the feeding of animal commodities indicated above.

D. International Residue Limits

With deletion of the metabolite melamine there are no longer any compatibility problems between Codex limits, Mexican limits and proposed U.S. tolerances. There are currently no Codex, Canadian or Mexican limits for residues of cyromazine on potatoes and lima beans. There is a Codex limit of 0.01 ppm in milk which is less than the proposed tolerance of 0.05 ppm. Although residues in milk would most likely be below 0.05 ppm, this level is the limit of quantitation (LOQ) used for enforcement purposes for determination of cyromazine residues.

E. Rotational Crop Restrictions

Rotational crop tolerances are being requested for cotton, undelinated seed, sweet corn (kernels plus cob with husks removed), sweet corn forage and stover as well as radish, roots and tops (leaves). When these crops are planted as rotational crops, cyromazine is persistent in soils and residues can be present in crops that are rotated to treated crops. For those crops with no tolerances established, a 1 year plant back interval is specified on the label.

IV. Conclusion

Tolerances are being proposed for residues of cyromazine in mangos at 0.3 ppm; onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; corn, sweet, (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, root at 0.5 ppm; radish, tops at 0.5 ppm; lima beans at 1.0 ppm; cotton, undelinted seed at 0.1 ppm; milk at 0.05 ppm; and meat, fat and meat byproducts (of cattle, goat, hogs, horses and sheep) at 0.05 ppm. Conditional Registration for use of cyromazine on succulent lima beans and cotton are being proposed to allow for development and review of additional residue field studies. The analysis for cyromazine using tolerance level residues shows that the proposed uses will not cause exposure to exceed levels at which EPA believes there is an appreciable risk. All population subgroups examined by EPA are exposed to cyromazine residues at levels below 100% of the RfD for chronic effects. Based on the information and data considered, EPA concludes that the proposed tolerances will be safe. Therefore, these tolerances are being proposed as set forth below.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. After consideration of comments, EPA will issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300913] (including any comments and data submitted electronically). 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 public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of comments received electronically into printed, paper form as they are received and will place the paper copies in the official record. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This action proposes to establish tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition this proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28,

1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180 [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.414, is revised to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6 triamine) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproduct	0.05
Cucurbit vegetables	1.0
Eggs	0.25

Commodity	Parts per million
Goats, fat	0.05
Goats, meat	0.05
Goats, meat byproduct	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, meat byproduct	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, meat byproduct	0.05
Leafy vegetables (except Brassica)	7.0
Lima beans	1.0
Mango ¹	0.3
Milk	0.05
Mushrooms	1.0
Onion, dry bulb	2.0
Onion, green	0.1
Peppers	1.0
Potato	0.8
Poultry, fat (from chicken layer hens and chicken breeder hens only)	0.05
Poultry, meat byproduct (from chicken layer hens and chicken breeder hens only)	0.05
Poultry, meat (from chicken layer hens and chicken breeder hens only)	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproduct	0.05
Tomato	0.5

¹There are no U.S. registrations on mango as of (inset date of publication).

(2) The additive cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) may be safely used in accordance with the following prescribed conditions:

(i) It is used as a feed additive only in the feed for chicken layer hens and chicken breeder hens at the rate of not more than 0.01 pound of cyromazine per ton of poultry feed.

(ii) It is used for control of flies in manure of treated chicken layer hens and chicken breeder hens.

(iii) Feeding of cyromazine-treated feed must stop at least 3 days (72 hours) before slaughter. If the feed is formulated by any person other than the end user, the formulator must inform the end user, in writing, of the 3-day (72 hours) preslaughter interval.

(iv) To ensure safe use of the additive, the labeling of the pesticide formulation containing the feed additive shall

conform to the labeling which is registered by the U.S. Environmental Protection Agency, and the additive shall be used in accordance with this registered labeling.

(v) Residues of cyromazine are not to exceed 5.0 parts per million (ppm) in poultry feed.

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in connection with use of the pesticide under section 18 emergency exemption granted by EPA. The tolerances are specified in the following table. These tolerances expire and are revoked on the date specified in the table.

Commodity	Parts per million	Expiration/revocation date
Turkey, fat	0.05	4/1/00
Turkey, meat	0.05	4/1/00
Turkey, meat byproduct	0.05	4/1/00

(c) *Tolerances with regional registrations.* As defined in 180.1(n), are established for the residues of cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cabbage, Chinese	3.0
Mustard, Chinese	3.0

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine), in or on the raw agricultural commodities when present therein as a result of the application of cyromazine to growing crops listed in paragraphs (a)(1) of this section.

Commodity	Parts per million
Cotton, undelinted seed	0.1
Corn, sweet, (kernels plus cob with husks removed)	0.5
Corn, sweet, forage	0.5
Corn, sweet, stover	0.5
Radish, root	0.5
Radish, tops (leaves)	0.5

[FR Doc. 99-24047 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6437-8]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Tennessee. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before October 15, 1999.

ADDRESSES: Mail written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104; (404) 562-8440. You can examine copies of the materials submitted by Tennessee during normal business hours at the following locations: EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104, Phone number: (404) 562-8190; or Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1535, Phone number: (615) 532-0850.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs

Branch, Waste Management Division, U.S. Environmental Protection Agency at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the **RULES AND REGULATIONS** section of this **Federal Register**.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99-23913 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301-11 and 301-74

[FTR Proposed Rule 3]

RIN 3090-AH02

Federal Travel Regulation; Conference Planning

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the Federal Travel Regulation (FTR) governing conference planning. Because conferences have different requirements than routine temporary duty (TDY) travel, GSA is proposing to provide specific guidance to minimize overall Government expenses associated with conferences.

DATES: Comments must be received on or before November 15, 1999.

ADDRESSES: Written comments should be sent to: Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

E-mail comments may be sent to RIN.3090-AH02@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Travel Team Leader, Travel Management Policy Division (MTT), telephone 202-501-0483.

SUPPLEMENTARY INFORMATION:

A. Background

Significant changes have been undertaken in the Federal travel management area over the past three years. One aspect particularly impacted has been the lodging portion of the per diem rate setting process. The process of establishing per diem rates has changed to reflect more accurately the marketplace for TDY travel. Taxes are treated separately from the room rate. More locations have market specific rates. GSA has taken a more customer

responsive approach in formulating travel policies.

The per diem rate setting process involves determining the market room rate for transient travelers by surveying properties and averaging the reported rates. However, not all properties have adequate facilities and meeting rooms to host a conference. As a result, it is often difficult to find a conference facility that meets the lodging rate.

Lodging costs are only a part of total conference costs. Other costs include, but are not limited to, facility/meeting room accommodations, transportation, computer and telephone access fees, audio-visual and other equipment, light refreshments, printing, postage, and man-hours. Agencies need guidance as to how to handle conferences from both a per diem and an overall cost perspective to ensure the best value for the Government. This proposed rule focuses on the total costs involved in employee travel to conferences.

B. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301-11 and 301-74

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, it is proposed that 41 CFR parts 301-11 and 301-74 be amended as follows:

PART 301-11—PER DIEM EXPENSES

3. The authority citation for part 301-11 continues to read as follows:

Authority: 5 U.S.C. 5707.

4. Section 301-11.5 is revised to read as follows:

§ 301-11.5 How will my per diem expenses be reimbursed?

- (a) Lodgings-plus per diem method;
- (b) Reduced per diem method;
- (c) Conference lodging allowance method (see § 301-74.23 of this chapter); or
- (d) Actual expense method.

5. Part 301-74 is revised to read as follows:

PART 301-74—CONFERENCE PLANNING

Subpart A—Agency Responsibilities

Sec.

- 301-74.1 What policies must we follow in planning a conference?
- 301-74.2 What costs should be considered when planning a conference?
- 301-74.3 What must we do to determine which conference expenditures result in the greatest advantage to the Government?
- 301-74.4 What should cost comparisons include?
- 301-74.5 How should we select a location and a facility?
- 301-74.6 What can we do if we cannot find an appropriate conference facility at the chosen locality per diem rate?
- 301-74.7 What is the conference lodging allowance?
- 301-74.8 May we exceed 25 percent and still be covered by the conference lodging allowance?
- 301-74.9 May we provide light refreshments at an official conference?
- 301-74.10 May we use both the conference lodging allowance method and the actual expense method of reimbursement concurrently?
- 301-74.11 May we include conference administrative costs in an employee's per diem allowance payment for attendance at a conference?
- 301-74.12 Are there any special requirements for sponsoring or funding a conference at a hotel, motel or other place of public accommodation?
- 301-74.13 May we waive the requirement in § 301-74.12?
- 301-74.14 What must be included in any advertisement or application form relating to conference attendance?
- 301-74.15 What special rules apply when a conference is held in the District of Columbia?
- 301-74.16 What policies and procedures must we establish to govern the selection of conference attendees?
- 301-74.17 What records must we maintain to document the selection of a conference site?

Subpart B—Conference Attendees

- 301–74.21 What governs the selection of conference attendees?
- 301–74.22 What is the applicable M&IE rate when meals or light refreshments are furnished at nominal or no cost by the Government or are included in the registration fee?
- 301–74.23 When may a Federal traveler, attending a conference, be authorized the conference lodging allowance?
- 301–74.24 What if the cost of lodging at a conference facility exceeds the maximum prescribed lodging allowance under the per diem rate method?
- 301–74.25 Is the adjustment in § 301–74.24 an actual expense reimbursement?
- 301–74.26 When should actual expense reimbursement be authorized for conference attendees?

Authority: 5 U.S.C. 5707.

Note to Part 301–74: Use of pronouns “we”, “you”, and their variants throughout this part refers to the agency.

Subpart A—Agency Responsibilities**§ 301–74.1 What policies must we follow in planning a conference?**

You must:

- (a) Minimize conference administrative costs, conference attendees' travel costs, and conference attendees' time costs;
- (b) Maximize the use of Government-owned or Government provided conference facilities as much as possible; and
- (c) Identify opportunities to save costs in selecting a particular conference site (e.g., through the availability of lower rates during the off-season at a site with seasonal rates).
- (d) Develop and establish internal policies to ensure these standards are met.

§ 301–74.2 What costs should be considered when planning a conference?

You should consider all direct and indirect conference costs paid by the Government, whether paid directly by agencies or reimbursed by agencies to travelers or others associated with the conference. Some examples of such costs are:

- (a) Authorized travel and per diem expenses.
- (b) Hire of rooms for official business.
- (c) Audiovisual and other equipment usage.
- (d) Computer and telephone access fees.
- (e) Light refreshments.
- (f) Printing.
- (g) Registration fees.
- (h) Ground transportation.
- (i) Employees' time at the conference and on en route travel.

§ 301–74.3 What must we do to determine which conference expenditures result in the greatest advantage to the Government?

You must:

- (a) Assure there is appropriate management oversight of the conference planning process.
- (b) Always do cost comparisons of the size, scope, and location.
- (c) Determine if a Government facility is available at a cheaper rate than a commercial facility.
- (d) Consider alternatives to a conference, e.g. teleconferencing.
- (e) Maintain written documentation of the alternatives considered and the selection rationale used.

§ 301–74.4 What should cost comparisons include?

Cost comparisons should include, but not be limited to, a determination of adequacy of lodging rooms at the established per diem rates, overall convenience, fees, availability of meeting space, equipment, and supplies, and commuting or travel distance of most attendees. (See Appendix E to Chapter 301, Guidance for Conference Planning.)

§ 301–74.5 How should we select a location and a facility?

Site selection is a final decision as to where to hold your conference. The term “site” refers to both the geographical location and the specific facility(ies) selected. In determining the best site in the interest of the Government, you should exercise strict fiscal responsibility to minimize costs. The actions in § 301–74.3 must be followed. Cost comparisons must cover factors such as those listed in § 301–74.4. As part of the cost comparison, initial selection of a location must be based upon the established per diem rate.

§ 301–74.6 What can we do if we cannot find an appropriate conference facility at the chosen locality per diem rate?

While it is always desirable to obtain lodging facilities at the chosen locality per diem rate, it may not always be possible. In negotiating rates with the properties in the chosen location, you may exceed the established lodging portion of the per diem rate by up to 25 percent, if necessary. This will provide flexibility in selecting an appropriate property at the most advantageous location. It will also permit attending agencies to reimburse their travelers' subsistence expense by using the conference lodging allowance (a variation of the per diem allowance (see § 301–74.7)) rather than the actual expense reimbursement method.

§ 301–74.7 What is the conference lodging allowance?

A pre-determined allowance of up to 25 percent of the applicable locality lodging per diem rate that is not considered to be an actual expense allowance.

§ 301–74.8 May we exceed 25 percent and still be covered by the conference lodging allowance?

No.

§ 301–74.9 May we provide light refreshments at an official conference?

Yes. Agencies sponsoring a conference may provide light refreshments to agency employees attending an official conference.

§ 301–74.10 May we use both the conference lodging allowance method and the actual expense method of reimbursement concurrently?

No. You must only use one of them at a time.

§ 301–74.11 May we include conference administrative costs in an employee's per diem allowance payment for attendance at a conference?

No. Per diem is intended only to reimburse the attendee's subsistence expenses. You must pay conference fees/registration separately, either directly or by reimbursing employees who pay such expenses and voucher for them.

§ 301–74.12 Are there any special requirements for sponsoring or funding a conference at a hotel, motel or other place of public accommodation?

Yes. When you sponsor or fund (see 15 U.S.C. 2225a), in whole or in part, a conference at a place of public accommodation (e.g. hotel, motel, bed and breakfast, etc.) in the United States, you must use a FEMA-approved accommodation, except as provided in § 301–74.13. This provision also applies to the government of the District of Columbia when it expends Federal funds for a conference and any non-Federal entity which uses Government funds to sponsor or fund a conference.

§ 301–74.13 May we waive the requirement in § 301–74.12?

Yes, if the head of your agency makes a written determination on an individual case basis that waiver of the requirement to use FEMA-approved accommodations is necessary in the public interest for a particular event. Your agency head may delegate this waiver authority to a senior agency official or employee who is given waiver authority with respect to all conferences sponsored or funded, in whole or in part, by your agency.

§ 301–74.14 What must be included in any advertisement or application form relating to conference attendance?

(a) Any advertisement or application for attendance at a conference described in § 301–74.12 must include:

(1) Notice of the prohibition against using a non-FEMA approved place of public accommodation for conferences; and

(2) Notice that the conference lodging allowance applies to Federal attendees, if applicable.

(b) In addition, any executive agency, as defined in 5 U.S.C. 105, shall notify all non-Federal entities to which it provides Federal funds of this prohibition.

§ 301–74.15 What special rules apply when a conference is held in the District of Columbia?

In addition to the general rules provided in this part, the following special rules apply:

(a) You may not directly procure lodging facilities in the District of Columbia without specific authorization and appropriation from Congress (see 40 U.S.C. 34); and

(b) Any short-term conference meeting space you obtain in the District of Columbia must be procured under 41 CFR 101–17.101–4.

Note to § 301–74.15(a): This provision does not prohibit payment of per diem to an employee authorized to obtain lodging in the District of Columbia while performing official business travel.

§ 301–74.16 What policies and procedures must we establish to govern the selection of conference attendees?

You must establish policies that reduce the overall cost of conference attendance. The policies and procedures must:

(a) Limit your agency's representation to the minimum number of attendees necessary to accomplish your agency's mission; and

(b) Provide for the consideration of travel expenses when selecting attendees.

§ 301–74.17 What records must we maintain to document the selection of a conference site?

For each conference you sponsor or fund, in whole or in part, you must maintain a record of the cost of each alternative conference site considered. You must consider at least three sites. You must make these records available for inspection by your Office of the Inspector General or other interested parties.

Subpart B—Conference Attendees**§ 301–74.21 What governs the selection of conference attendees?**

To reduce the overall costs of a conference, you should limit your agency's representation to the minimum number of attendees necessary to accomplish your agency's mission.

§ 301–74.22 What is the applicable M&IE rate when meals or light refreshments are furnished at nominal or no cost by the Government or are included in the registration fee?

(a) If meals are furnished the appropriate deduction from the M&IE rate must be made (see § 301–11.18 of this chapter).

(b) If light refreshments are furnished they are a separate administrative expense. Consequently no deduction of the M&IE is allowance required.

§ 301–74.23 When may a Federal traveler, attending a conference, be authorized the conference lodging allowance?

When the traveler is:

(a) Notified by the conference sponsor that the conference lodging allowance is necessary; and/or

(b) Authorized or approved by the traveler's agency.

§ 301–74.24 What if the cost of lodging at a conference facility exceeds the maximum prescribed lodging allowance under the per diem method?

You may authorize reimbursement of up to a 25 percent increase (rounded to the next highest dollar) in the lodging portion of the applicable per diem allowance under the conference lodging allowance method. The M&IE portion of the per diem allowance is the same as under the lodging plus per diem method.

§ 301–74.25 Is the adjustment in § 301–74.24 an actual expense reimbursement?

No. The conference lodging allowance is a separate method of per diem reimbursement.

§ 301–74.26 When should actual expense reimbursement be authorized for conference attendees?

If the conference lodging allowance still is inadequate, you may authorize actual expense reimbursement under § 301–11.300 of this chapter in lieu of conference lodging allowance method.

6. Chapter 301 is amended by adding Appendix E to read as follows:

Appendix E to Chapter 301—Guidance for Conference Planning**Terms**

Conference: A meeting, retreat, seminar, symposium or event that involves attendee travel. The term "conference" also applies to

training activities that are considered to be conferences under 5 CFR 410.404.

Conference lodging allowance: The rate that is up to 25 percent above the established lodging per diem rate.

Milestone schedule: Deadlines, which need to be reached in a progressive and orderly manner.

Planner: The person designated to oversee the conference.

Planning committee: Operational group significantly contributing to a conference's overall success and able to fully reflect the needs of both the agency and the attendees.

Getting Started

Depending on the size, type, and intended effect of the conference, start planning a minimum of one year in advance. Designate a planner and a planning committee.

Planning Committee

Functions typically include, but are not limited to:

- Establishing a set of objectives.
- Developing a theme.
- Making recommendations for location, agenda, dates, and logistics, *e.g.*, schedule, exhibits, speaker.
- Making suggestions as to who should attend.
- Serving as communications link between planners and participants.
- Evaluation and follow-up.

Milestone Schedule

(a) Develop a milestone schedule, which is essential to conference planning, by working backward from the beginning date of the conference to include each major step.

Examples include:

- Planning committee meetings.
- Preparation of mailing lists.
- Letters of invitation.
- Designation of speakers.
- Confirmation letters to speakers.
- Confirmation with site selection official.
- Preparation of agenda.
- Preparation of specification sheet.
- Location and date selection.
- Exhibits.
- Budget.
- Printing requirements.
- Signage.
- Conference information packages.
- Scheduling photographer (if planned).
- Use of agency seal and conference logo.
- Handicapped requirements.
- Planning of meals and refreshments, if appropriate.

(b) Establish completion dates for each major step.

(c) Update and revise the schedule as needed.

Specification Sheet

A detailed specification sheet is necessary to:

(a) Identify essential elements of a conference which typically include, but are not limited to:

- Sleeping rooms and on-site food services. It is generally best to estimate on the low side for the number of sleeping rooms and meals to be prepared. Facilities, unless there is only limited available space, are usually prepared to increase the number of

sleeping rooms and meals; however, they discourage—and in some cases penalize—you if the sleeping room and meal guarantees are not met.

- Meeting rooms.
- Exhibit facilities.
- Audio-visual equipment and support services.
- Miscellaneous support services.
- (b) Determine costs:
 - *Procurement.* Bring contracting officer into the process early. All agreements and decisions should be written and agreed to by the agency-contracting officer before being sent to the facility.
 - *Government Per Diem Rates.* The government per diem rate applies to Federal attendees. Application of it to non-Federal attendees is at the discretion of the property and conference negotiator.
 - *Registration fee.* Generally, the registration fee covers all direct expenditures of agency funds for planning and organization of a conference, *e.g.*, meeting room accommodations, meals, light refreshments (if appropriate), speaker fees, publications, and materials. Anything directly relating to the conference, except liquor, can be included in the fee. To estimate the registration fee, divide the proposed budget by the estimated number of attendees.

Budgeting

Decide how the conference expenses (other than sleeping room accommodations and individual meals) will be paid, *i.e.*, by the attendee from a training or registration fee, or directly by the agency.

Conference Site Selection

Minimize total costs, all factors considered.

Geographic Location

In determining where to locate the conference, consider:

- Targeted audience.
- Total costs, including per diem, transportation, and other.
- Accessibility by car or air.
- Whether recreational activities are necessary.
- The expense of desired facility (significant savings can be achieved in off-season periods).

Types of Facilities

- *Federal Government.* Use Government-owned or Government-provided conference facilities to the maximum extent possible.
- *Convention centers.* Excellent for very large meetings, trade shows and exhibits; usually located near a large number of hotels.
- *Conference centers.* Dedicated meeting facilities; good for smaller meetings when numerous breakout sessions are planned.
- *Colleges and universities.* Many have good meeting facilities and can offer sleeping accommodations when school is not in session.
- *Hotels.* Commercial facilities that may be used to meet all conference needs or just the room night needs.

Date Selection

For availability and economical reasons, the best months are April, May, September,

October, and November. You should book the facility as early as possible to increase the chances of getting the date you want. However pay particular attention to commitments for September or October due to fiscal year budget considerations.

Considerations When Choosing a Site

- (a) Is the facility:
 - Cost effective, *e.g.*, are Government rates honored?
 - Safe, *e.g.*, FEMA-approved?
 - Is there on-site security personnel?
 - Easily reached from an airport or by car?
 - Clean?
 - Well run, *e.g.*, does the staff seem to be competent and responsive?
 - Laid out in a functional way?
 - Large enough to supply the number of sleeping rooms required?
 - Set up to provide necessary conference registration equipment?
 - Handicapped accessible?
- (b) Parking:
 - Is it adequate?
 - How close to the facility is it?
 - Is it secure and safe?
 - Is the cost separate?
- (c) Sleeping rooms:
 - Will the facility make the reservations, or are you responsible for making the reservations for participants?
 - What are the facility's registration rules?
 - What are departure rules?
- (d) Functionality of meeting rooms:
 - Is appropriate space available?
 - What costs are involved?
 - Is needed equipment available (*i.e.*, for conference registration, faxes, phones, computers, copiers)? Do not rent equipment unless it is absolutely unrealistic to bring your own.
 - Are rooms designated for agency use for the duration of the conference?
 - Are there columns that can block views?
 - Are ceilings high enough for audio-video equipment?
 - Are rooms suitable for both classroom and/or theatre setups?
 - Are there windows? Shades?
 - Are there manually-controlled thermostats?
 - Are rooms handicapped accessible?
 - Where are electrical outlets?
 - Can the rooms be darkened?
 - Would it be more economical to bring audio-visual equipment?
 - Does the facility want meeting schedules and room layouts in writing in advance of the conference?
 - If necessary, can the rooms be entered the evening before for an early setup?
 - Will the facility arrange for room setup if given a layout?
 - What set-up costs are included?
 - What are departure rules?
- (e) Exhibits:
 - If exhibits are planned, is suitable exhibit space available?
 - Are easels available at no cost?
 - What are the put-up and takedown times?
 - What costs are involved?
 - What about pre-delivery and after-conference arrangements?
 - If exhibits are shipped, know where and to whom they are to be sent.

- If you are bringing large exhibits, determine location of loading dock, appropriate entrances and elevators.
- Are there additional handling fees?
- Check hotel policy on posting, size and appearance of signs.

Food and Drink

Meals

- You can not generally use appropriated funds to pay for meals for employees at their official duty stations.
- Employees on TDY travel may be served meals but cannot be reimbursed for those provided at government expense.
- You should clarify in advance the appropriate per diem reduction(s) of meal(s) allowance(s) for TDY travel.
- You may pay, or reimburse an employee for meals as necessary expenses incident to an authorized training program (under the Government Employees Training Act (GETA) at 5 U.S.C. § 4104(4)), if a determination has been made that essential training will be conducted during the meal.
- Work closely with the hotel to plan quality menus that fit within authorized per diem rates.
- Clarify and agree in advance to the number of meal guarantees.
- Ensure that gratuities and service charges are added to the cost of each meal, and determine the method of billing to be used (*e.g.*, signed guarantee, collected meal tickets, or actual quantities consumed).
- Confirm menus.

Breaks and Refreshments

- Breaks should last no longer than 30 minutes and take place between meeting sessions. The following should also be considered when planning for refreshments:
 - Keep in mind that everyone does not drink coffee or tea.
 - You should clarify and agree in advance that coffee and pastries, if appropriate, are purchased by the gallon and dozen.
 - Try to avoid a per person charge.
 - Negotiate the cost into the contract.
 - Be conservative in your estimates. There are seldom 100 percent of the conference participants attending any one function.
 - If coffee, soft drinks, and water are not included in the fee, are they available "at cost" to the attendee?

Account Reconciliation

It is important to request that the hotel bill be prepared in a logical and chronological sequence, and that backup data accompany the bill. Generally, the hotel will complete its accounting of the conference within two weeks of the conclusion.

Notification

Announcement and/or Invitations

- Announcement of the planned conference should be made as early as possible, even one year in advance; invitation letters, 8 weeks in advance. They should include, but are not limited to:
 - Point of contact name and telephone number.
 - Registration form, card, or Internet address (include space for identifying handicapped requirements).

- Registration instructions.
- Registration deadline date.
- Detailed area map and driving instructions.
- Information on traffic patterns to avoid rush hour delays.
- Promotional brochures from the facility.
- Layout of facility including telephone numbers.
- Breakdown of costs showing any difference from travel versus training object classes, particularly meal costs, so that proper reimbursement can be made.
- Agenda with a list of speakers and topics.
- Activity schedule for spouses and guests (all charges or costs attributed to spouses or guests must be borne by the individual attendee (not reimbursable by the Government)).
- Provide a sample travel voucher.
- Notice that conference lodging allowance applies if applicable.

Confirmations

- You should:
- Decide on the speaker(s) and the message you wish to be conveyed and obtain early commitment(s) in writing.
 - Confirm conference dates/times/topics/arrival and departure times with speaker(s) and any other special guests at least 30 days in advance.
 - Conduct a final planning committee meeting to confirm all plans.
 - Confirm photographer's schedule.
 - Confirm hotel plans at least one day in advance.

Facility Process

Check-In and -Out

- Streamline the process:
- Will the facility need additional personnel?
 - Is electronic one-stop processing available?
 - Is luggage storage and shuttle service available?
 - Arrange parking for any special guests.
 - Provide signage.

Registration Process

- Registration is generally the attendees' introduction to the conference. Give it special attention by:
- Using directional signs.
 - Placing especially attractive or important exhibits nearby.
 - Planning for late arrivals.
 - Using state-of-the-art processing.
 - Checking out the registration capabilities of using GSA's electronic SmartPay System.
 - Providing for handicapped attendees.

Conference Information Package

Each registrant should be given a conference information package. Used regularly during the conference, the conference information package should be accurate, beneficial, and reflect detailed information on a daily/hourly basis. You should finalize the package and send it to the printer at least 4 weeks in advance of the starting date. The program will be widely used, so you may want to print twice as many copies of the program as you have

expected attendees. The information package, for example, may contain:

- A list of everything in the package.
- A "welcome" letter.
- A schedule.
- Workshop agendas.
- Discussion of exhibits.
- Panelists' information.
- Photos and biographies of speakers/special guests.
- Facility layout and list of services available.
- Identify designated smoking areas.
- Special events.
- Message center information.
- Area map.
- Other pertinent material.

Note: Use of agency seal and conference logo may be considered for the conference package. However, the decision to use such items is strictly the judgement of agency officials.

Miscellaneous

Suggested Room Coordination

- Plan ahead to setup:
- Staff room to handle core of activities;
 - Meal functions;
 - Exhibit rooms, and
 - Meeting rooms—

Theatre or auditorium for lectures;
Facing speaker when note taking is important;

Square or U-shaped style for discussion/interaction; and
Banquet or roundtable for discussion.

Keeping in Touch

- Plan for:
- A message center to be set up in a central location for special announcements and telephone messages.
 - How to reach whomever at all times—use beepers and walkie-talkies.
 - Clear identification of conference staff.
 - Accommodation of physically impaired attendees with sign language or other special needs.

Mementos

Appropriations are not available to purchase memento items for distribution to conference attendees as a remembrance of an event. Two notable exceptions to the memento or gift prohibition are under training and awards. Work closely with appropriate agency officials to make final determinations.

Resources

- The following resources may be of assistance in planning a conference:
- An agency contracting officer;
 - Travel Management Centers;
 - Interagency Travel Management Committee (a forum of agency travel policy managers);
 - State chambers of Commerce or Visitors Bureaus;
 - Local chapters of the Society of Government Meeting Professionals; and
 - Private industry conference planners.

Conclusion

Process

- Questionnaires, which may provide invaluable feedback about the success of your conference.
- Training certificates.
- Thank you notes to participants, facility personnel, speakers, printers, photographers, and other special contributors.
- Summary to acknowledge the accomplishments, and to convey the information discussed to a wider audience, may be an excellent promotional tool.

Note to Appendix E: Use of pronouns "we", "you", and their variants throughout this appendix refers to the agency.

Dated: September 9, 1999.

Becky Rhodes,

Deputy Associate Administrator for Transportation and Personal Property.

[FR Doc. 99-23967 Filed 9-14-99; 8:45 am]

BILLING CODE 6820-34-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-277, RM-9666]

Digital Television Broadcast Service; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Channel 3 of Corpus Christi, Inc., licensee of station KIII, NTSC Channel 3, Corpus Christi, Texas, proposing the substitution of DTV Channel 8 for station KIII's assigned DTV Channel 47. DTV Channel 8 can be substituted and allotted to Corpus Christi, Texas, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27-39-30 N. and 97-36-04 W. However, since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government must be obtained for this allotment. As requested, we also propose to modify KIII's authorization to specify operation on the alternate DTV Channel 8 at Corpus Christi, Texas, with a power of 160 (kW) and a height above average terrain (HAAT) of 289 meters.

DATES: Comments must be filed on or before November 1, 1999, and reply comments on or before November 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC

20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert B. Jacobi, Esq., Cohn and Marks, 1920 N Street, NW, Suite 300, Washington DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-277, adopted September 3, 1999, and released September 8, 1999. The full text of this Commission decision is available for inspection and copying

during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.
Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99-23685 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 64, No. 178

Wednesday, September 15, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of the Final Report on the Joint Institute for Food Safety Research

AGENCY: Under Secretary for Research, Education, and Economics, USDA; Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Notice of Availability of Final Report on the Joint Institute for Food Safety Research.

SUMMARY: The United States Department of Agriculture and the Department of Health and Human Services announce the availability of the final report on the Joint Institute for Food Safety Research on the web address <http://www.foodsafety.gov/dms/jifsrp2.html>.

SUPPLEMENTARY INFORMATION: On July 3, 1998, President Clinton directed the Department of Health and Human Services (DHHS) and the Department of Agriculture (USDA) to develop a plan to create a Joint Institute for Food Safety Research (the Institute or JIFSR). The Institute is to (1) coordinate planning and priority setting for food safety research among the two Departments, other government agencies, and the private sector and (2) foster effective translation of research results into practice along the farm-to-table continuum. The ultimate goal of the Institute is to coordinate food safety research such that the incidence of foodborne illness is reduced to the greatest extent feasible. These coordinated and expanded efforts will strive for more efficient delivery of the scientific information needed to develop

effective food safety guidance, policies, and regulations in support of public health goals. DHHS and USDA will have joint leadership of the Institute and will use existing resources to support it. This acknowledgment of the critical need to coordinate and expand food safety research also emphasizes the companion needs to strengthen and expand public-private partnerships and to augment collaboration among state, local, and other Federal agencies, thereby providing effectively the scientific information required to help achieve public health goals. The full report as submitted to the President on July 2, 1999 is available at the Internet address <http://www.foodsafety.gov/dms/jifsrp2.html>.

FOR FURTHER INFORMATION CONTACT:

William C. Wagner, Interim Executive Director, (202) 401-4952, (202) 401-4888 (fax), email: wwagner@reeusda.gov.

Dated: September 3, 1999.

Eileen Kennedy

Deputy Under Secretary, Research, Education and Economics Department of Agriculture.

William Raub

Dated: September 3, 1999.

Deputy Assistant Secretary for Science Policy, Department of Health and Human Services.

[FR Doc. 99-24049 Filed 9-14-99; 8:45 am]

BILLING CODE 3410-01-P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Interim Flat Fee Policy for Outstanding and Guiding Activities; Alaska National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; extension of public comment period.

SUMMARY: The Regional Forester, Alaska Region is seeking comments on a proposed interim flat fee policy for outfitting and guiding activities on National Forest System land in the Alaska Region. Developed in response to an order from the federal district court in Alaska arising from a lawsuit filed by the Tongass Conservancy, the proposed interim flat fee policy is designed to charge fees that are fair and

equitable to the federal government and the Alaska outfitter and guide industry. A notice of availability was published in the **Federal Register** on July 21, 1999. Copies of the proposed interim flat fee schedule and policy were then sent with a request for comments to holders of National Forest outfitting and guiding permits in Alaska and other potentially interested parties. In addition, notice of and request to comment on the proposal was published in the local newspapers of record, and the policy and fee schedule is being posted on the World Wide Web. In response to requests from the outfitting and guiding industry and individual citizens we are extending the initial comment period ending September 7 an additional 25 days to October 1, 1999. The purpose of this notice is to advise people who may have an interest in this interim fee policy of the availability of the proposal and the extended opportunity to comment.

DATES: Comments must be received in writing by October 1, 1999.

ADDRESSES: For copies of the proposed interim flat fee policy, write to the Regional Forester, Attention: Public Services—Arn Albrecht, Alaska Region, P.O. Box 21628, Juneau, AK 99802-1628 or access the document online at http://www.fs.fed.us/r10/what's_hot/hot.htm. Send written comments to the post office listed under this heading or to webmaster/r10@fs.fed.us or by facsimile to (907) 586-7843. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed interim policy in the Office of the Public Services Staff, Room 501D, Federal Office Building, 709 West 9th Street, Juneau, AK 99801-1807 between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: The local Forest Service Ranger District, Supervisor's Office, or Arn Albrecht, (907) 586-7886, or Don Fisher, (907) 586-7861, in the Alaska Regional Office.

Dated: September 7, 1999.

Rick D. Cables,

Regional Forester.

[FR Doc. 99-24000 Filed 9-14-99; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE**International Trade Administration****Applications for Duty-Free Entry of Scientific Instruments**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 99-020. **Applicant:** National Institutes of Health, National Institute on Deafness and Other Communication Disorders, 9000 Rockville Pike, Bethesda, MD 20892. **Instrument:** Electron Microscope, Model JEM-1010. **Manufacturer:** JEOL Ltd., Japan. **Intended Use:** The instrument is intended to be used for ultrastructural analyses of animal tissues using electron microscopy preparative techniques such as fixation, embedding and ultrathin sectioning and immunogold and other immunocytochemical techniques to localize cellular components and antigens and computerized imaging quantitation. In addition, the instrument will be used for training postdoctoral fellows and to some extent pre-IRTAs and students. *Application accepted by Commissioner of Customs:* August 25, 1999.

Docket Number: 99-021. **Applicant:** University of Kentucky, 177 Anderson Hall, Lexington, KY 40506-0046. **Instrument:** Electron Microscope, Model JEM-2010F. **Manufacturer:** JEOL Ltd., Japan. **Intended Use:** The instrument is intended to be used in the study of the structure and chemistry of a wide variety of materials in the solid state (e.g., polymers, ceramics, metals, superconductors, carbon nanotubes) with emphasis on the structure of material defects. Experiments will include: (1) Quantification of interfacial segregation in oxide ceramics and correlation of segregation with interface crystallography, (2) high-resolution imaging of carbon nanotubes, and (3) phase identification of catalysts. In

addition, the instrument will be used to train graduate students in the theory of electron microscopy in the courses MSE 858 Material Characterization Techniques and MSE 666 Diffraction Methods in Materials Science. *Application accepted by Commissioner of Customs:* August 25, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99-24074 Filed 9-14-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****Overseas Trade Missions**

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions to be held between September 1999 and April 2000. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

Coal Trade Mission, Los Angeles Export Terminal, Los Angeles, CA, Comision Federal de Electricidad, Mexico City, Mexico, Petacalco Power Plant, Lazaro Cardenas, Mexico, September 28-October 2, 1999, Recruitment closes September 17, 1999, For further information contact: Helen Burroughs, U.S. Department of Commerce, Tel: 202-482-4931, Fax: 202-482-0170 or 202-482-5361.

Agricultural Trade Mission—PERU, November 29–December 3, 1999, Recruitment closes November 10, 1999, For further information contact: U.S. Department of Commerce, Eduardo Torres, Tel: 559-325-1619, Fax: 559-325-1647 or Dale Wright, Tel: 916-498-5155, Fax: 916-498-5923.

Pet Products Trade Mission, Mexico City and Guadalajara, Mexico, December 1–7, 1999, Recruitment closes November 15, 1999, For further information contact: Edward Kimmel, U.S. Department of Commerce, Tel: 202-482-3640, Fax: 202-482-3422. **Healthcare Technologies Matchmaker, Milan, Italy and Madrid, Spain,**

February 28–March 3, 2000, Recruitment closes January 7, 2000, For further information contact: Yvonne Jackson, U.S. Department of Commerce, Tel: 202-482-2675, Fax: 202-482-0178.

Medical and Dental Devices, Medical Device Components, and Laboratory Instruments, Trade Mission to China, March 19–28, 2000, Recruitment closes February 15, 2000, For further information contact: Lauren Saadat, U.S. Department of Commerce, Tel: 202-482-4431, Fax: 202-482-0975. **Used Equipment Trade Mission, Peru and Ecuador, April 10–15, 2000, Recruitment closes March 1, 2000, For further information John Bodson, U.S. Department Commerce, Tel: 202-482-0601, Fax: 202-482-0304. For further information contact:** Reginald Beckham, U.S. Department of Commerce, Tel: 202-482-5478, Fax: 202-482-1999.

Dated: September 8, 1999.

Tom Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 99-23979 Filed 9-14-99; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology**

[Docket No. 970725180-9196-03]

RIN No. 0693-ZA16

Request for Comments on the Finalist (Round 2) Candidate Algorithms for the Advanced Encryption Standard (AES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A process to develop a Federal Information Processing Standard (FIPS) for an Advanced Encryption Standard (AES) specifying an Advanced Encryption Algorithm (AEA) has been initiated by the National Institute of Standards and Technology (NIST). In the Fall of 1998, NIST announced fifteen publicly submitted algorithms as candidates for the AES, and invites public review, comment, and analysis in order to narrow the field of candidates to (approximately) five or fewer finalists. During the Round 1 technical evaluation period, these fifteen candidates were subjected to extensive analysis and testing by the cryptographic community.

At the conclusion of Round 1, NIST took the following information into consideration: (1) The submitted (official) versions of the AES candidate algorithms, (2) Round 1 public comments, (3) papers and discussions at the Second AES Candidate Conference, (4) results of NIST efficiency and statistical analysis, and (5) other relevant data (e.g., presentations at the Sixth Fast Software Encryption Workshop, discussions on NIST's AES Electronic Discussion Forum, etc.). Using this information, NIST has selected the AES finalist candidate algorithms ("finalists"), which will be subjected to further analysis during Round 2 of the AES development effort. A list of the finalists, along with specifications and intellectual property information, is available at the AES home page, <http://www.nist.gov/aes>.

This notice announces the beginning of the Round 2 technical evaluation period for the AES finalists. Additionally, the notice solicits comments on the finalists from the general public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. NIST will use these comments to select one or more of the finalists for inclusion in a draft Federal Information Processing Standards Publication (FIPS PUB), on which public comments will be invited via a future **Federal Register** announcement.

NIST's goal is that the AES will specify one or more unclassified, publicly disclosed encryption algorithm(s) available royalty-free worldwide that is (are) capable of protecting sensitive government information well into the next century.

DATES: Public comments for Round 2 are due May 15, 2000. Paper proposals for the Third AES Candidate Conference (which are also considered as public comments) are due to NIST by January 15, 2000. The Third AES Candidate Conference (AES3) is scheduled for April 13–14, 2000.

ADDRESSES: Comments and paper proposals should be sent electronically to AESround2@nist.gov. Alternatively, they may be sent to: Information Technology Laboratory Attn: AES Finalist Comments (Bldg. 820, Room 423), National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930, U.S.A.

AES-related comments received in response to this notice will be made part of the public record. Papers proposed for presentation at AES3 will be posted on the AES home page <http://www.nist.gov/aes> prior to the beginning of AES3. All additional Round 2 comments will be made available at the AES home page shortly after the Round 2 comments period closes.

FOR FURTHER INFORMATION CONTACT: The AES home page <http://www.nist.gov/aes> has all current NIST information pertaining to the AES development effort. Recent results and ongoing discussions regarding the finalists and AES-related issues takes place at the AES Electronic Discussion Forum, <http://aes.nist.gov/aes/default.htm>. General questions may be directed to Edward Roback at (301) 975–3696, or eroback@nist.gov.

Technical questions may be made by contacting Jim Foti at (301) 975–5237, jfoti@nist.gov, or Elaine Barker at (301) 975–2911, ebarker@nist.gov.

Algorithm-specific questions should be directed to the algorithm's submitter. Contact information for the submitters is located on the AES home page.

SUPPLEMENTARY INFORMATION:

1. AES Finalist Candidate Algorithms

NIST has selected the AES finalists for Round 2. The list of finalists, along with their specifications and intellectual property statements, is available electronically at the AES home page. At that same location, NIST is also making available a document that presents the rationale for NIST's selection of the finalists.

The Round 1 candidate algorithms that were not selected for Round 2 are no longer part of the AES development effort, and, therefore, will not be selected for inclusion in the AES FIPS. Those algorithms (including the specifications and reference and optimized code) may or may not be in the public domain (this includes using the code for testing and research purposes), so algorithm implementers, users, and others should be aware of the intellectual property status of each individual algorithm. When the algorithms were initially submitted before the start of Round 1, each submitter signed an intellectual property statement, part of which states that

* * * If my algorithm * * * is not selected for inclusion in the FIPS (including those not selected for second round of public evaluation), I understand that all rights, including use rights of the reference and mathematically optimized implementations, revert back to the submitter (and other owner[s] as appropriate).

Please note that the selection of an algorithm as a finalist does *not* constitute endorsement by NIST of the algorithm or its security. Similarly, the

non-selection of an algorithm is not necessarily to be taken as a statement about the algorithm's quality, security, efficiency, or other characteristics. Algorithms selected as finalists were determined to be more suitable for the proposed FIPS. For specific details on an algorithm and its particular security characteristics, one should consult the various Round 1 public comments that were submitted to NIST (available on the AES home page).

Although no formal process has been established to address minor modifications of the finalists that may become necessary, NIST reserves the right to work with the submitters of the finalists regarding any such modifications. NIST intends to do this in the most open and public manner possible. This is consistent with the made in the original call for candidate algorithms, to which all submitters agreed that

* * * the U.S. Government may, during the course of the lifetime of the AES or during the FIPS public review process, modify the algorithm's specifications (e.g., to protect against a newly discovered vulnerability).

2. Availability of AES CD–3

All persons with AES CD–1 and CD–2 should be aware of potential intellectual property issues with implementing and using algorithms on those CDs, especially for those algorithms that were not selected for Round 2. Please see the note in Section 1, above.

In addition to making specifications available on the AES home page, during Round 2 NIST will make a CD-ROM available (to be designated "AES CD–3") which contains the algorithm specifications, supporting documentation, and submitted code for the AES finalists. It is anticipated that this code will be different from the code provided before the start of Round 1 (e.g., updated to be more efficient, additional code for various platforms, etc.). The submitters of the AES finalists are being given one month from the start of Round 2 to provide NIST with any updated code.

AES CD–3 should be available approximately 2–3 months after the beginning of Round 2. When it is ready for distribution, NIST will re-activate the AES CD Request Form at <http://csrc.nist.gov/encryption/aes/round1/cdreq.htm>. To those people in the U.S. and Canada who received AES CD–2, NIST will automatically send a copy of AES CD–3. So, for those people, there will be no need to provide NIST with an additional CD-ROM request.

Since AES CD-3 will contain algorithm code, it will be subject to export control, and NIST will handle export requests appropriately. For those people *outside* of the U.S. and Canada who received AES CD-2 (for whom an export license was granted), AES CD-3 will automatically be distributed *only after a new export license is granted and their copy of AES CD-2 is returned to NIST, as required by the conditions of the original export license.* Information on where to send AES CD-2 is posted on the AES CD Request Form mentioned above.

3. Comments Solicited on the AES Finalists

Written comments on the finalists are solicited by NIST in this Round 2 technical evaluation in order to help NIST select one or more algorithms for specification in a draft AES FIPS. To facilitate the review of the comments, NIST asks the submitters of comments to clearly indicate the algorithm(s) to which their comments apply. Also, as guidance to comment submitters, the original Evaluation Criteria published on September 12, 1997, are reproduced in Section 4 below.

NIST will accept both general comments and formal analyses/papers that will be considered for presentation at the Third AES Candidate Conference (see Section 5 below).

Since submitted comments will be made available to the public, the comments must not contain proprietary information.

Comments and analysis are sought on any aspect of the candidate algorithms, including—but not limited to—the following topics.

3.1 Cryptanalysis

Since *security* will be the most important characteristic of the selected algorithm(s), NIST strongly encourages and welcomes cryptanalysis of the finalists.

3.2 Intellectual Property of the AES Finalists

NIST seeks detailed comments regarding any intellectual property—particularly any patent not already identified by the finalists' submitters—that may be infringed by the practice of any of the finalists algorithms. This also includes comments from all parties—including submitters—regarding specific claims that the practice of a finalist algorithm infringes on their patent(s). Claims regarding infringement of copyrighted software are also particularly solicited. NIST views this input as a critical factor in the eventual widespread adoption and

implementation of the algorithm(s) specified in the FIPS.

NIST reminds all interested parties that the adoption of AES is being conducted as an open standards-setting activity. Specifically, NIST has requested that all interested parties identify to NIST any patents or inventions that may be required for the use of AES. NIST hereby gives public notice that it may seek redress under the antitrust laws of the United States against any party in the future who might seek to exercise patent rights against any user of AES that have not been disclosed to NIST in response to this request for information.

3.3 Cross-Cutting Analyses of All of the AES Finalists

Public analysis comparing the entire field of finalists in a consistent manner for particular characteristics will be very useful. Examples of this type of analysis might include comparisons of the finalists regarding: (1) Performance on various smart cards, when the implementations are constructed to defend against timing and power analysis attacks, (2) performance and/or memory use measurements, when written in the same programming language, (3) relative performance on 64-bit processors, (4) performance of assembly language implementations on various platforms, and (5) performance of hardware implementations or simulations.

Additionally, surveys, analyses, and comments are invited regarding prospective future platforms and applications that will implement the AES FIPS algorithm(s).

During Round 2, NIST may take into consideration the issue of having "variable rounds" in the AES finalists. Therefore, NIST invites comments on how NIST should address the "variable rounds" issue during and after Round 2.

3.4 Overall Recommendations Regarding the Selection of the Algorithm(s) for the Proposed FIPS

When all factors are considered, which candidate algorithm(s) should be selected for inclusion in the FIPS? Also, conversely, NIST seeks the identification and justification of which algorithms should *not* be selected by NIST. Such comments (with supporting justifications) will be of great use to NIST and help assure timely progress of the AES selection process.

3.5 Related Recommendations Regarding Implementation of the AES FIPS

In addition to selecting the algorithm(s) to be included in the

proposed FIPS, issues regarding the implementation requirements of the standard will also need to be addressed. Therefore, NIST is seeking comments (with rationale) on what requirements should be included in the FIPS. For example, if NIST selects multiple algorithms for inclusion in the proposed FIPS, should the standard require that products conforming to the FIPS implement (1) one algorithm, (2) two (or more) algorithms, (3) all algorithms, or (4) a varying number of algorithms, depending on the type of implementation (e.g., require all algorithms in software implementations, only one in hardware implementations, etc.)?

Also, upon final publication as a FIPS, NIST intends to provide validation testing for implementations of the AES algorithm(s), as it does with other FIPS-approved cryptographic algorithms. Comments pertaining to such validation testing are also welcome.

4. Evaluation Criteria

In the call for AES candidate algorithms (**Federal Register**, September 12, 1997, [Volume 62, Number 177], pages 48051–48058), NIST published evaluation criteria for use in reviewing candidate algorithms. For reference purposes, these criteria are reproduced below:

[Beginning of Excerpt]

Security (i.e., the effort required to cryptanalyze).

The security provided by an algorithm is the most important factor in the evaluation.

Algorithms will be judged on the following factors:

i. Actual security of the algorithm compared to other submitted algorithms (at the same key and block size).

ii. The extent to which the algorithm output is indistinguishable from a random permutation on the input block.

iii. Soundness of the mathematical basis for the algorithm's security.

iv. Other security factors raised by the public during the evaluation process, including any attacks that demonstrate that the actual security of the algorithm is less than the strength claimed by the submitter.

Claimed attacks will be evaluated for practicality.

Cost

i. Licensing requirements: NIST intends that when the AES is issued, the algorithm(s) specified in the AES shall be available on a worldwide, non-exclusive, royalty-free basis.

ii. Computational efficiency: The evaluation of computational efficiency will be applicable to both hardware and software implementations. Round 1 analysis by NIST will focus primarily on software implementations and specifically on one key-block size combination (128–128); more attention will be paid to hardware

implementations and other supported key-block size combinations (particularly those required in the "Minimum Acceptability Requirements" section) during Round 2 analysis.

Computational efficiency essentially refers to the speed of the algorithm. NIST's analysis of computational efficiency will be made using each submission's mathematically optimized implementations on the platform specified under "Round 1 Technical Evaluation" below. Public comments on each algorithm's efficiency (particularly for various platforms and applications) will also be taken into consideration by NIST.

iii. Memory requirements: The memory required to implement a candidate algorithm—for both hardware and software implementations of the algorithm—will also be considered during the evaluation process. Round 1 analysis by NIST will focus primarily on software implementations; more attention will be paid to hardware implementations during Round 2.

Memory requirements will include such factors as gate counts for hardware implementations, and code size and RAM requirements for software implementations.

Testing will be performed by NIST using the mathematically optimized implementations provided in the submission package. Memory requirement estimates (for different platforms and environments) that are included in the submission package will also be taken into consideration by NIST. Input from public evaluations of each algorithm's memory requirements (particularly for various platforms and applicants) will also be taken into consideration by NIST.

Algorithm and Implementation Characteristics

i. Flexibility: Candidate algorithms with greater flexibility will meet the needs of more users than less flexible ones, and, therefore, *inter alia*, are preferable. However, some extremes of functionality are of little practical application (e.g., extremely short key lengths)—for those cases, preference will not be given.

Some examples of "flexibility" may include (but are not limited to) the following:

a. The algorithm can accommodate additional key- and block-sizes (e.g., 64-bit block sizes, key sizes other than those specified in the Minimum Acceptability Requirements section, [e.g., keys between 128 and 256 that are multiples of 32 bits, etc.]).

b. The algorithm can be implemented securely and efficiently in a wide variety of platforms and applications (e.g., 8-bit processors, ATM networks, voice & satellite communications, HDTV, B-ISDN, etc.).

c. The algorithm can be implemented as a stream cipher, Message Authentication Code (MAC) generator, pseudo-random number generator, hashing algorithm, etc.

ii. Hardware and software suitability: A candidate algorithm shall not be restrictive in the sense that it can only be implemented in hardware. If one can also implement the algorithm efficiently in firmware, then this will be an advantage in the area of flexibility.

iii. Simplicity: A candidate algorithm shall be judged according to relative simplicity of design.

[End of excerpt]

5. Initial Planning for the Third AES Candidate Conference (AES3)

Near the end of Round 2, NIST will sponsor the Third AES Candidate Conference (AES3)—another open, public forum that will be used to discuss analyses of the AES finalists. Additionally, submitters of the AES finalists will be invited to attend and engage in discussions regarding comments on their algorithms.

AES3 will be held April 13–14, 2000, at the Hilton New York and Towers, in New York City. The AES home page contains registration and logistical information, in addition to information on other nearby hotels. As for AES2 (March 22–23, 1999), AES3 will be held during the same week and at the same location as the Fast Software Encryption (FSE) Workshop (a link to FSE information will be available on the AES home page).

Paper submissions for AES3 should be sent to AESround2@nist.gov as an official comment, with a note indicating that the paper is being submitted for AES3. The deadline for AES3 submissions is January 15, 2000. All papers must be submitted in one of the following formats: Adobe PDF, Postscript, Rich Text Format (RTF), or Microsoft Word97. (For Adobe PDF and Postscript submissions, please embed all necessary fonts within the document.) All papers received for AES3—regardless of their acceptance for presentation at AES3—will be made available on the AES home page prior to the conference.

Appreciation

NIST extends its appreciation to *all* AES candidate algorithm submitters—both those submitters whose algorithms did and did not qualify for Round 2—and those people providing public comments during the AES development process.

Dated: September 9, 1999.

Karen Brown,

Deputy Director, NIST.

[FR Doc. 99–24014 Filed 9–14–99; 8:45 am]

BILLING CODE 3510-CN-M'

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Sanctuary Program

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric

Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA is withdrawing the Northwest Straits from consideration as an Active Candidate for designation as a National Marine Sanctuary. The Northwest Straits are located north of Puget Sound, and encompass marine waters surrounding the San Juan Islands, north to the Canadian border, U.S. waters west to the entrance of the Strait of Juan de Fuca, Haro and Rosario Straits and the lower portion of the Strait of Georgia. The Northwest Straits site was identified by NOAA for evaluation as a national marine sanctuary by being listed on the National Marine Sanctuary Program's Site Evaluation List (SEL) in 1983 (as "Washington State Nearshore"). Congress directed NOAA to prepare a designation prospectus on Northwest Straits in 1988 and the site became an Active Candidate. For reasons related to designation guidance contained in the 1996 reauthorization of the National Marine Sanctuary Act (NMSA), the findings of a Congressionally-convened Northwest Straits Citizens Advisory Commission, and limited agency resources, NOAA is discontinuing consideration of the site for possible designation as a national marine sanctuary.

FOR FURTHER INFORMATION CONTACT:

Debra Malek, NOAA Marine Sanctuaries Division, 1305 East-West Highway, N/ORM2, Silver Spring, Maryland 20910 or at (301) 713-3141 Ext. 162.

SUPPLEMENTARY INFORMATION:

I. Background

The NMSA (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries to fulfill the purposes and policies of the NMSA (set forth in section 301(b) (16 U.S.C. 1431(b)), and if: (1) the area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conversation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management (16

U.S.C. 1433(a)). The NMSA is administered by NOAA through the Office of Ocean and Coastal Resource Management of the National Ocean Service.

II. Administrative History

In January 1982, NOAA published a Program Development Plan (PDP) for the National Marine Sanctuary Program (NMSP), describing the Program's mission and goals, site identification and selection criteria, and the nomination and designation process. Based on the PDP and Program regulations, NOAA published a proposed SEL recommended to NOAA by regional resource evaluation teams. On August 4, 1983, NOAA published the final SEL (48 FR 35568). The SEL is described in the regulations for the National Marine Sanctuary Program at 15 CFR 922.10.

The Northwest Straits appeared on the SEL in 1983 as "Washington state Nearshore" (48 FR 35568). It was made an Active Candidate under the name of Northern Puget Sound by the 1988 reauthorization of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. No. 100-627 section 205) (54 FR 41481). This notice expanded the study area beyond that initially recognized in the SEL. A Discussion Paper presenting the rationale for a federal Sanctuary entirely in state waters, a description of some of the threats to the marine resources, and suggestions for ways in which the Sanctuary could address those threats was drafted for public review in 1993. NOAA, in conjunction with the State Department of Ecology, held 24 focus group meetings throughout the study area in March 1995 to ensure accurate information was considered for developing a Draft Environmental Impact Statement/Management Plan (DEIS/MP). Three public focus group meetings were held in May 1995, followed by two workshops in summer 1995 dedicated to discussing issues of education and research within the proposed sanctuary.

Throughout Fiscal Year 1996, NOAA worked with the State Department of Ecology to synthesize information gathered during the 1995 meetings and workshops, in anticipation of releasing a DEIS/MP, which was not completed. The 1996 reauthorization of the NMSA and subsequent Congressional instructions gave NOAA specific guidance as to the designation process for the proposed Northwest Straits NMS. Section 10 of Public Law 104-283 provided that, "No designation of an area in the Northwest Straits in the State of Washington as a national marine

sanctuary under the National Marine Sanctuaries Act shall take effect unless that designation is specifically authorized by a law enacted after the date of enactment of this Act." Accompanying statements by Senator Murray and Representative Metcalf resulted in the formation of an independent Citizen's Advisory Commission (CAC) comprised of 15 members representing local governments, tribes, users, ports, and environmentalists, and two facilitators. The statements instructed NOAA to act as "technical advisors" to the CAC and to include recommendations from the CAC in any decision document regarding the Northwest Straits.

The CAC initiated meetings in May 1997, and completed a final report in August 1998. In reaching a consensus on how best to address protection in the region, the CAC recommended the creation of a federally-funded regional, voluntary program for the seven counties adjacent to the waters of the Northwest Straits. The CAC did not recommend that a National Marine Sanctuary be established or considered further and explicitly proposed that no new regulatory authority be created or introduced.

III. Action

In consideration of the designation guidance in the 1996 NMSA reauthorization; the direction from Senator Murray and Representative Metcalf that NOAA consider recommendations put forward by local committees or commissions; the CAC's failure to recommend designation or further consideration of a national marine sanctuary for the Northwest Straits; the CAC's recommendation that no new regulatory authority be introduced for management and protection of the resources of the Northwest Straits at this time; and limited agency personnel and budgetary resources (which the NMSP has determined are necessary to devote to existing rather than new sites at this time), NOAA is withdrawing the site from Active Candidate status. Further consideration of the Northwest Straits for designation as a National Marine Sanctuary is discontinued.

NOAA will publish a final report of fundings and recommendations to provide a tool to assist ongoing or new efforts for marine resource protection in the Northwest Straits. The report and additional materials and information about the Northwest Straits will be maintained at the NOAA Seattle Regional Library located at 7600 Sand Point Way NE, Seattle, Washington. In addition, the Northwest Straits web site

will include a downloadable version of the final report, and links to other relevant information. The web site address is <http://www.nwsnms.noaa.gov/> and will be on-line in October 1999.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 10, 1999.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99-24093 Filed 9-14-99; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee

ACTION: Notice of public meeting.

TIME AND DATE: September 28-29, 1999, beginning at 8 a.m. each day.

PLACE: National Interagency Fire Center, 3833 S. Development Avenue, Boise, Idaho 83705-5354.

STATUS: The meeting will be open to the public. On September 28, the time between 9:45 a.m. and 10:15 a.m. will be set aside for public comments regarding the proposed certifications of the Los Angeles (aviation), Redding, and Riverside, California, offices; the time between 1:15 p.m. and 1:45 p.m. will be set aside for public comments regarding the proposed certifications of the Fort Smith, Arkansas, office; and the time between 3 p.m. and 3:30 p.m. will be set aside for public comments regarding the Evansville, Indiana, office. On September 29, the time between 10:30 a.m. and 11 a.m. will be set aside for public comments regarding the proposed certifications of the Huntsville, Alabama, office. Approximately 50 seats will be available to the public on a first-come first-served basis.

MATTERS TO BE CONSIDERED: On September 28, consultation on the proposed closure of the Olympia and Wenatchee, Washington, and Salem, Oregon, fire weather offices, the Los Angeles (aviation), Redding, and Riverside, California, weather offices, and the Fort Smith, Arkansas, weather office; and consultation on the Evansville Area Action Plan. On September 29, consultation on the proposed closure of the Huntsville, Alabama, office and review of the remaining National Weather Service (NWS) offices proposed for modernization.

FOR FURTHER INFORMATION CONTACT:
Nicholas Scheller, NWS, Modernization
Staff, 1325 East-West Highway, Silver
Spring, Maryland 20910-3283.
Telephone: 301-713-0454.

Dated: September 9, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99-24009 Filed 9-14-99; 8:45 am]

BILLING CODE 3510-KE-M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel on Munitions will meet at Eglin AFB, Florida on November 15-19, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697-8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99-23980 Filed 9-14-99; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 15, 1999.

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 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 9, 1999.

William Burrow,

*Leader, Information Management Group,
Office of the Chief Information Officer.*

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54. Burden Hours: 6,400.

Abstract: The information contained in the Annual Performance Reports for Vocational Technical Education is needed to monitor the performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998, Report to Congress on the Levels of Performance Achieved on the core indicators of performance, provide necessary outcome information to meet the Office of Vocational and Adult Education's (OVAE's) Government Performance and Results Act (GPRA) goals for Vocational Technical Education, and provide documentation

for incentive awards under Title V of the Workforce Investment Act. The respondents include eligible agencies in 59 states and insular areas.

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 Sheila Carey at 202-708-6287 or electronically at her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-23985 Filed 9-14-99; 8:45 am]

BILLING CODE 4000-01-P

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 October 15, 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 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: September 9, 1999.

William E. Burrow,

*Leader, Information Management Group,
Office of the Chief Information Officer.*

Office of Vocational and Adult Education

Type of Review: New.

Title: Application for New Grants under the English Literacy and Civics Education Demonstration Grants Program.

Frequency: Annually.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 800. Burden Hours: 32,000.

Abstract: The application package includes the information needed to apply for grants under the English Literacy and Civics Education Demonstration Grants Program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890-0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Written comments and requests for copies of the proposed information collection request should be addressed to Danny Werfel, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 10235, Washington, DC 20503, or should be electronically mailed to the internet address werfel_d@al.eop.gov or should be faxed to 202-708-9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202-708-6287 or electronically at her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the

deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 99-23986 Filed 9-14-99; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: October 7, 1999 from 9 a.m. to 4 p.m.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Sandra Newkirk, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3100, ROB #3, Washington, D.C. 20202-5175. Telephone: (202) 708-5750. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

The meeting of the National Board is open to the public. The National Board will meet on Thursday, October 7, from 9 a.m. to 4 p.m. to provide an overview of the Fund's program status and special initiatives.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g.,

interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, S.W., Washington, D.C. 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: September 9, 1999.

Claudio Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99-24070 Filed 9-14-99; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility (DOE/EIS-0310)

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent (NOI).

SUMMARY: DOE's civilian nuclear research and isotope production infrastructure has diminished significantly since the early 1990s. As a result, DOE is no longer able to accommodate new and expanding missions for nuclear research and development and isotope production. The Department does not have sufficient steady-state neutron resources to meet all of its projected irradiation needs for: (1) The production of isotopes for medical and industrial uses, (2) the production of plutonium-238 for use in advanced radioisotope power systems for future National Aeronautics and Space Administration (NASA) space missions, and 3) the Nation's nuclear research and development needs.

Therefore, pursuant to the National Environmental Policy Act (NEPA), the Secretary of Energy recently announced DOE's intent to prepare a programmatic environmental impact statement (PEIS) on accomplishing these new missions through the proposed enhancement of the existing infrastructure, including the possible role of the Fast Flux Test Facility (FFTF), located at DOE's

Hanford Site near Richland, Washington.

This PEIS will analyze the potential environmental impacts of alternative ways to meet the projected irradiation needs for the next 35 years by enhancing the existing infrastructure as follows: (1) Resuming FFTF operation, (2) constructing and operating a research reactor at a generic DOE site, and (3) constructing and operating one or more neutron accelerators at a generic DOE site. In addition, the PEIS will analyze the potential environmental impacts of meeting the projected mission needs to the extent possible using existing reactor and neutron accelerator facilities.

The FFTF, DOE's largest operable reactor, is currently maintained in a standby mode with no fuel in the reactor vessel. The PEIS will include sufficient project-specific analyses of the FFTF to enable DOE to support a restart decision. In addition, since DOE may decide not to restart FFTF to meet the projected irradiation needs evaluated in this PEIS, the environmental impacts of deactivating the FFTF reactor will also be analyzed.

Consistent with the Council on Environmental Quality's NEPA regulations, a No Action alternative, i.e., maintaining the status quo, will be evaluated in this PEIS. Under No Action, DOE would continue to rely on the existing infrastructure for production of isotopes and nuclear research and development within the current operating envelope. No domestic capability to produce plutonium-238 for future space missions would be established.

DOE is now canceling the Plutonium-238 Production EIS, announced in the **Federal Register** on October 5, 1998 (63 FR 53398) and integrating the plutonium-238 production analyses into this PEIS. All oral and written comments received by DOE on the proposed scope of the Plutonium-238 Production EIS will be considered in preparing this PEIS.

DOE invites individuals, organizations, and agencies to submit oral and/or written comments regarding the scope of this PEIS, including the environmental issues and alternatives that the PEIS should analyze.

DATES: The public scoping period begins with the publication of this Notice in the **Federal Register** and will continue until October 31, 1999. Comments submitted by mail, facsimile (FAX), electronic mail (e-mail), or telephone will be considered in preparation of this PEIS. Comments received after this date will be considered to the extent

practicable. DOE will conduct public scoping meetings to assist in defining the scope of this PEIS including the significant environmental issues to be addressed. DOE will hold scoping meetings in Seattle and Richland, Washington; Portland and Hood River, Oregon; Oak Ridge, Tennessee; Idaho Falls, Idaho; and in the Washington D.C. area. The dates, times, and locations of these meetings are as follows:

- Oak Ridge, Tennessee, October 13, 1999, registration at 6 p.m., presentation at 7 p.m., at the American Museum of Science & Energy, 300 South Tulane Avenue
- Idaho Falls, Idaho, October 15, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Shilo Inn, 780 Lindsay Boulevard
- Seattle, Washington, October 18, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Seattle Center, 305 Harrison Street
- Portland, Oregon, October 19, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Marriott Hotel-Downtown Portland, 1401 SW Front Avenue
- Hood River, Oregon, October 20, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Hood River Inn, 1108 E. Marina Way
- Richland, Washington, October 21, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Best Western Tower Inn & Conference Center, 1515 George Washington Way
- Arlington, Virginia, October 26, 1999, registration beginning at 2 p.m., presentation at 2:30 p.m., at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway

ADDRESSES: Written comments on the scope of the PEIS, requests to speak at the public scoping meetings, requests for special arrangements to enable participation at the meetings (e.g., interpreter for the hearing-impaired), and questions concerning the project review, should be addressed to the DOE NEPA Document Manager: Ms. Colette E. Brown, Office of Nuclear Energy, Science and Technology (NE-50), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874.

Electronic mail (e-mail): *Nuclear.Infrastructure-PEIS@hq.doe.gov*; toll-free facsimile (FAX): 1-877-562-4592; or leave a message, toll-free, at telephone number 1-877-562-4593.

FOR FURTHER INFORMATION CONTACT: To request information about this PEIS, or to be placed on the PEIS document distribution list, contact Colette E. Brown at the above mailing/e-mail

addresses or toll-free telephone/FAX numbers. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, DC 20585-0119.

Telephone: 202-586-4600 or leave a message at 1-800-472-2756.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Agency Action

DOE recognizes that increased nuclear research, technology development, and educational programs are essential to support national nuclear energy programs and international collaboration. DOE believes that the availability of nuclear research reactor and accelerator facilities is necessary to implement a successful nuclear energy program. Under the authority of the Atomic Energy Act of 1954, as amended, DOE is responsible for serving the national need for a reliable supply of isotope products and services for medicine, industry, research, and space exploration. An adequate nuclear research and isotope production facility infrastructure is needed to continue these national services into the future at projected increased demand levels.

DOE's nuclear technology infrastructure is dwindling while the demand for steady-state neutron sources continues to increase to explore the use of nuclear science for analyzing and testing materials, nuclear fuels, electronic circuits, and other components; creating isotopes required by medical clinicians, researchers, government, and industry for a wide range of applications; and to produce plutonium-238 required to power deep space probes. Current supplies of isotopes are limited and the demand is projected to increase dramatically, particularly as research points toward additional medical applications for many radioisotopes. Resuming operations at the FFTF, building a new research reactor, or building new accelerator facilities, in conjunction with the existing DOE neutron sources, would provide adequate neutron source capacity to serve the nation's foreseeable nuclear research and development and isotope production needs. Therefore, DOE is proceeding with a NEPA evaluation (i.e., a Programmatic Environmental Impact Statement, [PEIS]) of potential enhancement to the nation's nuclear research and technology infrastructure to assure that the United States can support future nuclear research and isotope production activities.

This PEIS will analyze the potential environmental impacts resulting from accomplishing these new nuclear research and development and isotope production missions with (1) The existing operational DOE infrastructure; (2) the existing operational DOE infrastructure supplemented by the operation of the FFTF; (3) the existing operational DOE infrastructure supplemented by the construction and operation of a research reactor and supporting facilities at a generic DOE site; and (4) the existing operational DOE infrastructure supplemented by the construction and operation of one or more neutron-producing accelerators and supporting facilities at a generic DOE site. Impacts from the No Action alternative, as discussed below, will also be analyzed.

Background

DOE's nuclear research and isotope production infrastructure has diminished significantly since the early 1990s. The Department does not have sufficient steady-state neutron sources to meet all of its projected irradiation needs for: (1) The production of isotopes for medical and industrial uses, (2) the production of plutonium-238 for use in advanced radioisotope power systems for future NASA space missions, and (3) the Nation's nuclear research and development needs. On August 18, 1999, the Secretary of Energy announced DOE's intent to prepare a PEIS on accomplishing these new and expanded missions through the proposed enhancements of the existing infrastructure, including the possible role of the FFTF.

FFTF, the largest research reactor in the world, is a sodium-cooled research reactor located in the 400 Area of the Hanford Site, near the City of Richland, in southeastern Washington State. FFTF is currently defueled and usable fuel is stored on site in sodium fuel storage pools or in the secure vault at the Plutonium Finishing Plant at the Hanford Site. The reactor is in standby mode with the main cooling system operating at approximately 200°C (400°F), to keep the sodium coolant liquid and circulating. Essential systems, staffing, and support services are being maintained in a manner that will support either timely deactivation of the reactor or its restart. With minor modification, (e.g., the installation of a system to insert and remove irradiation targets while at power), the FFTF is capable of accomplishing new and expanded mission requirements discussed above.

Alternatively, all or most of the new and expanded mission requirements can

be achieved by the addition of a new research reactor or new neutron-producing accelerators to the existing infrastructure. The environmental impacts of the proposed new facilities (including support facilities) will be analyzed at a generic DOE site.

The Department does not have sufficient steady-state neutron generation capacity to meet all of the projected needs without impacting current missions at existing operating facilities. However, some of the mission objectives can be achieved with surplus capacity available at these existing operating facilities. The plutonium-238 mission objectives could be achieved at existing DOE research reactors or commercial light water reactor (CLWR) facilities. Surplus capacity exists at the Advanced Test Reactor (ATR) at the Idaho National Engineering and Environmental Laboratory and at the High Flux Isotope Reactor (HFIR) at the Oak Ridge National Laboratory. Implementation of plutonium-238 production at ATR and HFIR would consume nearly all of the available surplus capacity. Surplus capacity in these facilities and existing neutron-producing accelerators could be used to support medical and industrial isotope production and nuclear research and development missions to the extent possible without impacting existing missions. CLWRs cannot support most isotope production and research and development mission objectives without significantly impacting their primary mission, the production of electrical power. CLWRs were therefore dropped from further consideration for these missions.

This PEIS will analyze the environmental impacts of operating existing and new steady-state irradiation facilities, including both reactors and neutron accelerators, and existing and new support processing facilities to meet the mission objectives. In evaluating these alternatives the Department assumes:

- (1) None of these proposed missions is defense-related; and
- (2) The mission activities currently pursued at existing facilities (i.e., isotope production, nuclear research, etc.) are not changed in any of the alternatives.

Following is a brief discussion of the proposed new and expanded mission areas:

(1) Medical and Industrial Isotope Production

Medical isotopes are produced in the United States by the Department of Energy in nuclear accelerators and reactors, and by extracting them from

existing radioactive materials. These isotopes can be used for diagnosis or therapy. Diagnostic isotopes are used for imaging internal organs. Unlike conventional radiology, imaging with radioisotopes reveals organ function and structure, providing more accurate diagnostics data and early detection of abnormalities. In ongoing clinical testing, therapeutic isotopes have proven effective in the treatment of cancer and other illnesses by cell-directed localized radiation therapy (i.e., deploying antibodies or carriers of radioisotopes to seek and destroy invasive cancer cells). This directed therapy can minimize adverse side effects (e.g., healthy tissue damage, nausea, hair loss) making it an effective and attractive alternative to traditional chemotherapy or radiation treatments. An Expert Panel convened by the Department last year reviewed several industry projections relating to the future demand growth of medical isotopes. The Expert Panel believes that the growth rate of medical isotope usage could be significant over the next 20 years.

Industrial applications of radioisotopes fall into three broad categories, including nucleonic instrumentation, irradiation and radiation processing, and technologies that use radioactive tracers. Examples of nucleonic instrumentation include gauges for measuring physical parameters, such as: detection systems for pollutants, explosives, drugs, ores, petroleum, and natural gases; nondestructive testing by gamma radiography; and smoke detectors. Irradiation and radiation processing technologies include radiation sterilization of food and medical products, and the curing of plastics. Radioactive tracer applications include studies on chemical synthesis reactions; monitoring of mass transfer in industrial plants; analysis of transport and uptake of nutrients, fertilizers, herbicides, and waste materials in plants, soil, and groundwater; and laboratory-based studies on the properties of materials.

In supporting these mission activities, the Department does not expect to engage the commercial market itself. Rather, consistent with current isotope activities, the Department will work with the private sector to support private sector production and sale of isotopes. The Department prefers to provide irradiation services for the private sector using an appropriate fee structure and allow the private sector to take responsibility for producing and processing targets.

(2) Plutonium-238 Production

Under the Atomic Energy Act of 1954, as amended, DOE and its predecessor agencies have been developing radioisotope power systems and radioisotope heater units and supplying them to the National Aeronautics and Space Administration (NASA) for more than 30 years. The radioisotope used in these systems is plutonium-238. These systems have repeatedly demonstrated their value as enabling technologies in various NASA missions. DOE has projected that over the next 20 to 35 years, NASA will continue to conduct missions that require or would be enabled or enhanced by radioisotope power systems fueled with plutonium-238.

Under the National Space Policy issued by the Office of Science and Technology Policy in September 1996, and in accordance with its nuclear charter under the Atomic Energy Act, as amended, DOE has responsibility to assure that it maintains the capability to provide the nuclear infrastructure, including the plutonium-238, needed to support these missions. The Intersector Guidelines section of the National Space Policy state that "The Department of Energy will maintain the necessary capability to support space missions which may require the use of space nuclear power systems." DOE has estimated that up to 5 kilograms per year of plutonium-238 is required to support NASA requirements for future space missions.

Historically, the reactors and chemical processing facilities at DOE's Savannah River Site (SRS) were used to produce plutonium-238 by the irradiation of targets containing neptunium-237. The irradiated targets were moved from the reactor site to a chemical processing facility where the targets were processed and the plutonium-238 was recovered as an oxide powder. The remaining neptunium-237 was recovered for recycling into additional targets. The plutonium-238 oxide powder was then shipped to facilities for producing pellets that were in turn shipped to another DOE site to make the radioisotope power systems. As a result of the downsizing of the DOE nuclear weapons complex at the end of the Cold War, the reactors used to produce plutonium-238 at SRS were shut down. The radiochemical processing facilities at SRS are also planned to be shut down in the near future after existing supplies of radioactive materials no longer needed to support DOE's missions have been processed into a form suitable for long-term storage or disposal.

In 1992, DOE signed a contract to purchase plutonium-238 from Russia allowing the U.S. to purchase up to 40 kilograms of plutonium-238. Under this contract, DOE has purchased 9 kilograms of plutonium-238, and in 1997, extended the contract for another five years. This option, therefore, continues to be viable until at least 2002. However, the long-term viability of this option is unclear once the end of the current contract is reached. The political and economic climate in Russia creates uncertainties about the reliability of this source of plutonium-238 to satisfy future NASA space mission requirements. Moreover, limited information exists regarding the extent of the Russian supply, Russian plans on how they would satisfy future demand, and nuclear safety and nonproliferation implications of Russian production methods. Therefore, DOE proposes to reestablish a reliable domestic capability for producing and processing plutonium-238 to satisfy these foreseeable space mission requirements. Since the facilities previously used at SRS are no longer available for the production of plutonium-238, DOE needs to evaluate other existing DOE and commercial light water reactors and chemical processing facilities for target irradiation and separation of plutonium-238. The environmental impacts of purchasing plutonium-238 from Russia are evaluated and documented in the *Environmental Assessment of the Import of Russian Plutonium-238* (DOE/EA-0841, June 1993), prepared by DOE's Office of Nuclear Energy, Science and Technology.

On October 5, 1998, DOE published a Notice of Intent in the **Federal Register** (63 FR 53398) to prepare an EIS on the proposed production of plutonium-238 for use in advanced radioisotope power systems for future space missions. Since then, DOE has been preparing the draft EIS, giving consideration to the numerous comments submitted by the public during the scoping period last fall. During the public scoping of this EIS, DOE announced that FFTF would not be considered a reasonable alternative for that mission unless the facility was proposed to be restarted for other reasons. With the Secretary's recent announcement to prepare a PEIS which includes the possible restart of FFTF, the scope of the Plutonium-238 Production EIS has been consolidated into the scope of this PEIS. This PEIS will include the environmental impacts of re-establishing a domestic plutonium-238 production capability for future space missions. The Plutonium-238

Production EIS has been terminated as a separate NEPA review. However, all comments and input received from the public during the scoping period will be considered in the preparation of the draft PEIS to be prepared pursuant to this Notice.

(3) Support of Nuclear Research and Development

Materials Testing: Researchers from many different countries have used DOE's high flux research reactor facilities for nuclear materials testing and fuels research. These facilities, with the capability to maintain a high density of neutrons in a given test volume for materials testing, shorten the time needed for such testing, tailor the flux to simulate different reactors and reactor conditions, and instrument the core for close monitoring of tests. There is particular interest in materials testing related to commercial nuclear power plant license renewal, cooperative international fusion energy, space power technology, and transmutation of wastes as a means to destroy long-lived isotopes from commercial spent nuclear fuel. Activities considered within the scope of this PEIS will include those arising from international cooperation.

Nonproliferation Programs: Since October 1976, when President Gerald Ford issued a Nuclear Policy Statement prohibiting the export of reprocessing and other nuclear technologies that could contribute to proliferation of fissile materials, all U.S. Administrations have adopted policies aimed at minimizing the prospects that civilian plutonium separation would be adopted in other countries. At the same time, the U.S. has refrained from the commercial development of reprocessing and plutonium separation technologies. The U.S. policy is to advance global non-proliferation technology, while at the same time supporting the development of advanced, ultra-high burnup nuclear fuels. DOE's high flux research reactor facilities are ideally suited for the study, research, testing, development, and demonstration of technologies necessary to safely convert plutonium-based materials for disposition and use as proliferation-resistant fuels.

Alternatives To Be Evaluated

This PEIS will analyze the potential environmental impacts of using irradiation and processing facilities to meet projected irradiation service mission needs for 35 years, *i.e.*, (1) production of isotopes for medical and industrial uses, (2) production of up to five kilograms per year of plutonium-238 for use in advanced radioisotope

power systems for future NASA space missions, and (3) to support the Nation's nuclear research and development needs. This PEIS will not re-examine current missions conducted at existing, operating facilities, but rather assumes that these current activities will continue while new or expanded missions are pursued.

When applicable, the impacts of transporting radioactive feedstock material to the processing facility for storage, transporting radioactive material between the irradiation facility and the processing facility, and transporting the product to the user will be analyzed in this PEIS.

No Action

Under this alternative, DOE would maintain the *status quo*. The Department would not restart the FFTF and would maintain it in a standby mode. Production of isotopes for medical and industrial uses and existing irradiation services missions currently conducted at operating facilities would continue within the existing mission envelope. No domestic capability to produce plutonium-238 would be established. DOE would rely on its remaining inventory of plutonium-238 inventory to meet the power requirements of near-term space missions and would seek to negotiate for additional purchases from Russia to enable future space missions. The PEIS would evaluate two scenarios with respect to the neptunium-237 currently stored at the Savannah River Site: (a) The neptunium-237 aqueous nitrate solution stored at the Savannah River Site would be converted to a solid form suitable for disposal as evaluated in the *Final Environmental Impact Statement Interim Management of Nuclear Materials, Savannah River Site* (DOE/EIS-0220, October 1995); or (b) the neptunium-237, converted to an oxide form, would be transferred from the Savannah River Site to a new storage site to maintain a future option to produce plutonium-238. The three alternative facilities for the storage of the neptunium-237 are the Radiochemical Engineering Development Center in Oak Ridge, Tennessee; the Fluorinel Dissolution Process Facility near Idaho Falls, Idaho; and the Fuels and Materials Examination Facility in Hanford, Washington. The impacts of transporting neptunium-237 to the candidate storage facilities from the Savannah River Site will be evaluated.

Alternative 1—Restart FFTF

Under this alternative, the PEIS will analyze the potential environmental

impacts of resuming operation of FFTF to accomplish the identified missions. The FFTF is designed to operate at a maximum power level of 400 megawatts, but can achieve all the projected new and expanded mission requirements anticipated under this PEIS while operating at the 100 megawatt power level. This PEIS will analyze the FFTF for operations at the 100 megawatt power level. The FFTF has an onsite supply of mixed oxide (MOX) fuel (*i.e.*, plutonium-uranium) to support approximately 6 years of operation at the 100 megawatt level. When the onsite fuel is depleted the FFTF may continue to use MOX fuel or switch to a reactor core of highly-enriched uranium (HEU) fuel. The Department believes that an additional 15-year supply of MOX fuel is available from Germany under very favorable terms (*i.e.*, no charge for the fuel). This PEIS will evaluate 35 years of FFTF operation for two reactor core configurations: (1) MOX core for approximately 21 years followed by 14 years of operation with a HEU core, and (2) MOX core for approximately 6 years followed by 29 years of operation with a HEU core. The impacts of spent fuel produced by FFTF operation and for transporting German fuel to FFTF will be evaluated in the PEIS. The PEIS will include sufficient project-specific analyses of the FFTF to enable DOE to support a restart decision.

This PEIS will also analyze the impacts of performing medical, industrial, and plutonium-238 isotope processing operations associated with the identified missions in hot cell facilities in the DOE complex. Processing operations include storage of target and process feedstock material, fabrication of targets for irradiation, processing irradiated targets to separate the product and recycling the unconverted feedstock material for the fabrication of new targets.

The processing operations portion of this alternative includes three options. Because space is not available in currently operating facilities on the Hanford site to support all of the processing requirements for the identified missions, new or off-site facilities will be needed to support activities conducted using the FFTF. The first option incorporates the use of a large existing and never used hot cell facility located near the FFTF to support all process facility operations for the identified missions. The second and third options incorporate the use of off site processing facilities to support the plutonium-238 production mission in conjunction with the use of existing operational processing facilities at the

Hanford Site to support the FFTF in the remaining missions.

Option 1 will assess the impact of using the Fuels and Materials Examination Facility (FMEF) located near the FFTF in the 400 Area of the Hanford Site to support the FFTF missions.

Option 2 will assess the impact of using the Radiochemical Engineering Development Center (REDC) located in the Oak Ridge National Laboratory at Oak Ridge, Tennessee, in support of FFTF for the production of plutonium-238 and other existing facilities located in the 300 and 400 Areas of the Hanford Site to support the FFTF in the remaining mission areas (*i.e.*, production of medical and industrial isotopes and nuclear research and development).

Option 3 will assess the impact of using the Fluorinel Dissolution Process Facility (FDPF) located in the Idaho National Engineering and Environmental Laboratory near Idaho Falls, Idaho, in support of FFTF for the production of plutonium-238 and other existing facilities located in the 300 Area and 400 Area of the Hanford Site to support the FFTF in the remaining mission areas (*i.e.*, production of medical and industrial isotopes and nuclear research and development).

Alternative 2—Use Only Existing Operational Facilities to the Extent Possible

Under this alternative, the PEIS will analyze the potential environmental impacts of meeting the projected mission needs to the extent possible using only existing operational facilities (without FFTF). The Department's analyses indicate that the plutonium-238 production objectives can be met using existing facilities. However, should plutonium-238 production be conducted at existing facilities, significant new medical and industrial isotope production and nuclear research and development mission objectives cannot be achieved without impacting current missions at these facilities. This PEIS will analyze the impact of the continuing, existing isotope production and nuclear research and development missions at current levels as part of the No Action alternative. The cumulative impacts from operating the affected facilities for all missions will be addressed under this alternative. This PEIS will evaluate the potential impacts of nine options for plutonium-238 production, that is, the combinations of three reactor sites (for the irradiation of targets) with three different processing facilities (for the storage of neptunium-237, fabrication of neptunium-237

targets for irradiation, and the processing of irradiated targets to separate plutonium-238). The three reactor sites are the Advanced Test Reactor located at the Idaho National Engineering and Environmental Laboratory near Idaho Falls, Idaho; the High Flux Isotope Reactor located at the Oak Ridge National Laboratory, Oak Ridge, Tennessee; and a commercial light water reactor located at an undefined generic site. The three processing facilities, previously discussed under Alternative 1, are REDC, FDPF, and FMEF. The impacts of transporting neptunium-237 to the storage facility from the Savannah River Site (SRS); unirradiated and irradiated targets between the irradiation facilities and processing facilities; and plutonium-238 from the processing facilities to the Los Alamos National Laboratory in Los Alamos, New Mexico where it is processed for use in advanced radioisotope power systems, will be evaluated for each combination.

Alternative Sites for Plutonium-238 Production Target Irradiation

Advanced Test Reactor (ATR) at the Idaho National Engineering and Environmental Laboratory: Under this alternative, DOE would irradiate targets (fabricated from neptunium-237 currently stored at SRS) in the ATR to produce up to 5 kilograms per year of plutonium-238, the maximum annual production requirement for the plutonium-238 production mission under current planning. ATR is an operating test reactor with a primary programmatic mission to support the Naval Reactor Fuels Program. A prerequisite of applying this alternative is that no impacts to the primary mission of the reactor would be allowed. In addition, nuclear research and isotope production missions at the ATR would also continue within the facility's current mission envelope.

High Flux Isotope Reactor (HFIR) at the Oak Ridge National Laboratory: Under this alternative, DOE would irradiate neptunium-237 targets in HFIR to produce up to 2 kilograms per year of plutonium-238. HFIR is an operating research reactor with its main programmatic mission to support DOE's Office of Science. A prerequisite of applying this alternative is that no impacts to the primary mission of the reactor would occur. Nuclear research and isotope production missions at the HFIR would also continue within the facility's current mission envelope. The use of HFIR for production of small quantities of plutonium-238 is compatible with the primary neutron scattering and radioisotope production mission of that reactor. Production of plutonium-238 at a rate higher than two kilograms per year would disrupt experimental programs currently being conducted at HFIR. Use of HFIR for the plutonium-238 production would need to be supplemented by the ATR to meet the 5 kilograms per year production objective.

Commercial Light Water Reactor (CLWR) at a generic site location: Under this alternative, DOE would irradiate neptunium-237 targets in an existing CLWR to produce up to five kilograms per year of plutonium-238. A CLWR is an operating reactor with a primary mission to deliver electric power to the local power grid. A prerequisite of applying this alternative is that no impacts to the primary mission of the reactor would be allowed.

Under Alternative 2, the PEIS will also analyze the potential environmental impacts of meeting projected medical and industrial isotope production and nuclear research and development mission needs, to the extent possible (i.e., without impacting existing missions), using existing neutron spallation sources (i.e., neutron-producing accelerators), such as, for example, the Brookhaven LINAC Isotope Producer at Brookhaven National Laboratory in Upton, New York, or the Isotope Production Facility at Los Alamos National Laboratory in Los Alamos, New Mexico). The FFTF would be deactivated under Alternative 2.

Alternative 3—Construct New Accelerator(s)

Under this alternative, the PEIS will analyze the potential environmental impacts of constructing and operating one or more (if necessary, depending on power level requirements) new neutron-producing accelerators and new process facility at a generic DOE site for all identified missions. The role of the process facility is the same as in Alternative 1. Under Alternative 3, the FFTF would be deactivated.

Alternative 4—Construct New Research Reactor

Under this alternative, the PEIS will analyze the potential environmental impacts of constructing and operating a new research reactor and new process facility at a generic DOE site for all identified missions. The role of the process facility is the same as in Alternative 1. Under Alternative 4, the FFTF would be deactivated.

Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the PEIS. This list is neither intended to be all inclusive nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of this PEIS. Additions to or deletions from this list may occur as a result of the public scoping process:

- **Health and Safety:** Potential public and occupational consequences from construction, routine operation,

transportation, and credible accident scenarios;

- **Waste Management/Pollution Prevention:** Types of wastes expected to be generated, handled, and stored; pollution prevention opportunities and the potential consequences to public safety and the environment;

- **Hazardous Materials:** Handling, storage, and use; both present and future;

- **Background Radiation:** Cosmic, rock, soil, water, and air and the potential addition of radiation;

- **Water Resources:** Surface and groundwater hydrology, water use and quality, and the potential for degradation;

- **Air Quality:** Meteorological conditions, ambient background, sources, and potential for degradation;

- **Earth Resources:** Physiography, topography, geology, and soil characteristics;

- **Land Use:** Plans, policies, and controls;

- **Noise:** Ambient, sources, and sensitive receptors;

- **Ecological Resources:** Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;

- **Socioeconomic:** Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;

- **Natural Disasters:** Floods, hurricanes, tornadoes, and seismic events;

- **Cumulative Effects:** Including impacts from past, present, and reasonably foreseeable actions at and in the vicinity of the sites;

- **Unavoidable Adverse Impacts;**

- **Natural and Depletable Resources:** Requirements and conservation potential; and

- **Environmental Justice:** Any potential disproportionately high and adverse impacts to minority and low income populations.

Pending Decisions

This PEIS is only one of many inputs required for a decision to be made relating to the infrastructure to support new nuclear research and development and isotope production missions. Other elements that will provide major inputs into the decision process include:

- DOE's Nuclear Science and Technology Long-Range Research and Development Plan;

- DOE's Nuclear Science and Technology Infrastructure Road Map;

- Nonproliferation Study, a review of potential impacts to the U.S. nonproliferation policy from the

alternatives under consideration in the PEIS;

- Cost Study, a review of costs for the alternatives under consideration in the PEIS; and
- Implementation schedule for the alternatives under consideration in the PEIS.

The primary decision is related to the ability of DOE to support the future missions evaluated in the PEIS. DOE will make a decision whether its infrastructure should be enhanced to support these missions.

- If the decision is for enhancement, then subsequent decisions will be made relating to Alternatives 1, 3, and 4.

► If Alternative 1 (FFTF Restart) is selected for implementation, subsequent decisions will be made relating to the support facilities. The FMEF could support FFTF for all of the missions or existing operational onsite facilities in combination with either the REDC in the Oak Ridge National Laboratory or the FDPF at the Idaho National Engineering and Environmental Laboratory could support FFTF for all the missions.

► If Alternative 3 (New Accelerator(s)) or Alternative 4 (New Research Reactor) is selected, subsequent NEPA review would be required for site selection, construction, and operation of the facility(ies).

- If the decision is not to enhance or expand the infrastructure, then subsequent decisions will be made relating to No Action or Alternative 2 (Use Only Existing Facilities).

► If No Action Scenario 1 is selected, a subsequent decision would be required to determine if Russian plutonium-238 should be purchased to support future NASA space missions.

► If No Action Scenario 2 is selected, a subsequent decision would be required to determine if Russian plutonium-238 should be purchased to support future NASA space missions. In addition, the site for the storage of the neptunium-237 would be selected.

► If Alternative 2 is selected, a series of decisions are required: (1) The selection of neutron accelerator sites to support, to the extent possible, the medical and industrial isotope production and research and development missions; (2) the selection of the reactor option to support the plutonium-238 mission; and (3) the selection of the processing facility site to support the plutonium-238 mission.

DOE, in its Record of Decision (ROD), may elect to implement a combination of the pathways and/or individual elements within the outlined pathways.

Scoping Meetings

The purpose of this Notice is to encourage public involvement in the PEIS process and to solicit public comments on the proposed scope and content of this PEIS. Through this notice, DOE formally invites Federal, state, tribal, and other government agencies, as well as the public to comment on the scope of this PEIS. DOE will hold scoping meetings in Seattle, Washington, Portland, Oregon, Hood River, Oregon, Richland, Washington, Oak Ridge, Tennessee, Idaho Falls, Idaho, and Washington DC. The dates, times, and locations of these meetings are identified under **DATES** above.

In order to facilitate an understanding of the program's objectives, DOE personnel will also be available at the scoping meetings to explain the program to the public and answer any questions. DOE will designate a facilitator for the scoping meetings. At the opening of each meeting, the facilitator will establish the order of speakers and will announce any additional procedures necessary for conducting the meetings. To ensure that all persons wishing to make a presentation are given the opportunity, each speaker may be limited to five minutes except for public officials and representatives of groups, who will each be allotted ten minutes. DOE encourages those providing oral comments to also submit them in writing. Comment cards will also be available for those who prefer to submit their comments in written form. Speakers may be asked clarifying questions, but the scoping meetings will not be conducted as evidentiary hearings.

Toll-free telephone and facsimile (FAX) numbers have been established to receive public comments. Interested parties may call 1-877-562-4593 and leave a detailed message with their comments or FAX their comments to 1-877-562-4592. Comments will also be accepted by electronic mail. Interested parties may e-mail their comments to: Nuclear.Infrastructure-PEIS@hq.doe.gov

DOE will make transcripts of the scoping meetings and project-related materials available for public review in the following reading rooms:

U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 586-3142

Idaho National Engineering and Environmental Laboratory, DOE—Idaho Operations Office Public Reading Room, 1776 Science Center

Drive, Idaho Falls, ID 83415, Telephone: (208) 526-1144

Portland State University, Branford Price Millar Library, Government Documents Section, 951 Southwest Hall, Portland, OR 97207, Telephone: (503) 725-3690

U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge Public Reading Room, 230 Warehouse Road, Building 1916-T-2, Suite 300, Oak Ridge, TN 37830, Telephone: (423) 241-4780

Richland Public Library, 955 Northgate Drive, Richland, WA 99352, Telephone: (509) 942-7457

U.S. Department of Energy, Richland Operations Office, DOE Public Reading Room, 2770 University Drive CIC, Room 101L, Richland, WA 99352, Telephone: (509) 372-7443

University of Washington, Suzzallo Library, Government Publications Room, Seattle, WA 98195, Telephone: (206) 543-1937

Gonzaga University, Foley Center Library, East 502 Boone, Spokane, WA 99258, Telephone: (509) 323-6532

NEPA Process

The Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility will be prepared in accordance with the National Environmental Policy Act of 1969, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and DOE's NEPA Regulations (10 CFR part 1021).

A 45-day comment period on the draft PEIS is planned, and public hearings to receive comments will be held approximately 3 to 4 weeks after distribution of the draft PEIS. The draft PEIS is expected to be issued during the Spring 2000. Availability of the draft PEIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media when the draft PEIS is distributed.

The final PEIS, which will consider the public comments received on the draft PEIS, is expected to be published during the Fall 2000. No sooner than 30 days after the U.S. Environmental Protection Agency's notice of availability of the final PEIS is published in the **Federal Register**, DOE will issue its Record of Decision and publish it in the **Federal Register**.

Signed in Washington, D.C., this 10th day of September 1999.

David Michaels, PhD,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 99-24086 Filed 9-14-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 92-109-NG; 99-56-NG; 99-55-NG; 99-57-NG; 93-34-NG; 99-54-NG; 99-59-NG; 99-58-NG; 96-47-NG and 96-48-NG]

Kamine/Besicorp Beaver Falls L.P. et al.; Orders Granting, Amending and Vacating Authorizations to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and vacating natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at <http://www.fe.doe.gov>, or on the electronic bulletin board at (202) 586-7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on September 8, 1999.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING, AMENDING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

DOE/fe authority

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
746-A	8-11-99	Kamine/Besicorp Beaver Falls L.P. 92-109-NG.	.....	.....	Vacating long-term authority.
1504	8-13-99	Barrington Petroleum LTD. 99-56-NG	3.65 Bcf ...	.....	Import from Canada over a two-year term beginning on September 1, 1999, and extending through August 31, 2001.
1505	8-16-99	Sunoma Energy Corp. 99-55-NG	3.65 Bcf ...	.....	Import from Canada over a two-year term beginning on September 1, 1999, and extending through August 31, 2001.
1506	8-17-99	Conoco Inc. 99-57-NG	100 Bcf		Import and export from and to Canada and Mexico up to a combined total beginning on August 27, 1999, and extending through August 26, 2001.
795-A	8-19-99	TransCanada PipeLines Limited 93-34-NG	.....	.....	Amending long-term authorization to increase volumes from 1,405,000 Mcf per day to 1,717,000 Mcf per day for the remaining term through November 1, 2005.
1508	8-27-99	Reliant Energy Services, Inc. 99-54-NG ...	292 Bcf 292Bcf.	292 Bcf 292 Bcf.	Import and export from and to Canada, and import and export from and to Mexico, over a two-year term beginning on the date of first import or export.
1509	8-27-99	El Paso Energy Marketing Company 99-59-NG.	200 Bcf	Import from Mexico over a two-year term beginning on the date of first delivery after August 30, 1999..	
1510	8-27-99	El Paso Energy Marketing Company 99-58-NG.	.....	200 Bcf 200 Bcf	Export to Canada and export to Mexico over a two-year term beginning on the date of first delivery after September 30, 1999.
1188-A	8-31-99	Cinergy Marketing & Trading, LLC (Formerly Producers Energy Marketing, LLC) 96-47-NG.	.....	.....	Name change.
1189-A	8-31-99	Cinergy Marketing & Trading, LLC (Formerly Producers Energy Marketing, LLC) 96-48-NG.	.....	.....	Name change.

[FR Doc. 99-24084 Filed 9-14-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposal to change the data collection frequency of the Form EIA-820, Biennial Refinery Report, from biennial to annual.

DATES: Written comments must be submitted by November 15, 1999. If you anticipate difficulty in submitting comments within that period, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Stacey Ungerleider, Energy Information Administration, EI-42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Stacey Ungerleider may be reached by phone at (202) 586-5130, by e-mail stacey.ungerleider@eia.doe.gov, or by FAX (202) 586-5846.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stacey Ungerleider at the address listed above.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93-275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95-91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of

1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under section 3507(h) of the Paperwork Reduction Act of 1995.

The Form EIA-820 is used to collect data on the following items: Fuels consumed for all purposes at the refinery; refinery receipts of crude oil by method of transportation; current and projected capacities for refineries, specifically operable atmospheric crude oil distillation capacity, downstream charge capacity, and production capacity; and working and shell storage capacities.

Federal, State, and local governments as well as the private sector use these data to conduct research and to provide relevant and timely analysis on the refinery industry. Data from this survey is published by the Energy Information Administration in the Petroleum Supply Annual Volume I.

II. Current Actions

The Energy Information Administration is requesting a change in the frequency of collection for the Form EIA-820, Biennial Refinery Report. EIA proposes to use the Form EIA-820 to collect data on an annual basis in order to maintain a more accurate, up-to-date database for refinery capacity activity. Annual collection of this data will provide internal and external customers with the data to perform more extensive and accurate trend and feasibility costs analysis. Also, pending new environmental standards for motor gasoline and distillate fuel oil will impact the capability of U.S. refineries to produce new quality products in sufficient volumes to meet consumer demand. EIA's ability to assess this impact requires the most timely data available on refinery capacity. Data on a biennial basis is inadequate to meet this need.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 2 hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information.

Please comment on (1) The accuracy of the agency's estimate and (2) how the agency could minimize the burden of collecting this information, including the use of information technology.

D. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs; and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the method(s) of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Sec. 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, September 9, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99-24085 Filed 9-14-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99-500-000, CP96-178-012 and CP96-809-010]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 9, 1999.

Take notice that on September 2, 1999, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed to place into effect FERC Gas Tariff, First Revised Volume No. 1 as listed in the form attached as Appendix B to its filing.

Maritime states that it proposes to place its complete FERC Gas Tariff, First Revised Volume No. 1 into effect on November 1, 1999, which is consistent with the in-service date specified in the certificate for the Maritimes Phase II facilities. The tariff will allow Maritimes to provide firm or interruptible services to those customers desiring such services at this time as contemplated by the Orders of the Federal Energy Regulatory Commission dated July 31, 1998, (84 FERC 61,130 (1998)), and April 14, 1999, (87 FERC 61,061 (1999)).

Maritimes states that with the introduction of Rate Schedule MNLFT, additional conforming tariff changes are required. Specifically, Maritimes proposes to clarify that the MNIT rate for service on the lateral facilities shall be the 100% load factor rate of the applicable rate for the applicable Incremental Lateral. Also, Maritimes proposes to clarify that service under a firm mainline rate schedule does not include service on incrementally priced lateral facilities.

Maritimes states that complete copies of this filing are being mailed to potential customers and interested state commissions. Maritimes states that due to the voluminous nature of Appendix B, copies of this filing with Appendix B deleted are being mailed to all other parties on the Commission's Official Service Lists in the above referenced dockets. Copies of Appendix B will be made available upon request.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 24, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-24026 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-613-000]

Natural Gas Pipeline Company of America and Transcontinental Gas Pipe Line Corporation; Notice of Application

September 9, 1999.

Take notice that on September 7, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed a joint application with the commission in Docket No. CP99-613-000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon four natural gas exchange services, all as more fully set forth in the application which is open to the public for inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Natural and Transco, jointly, propose to abandon three natural gas exchange service performed under (1) Natural's FERC Rate Schedule X-59 and Transco's FERC Rate Schedule X-87; (2) Natural's Rate Schedule X-117 and Transco's Rate Schedule X-230; and (3) Natural's Rate Schedule X-135 and Transco's Rate Schedule X-247. Natural also proposes to abandon its portion of a natural gas exchange service with

Transco performed under Natural's Rate Schedule X-71. Transco has already abandoned in Docket No. CP98-236-000 its portion of the exchange service performed under Transco's Rate Schedule X-94. Natural and Transco state that they no longer require these four exchange services and that by letter agreements dated August 25, 1999, they have agreed to terminate the 1975, 1976, 1980, and 1981 agreements which resulted in the above Rate Schedules.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural and Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-24020 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP99-502-000]

**Nautilus Pipeline Co., L.L.C.; Notice of
Proposed Changes in FERC Gas Tariff**

September 9, 1999.

Take notice that on September 3, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective October 3, 1999.

Nautilus states that the purpose of this filing is to request authority to create a new rate schedule for service on Nautilus' Plant Discharge Facility. Nautilus proposes this service as a Preferred Short-Haul (PSH) Transportation Service that will be subordinate to service provided by Nautilus under Rate Schedules FT-1, FT-2 and FT-3, but higher in priority than interruptible service provided under Rate Schedule IT-1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 99-24028 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP99-496-001]

**Southern Natural Gas Company;
Notice of Proposed Changes to FERC
Gas Tariff**

September 9, 1999.

Take notice that on September 3, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2A, the following revised tariff sheets to become effective October 1, 1999:

Twenty-first Revised Sheet No. 94

On August 31, 1999, Southern submitted for filing certain tariff sheets in the above-reverenced proceeding. Southern states that the tariff sheets revise rates for jurisdictional service in order to reflect current and projected costs and changes in demand on Southern's interstate natural gas pipeline system. It has come to Southern's attention that a tariff sheet was inadvertently omitted from the August 31 filing. Southern files herewith such tariff sheet and requests that the Commission grant waivers as necessary to place the tariff sheet in effect on October 1, 1999.

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. 99-24025 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. GT99-68-000]

**Tennessee Gas Pipeline Company;
Notice of Gas Transportation
Agreement**

September 9, 1999.

Take notice that on August 31, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing an amended version of their Gas Transportation Agreement between Tennessee and Pemex y Petroquimica Basica originally filed on August 11, 1999 in Docket No. GT99-64-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 99-24019 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP99-380-002]

**Transcontinental Gas Pipe Line
Corporation; Notice of Tariff Filing**

September 9, 1999.

Take notice that on September 3, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing in the referenced docket a revised tariff sheet to its FERC Gas Tariff, Third Revised Volume No. 1. The effective date for the tariff sheet is August 1, 1999.

Transco states that the Commission's July 26 order granted Transco an extension of time until June 1, 2000 to

revise several specified GISB standards to Version 1.3 while Transco was developing its new computer system. On August 6, Transco filed to incorporate the Version 1.3 standards not covered by the extension of time. On August 20 the Commission issued an order approving Transco's August 6 compliance filing and directed Transco to incorporate standards 1.4.2, 1.4.5 and 2.4.5 as Version 1.3 which were omitted in the August 6 compliance filing.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

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. 99-24024 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP99-501-000]

Transcontinental Gas Pipe Line Corporation; Notice for Limited Waiver of Tariff Provision

September 9, 1999.

Take notice that on September 2, 1999, Transcontinental Gas Pipe Line Corporation (Transco), filed a Request for Limited Waiver of Tariff, Orders and Regulations in Docket No. RP99-501-000.

Transco states that it is seeking a limited waiver of the Commission's regulations and orders, as well as a limited waiver of certain provisions of Transco's FERC Gas Tariff related to Transco's nomination, scheduling and capacity release requirements, all to the extent necessary to assist in the orderly provision of transportation services on Transco's system for the first week of

the Year 2000, and all as more fully described therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before September 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-24027 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99-90-000]

City of Wichita, Kansas v. Western Resources, Inc.; Notice of Filing

September 9, 1999.

Take notice that on September 7, 1999, the City of Wichita, Kansas (Wichita) tendered for filing a "Complaint And Request For Enforcement Of Contract Terms And Cost Equalization" against Western Resources, Inc. (Western Resources). Wichita's Complaint alleges that Western Resources has priced certain affiliate power sales in a manner that is unjust, unreasonable, and unduly discriminated, and therefore unlawful under the Federal Power Act. Wichita seeks cost equalization within the Western Resources system as a remedy.

Copies of the Complaint were served, simultaneous with filing with the Commission, on Western Resources and on the Kansas Corporation Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests

must be filed on or before September 27, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222) for assistance. Answers to the complaint shall also be due on or before September 27, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-24022 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-4315-000, et al.]

The Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 9, 1999.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Company

[Docket No. ER99-4315-000]

Take notice that on August 31, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Louisiana-Pacific Corporation under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Louisiana-Pacific Corporation.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light and Power Company, Northeast Utilities Service Company, NRG Energy, Inc., Montville Power LLC, Middletown Power LLC, Devon Power LLC, Norwalk Power LLC and Connecticut Jet Power LLC

[Docket Nos. EC99-111-000 and ER99-4353-000]

Take notice that on September 1, 1999, The Connecticut Light and Power Company (CL&P), Northeast Utilities Service Company, NRG Energy, Inc.

Montville Power LLC, Middletown Power LLC, Devon Power LLC, Norwalk Power LLC and Connecticut Jet Power LLC (collectively, Applicants) tendered for filing an application under section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities associated with the sale of certain CL&P generating facilities. The Applicants also tendered for filing under section 205 of the Federal Power Act an interconnection agreement, a related Tariff No. 9 service agreement and a wholesale sales contract with respect to sales from certain generating units being sold by CL&P.

The Applicants state that copies of this filing have been sent to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER99-4316-000]

Take notice that on August 31, 1999, Western Resources, Inc. (Western Resources), tendered for filing an agreement between Western Resources and Public Service Electric & Gas. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the commission.

This agreement is proposed to become effective August 27, 1999.

Copies of the filing were served upon Public Service Electric & Gas and the Kansas Corporation Commission.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Supply Company, West Penn Power Company, and AYP Energy, Inc.

[Docket No. EC99-112-000]

Take notice that on September 2, 1999, Allegheny Energy Supply Company (AE Supply), West Penn Power Company (West Penn) and AYP Energy, Inc. (AYP) filed a Joint Application Under Section 203 Of The Federal Power Act For The Disposition Of Jurisdictional Facilities. The Applicants request Commission approval of the transfer to, and acquisition by, AE Supply of the following: (1) The portions of the step-up transformers associated with West Penn's shares of the generating facilities identified on Schedule 1 of the

Application, (2) the portion of the step-up transformer associated with AYP's 50 percent share of Fort Martin Unit 1, (3) West Penn's interests in two power supply agreements, (4) West Penn's share of the securities of Allegheny Generating Company, and (5) West Penn's pollution control notes listed on Schedule 2 of the Application which are associated with West Penn's transferred generating facilities.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Yankee Atomic Power Company

[Docket No. EC99-113-000]

Take notice that on September 3, 1999, Maine Yankee Atomic Power Company filed an application requesting authorization to dispose of certain jurisdictional facilities pursuant to section 203 of the Federal Power Act. The application involves the proposed sale of two 600 MVA main generator step-up transformers.

Comment date: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PSEG Tongzhou Cogen Power Ltd.

[Docket No. EG99-222-000]

Take notice that on September 3, 1999, PSEG Tongzhou Cogen Power Ltd. (PSEG Tongzhou) with its principal office at Clarendon House, Church Street, Hamilton HMCX, Bermuda filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Tongzhou is a company organized under the laws of Bermuda. PSEG Tongzhou will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a coal-fired, co-generation, electric generating facility consisting of three pulverized 75 ton coal-fired boilers and two 15 megawatts steam turbine generators and incidental facilities located within the Tongzhou Development Zone, outside Tongzhou City, Jiangsu Province, PRC; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. PSEG Zuojiang Hydropower Ltd.

[Docket No. EG99-223-000]

Take notice that on September 3, 1999, PSEG Zuojiang Hydropower Ltd. (PSEG Zuojiang) with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Zuojiang is a company organized under the laws of Mauritius. PSEG Zuojiang will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a hydropower electric generating facility consisting of three 24 megawatt hydro-turbine generators and incidental facilities located along the Zuojiang River, Nanning Prefecture, Guangxi Zhuang Autonomous Region, PRC; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Pacific Gas and Electric Company

[Docket No. EL99-91-000]

Take notice that on September 8, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing, a Petition for Declaratory Order. This petition for declaratory relief requests a declaratory order from the Commission providing guidance on whether it is appropriate for PG&E to use a proposed revenue-sharing for certain categories of products and services which utilize PG&E's jurisdictional transmission assets. The subject product and services are outside the scope of PG&E's traditional tariffed FERC-jurisdictional products and services.

Copies of this petition have been served upon the California Public Utilities Commission.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER99-4352-000]

Take notice that on September 1, 1999, Illinois Power Company filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ellen V. Futter

[Docket No. ID-3082-001]

Take notice that on August 31, 1999, Ellen V. Futter filed an Application for Authority to Hold Interlocking Positions pursuant to Section 305(b) of the Federal Power Act and Part 45 of the Commission's regulations.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. J. Douglas Divine and J. Christopher Allen, Sr.

[Docket Nos. ID-3416-000 and ID-3417-000]

Take notice that on August 27, 1999, the following officer and director of El Dorado Energy, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) abbreviated applications pursuant to Section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (1994), and the Commission's Order in El Dorado Energy, LLC, 85 F.E.R.C. (CCH) ¶ 61,006 (1998), to hold jurisdictional interlocks:

J. Douglas Divine

J. Christopher Allen, Sr.

Comment date: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket Nos. OA96-64-005 and ER96-1552-002]

Take notice that on September 1, 1999, The Dayton Power and Light Company (Dayton) tendered for filing a refund compliance report in accordance with the Commission's Order approving the settlement in Docket Nos. OA96-64-004 and ER96-1552-001.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Mid-Continent Area Power Pool

[Docket Nos. OA97-163-005, ER97-1162-004 and OA97-658-005]

Take notice that on September 1, 1999, the Mid-Continent Area Power Pool (MAPP) tendered for filing a supplemental compliance filing in the above-reference dockets, regarding elimination of border system tariff charges associated with service under MAPP's Schedule F.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Mid-Continent Area Power Pool

[Docket Nos. OA97-163-006, ER97-1162-005 and OA97-658-006]

Take notice that on September 1, 1999, the Mid-Continent Area Power Pool (MAPP) tendered for filing its compliance filing to the Commission's order in *Mid-Continent Area Power Pool*, 88 FERC ¶ 61,157 (1999), regarding MAPP's Schedule F.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Mobile Energy LLC

[Docket No. QF96-103-002]

Take notice that on August 31, 1999, Mobile Energy LLC located at Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, IL 60062 filed with the Federal Energy Regulatory Commission (Commission) Notice of Certification of a facility as a qualifying cogeneration facility pursuant to 292.207(b) of the Commission's regulations. No determination has been made by the Commission that the submittal constitutes a complete filing.

The facility located at the Hob Bayou Energy Center, formerly known as the Mobile Energy Center, is a gas turbine combined cycle cogeneration facility that uses natural gas as its fuel source. The facility includes one combustion turbine generator, with a rated capacity of approximately 168,300 kW at ISO conditions, a heat recovery steam generator, and a condensing steam turbine generator rated at approximately 75,000 kW. The facility will be located at the Hob Bayou Energy Center in Mobile County, Mobile Alabama.

The Facility will interconnect directly with the transmission system of Alabama Power Company located in Birmingham, Alabama, and will sell its useful output at wholesale to various qualified buyers.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Minnesota Power, Inc.

[Docket No. ER99-4306-000]

Take notice that on August 30, 1999, Minnesota Power, Inc., tendered for filing a signed Service Agreement with TransAlta Energy Marketing (U.S) Inc., under its market-based Wholesale Coordination Sales Tariff (WCS-2) to satisfy its filing requirements under this tariff.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ER99-4307-000]

Take notice that on August 31, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and East Bay Municipal Utility District for acceptance by the Commission.

The ISO states that this filing has been served on East Bay Municipal Utility District and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of August 19, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and Power Authority of the State of New York; New York Power Pool

[Docket Nos. ER97-1523-015, OA97-470-014 and ER97-4234-012 (not consolidated)]

Take notice that on September 1, 1999, the Member Systems of the New York Power Pool (Member Systems), tendered for filing certain revised tariff sheets to their ISO Open Access Transmission and ISO Services Tariffs. The Member Systems state that these tariff sheets contain errata to the tariffs accepted by the Commission in its July 29 Order in these dockets. *Central Hudson Gas & Electric Corp., et al.*, 88 FERC ¶ 61,138 (1999).

The Member Systems request that the above-referenced tariff sheets become effective October 12, 1999.

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER98-3853-006]

Take notice that on September 1, 1999, the New England Power Pool (NEPOOL) Participants Committee tendered for filing the Forty-Third Agreement Amending New England

Power Pool Agreement. The NEPOOL Participants Committee states that the changes are to comply with the Commission's June 22, 1999 order in the captioned docket to remove the enhanced interconnection study option from Section 49 of the NEPOOL Tariff.

The NEPOOL Participants Committee states that copies of these materials were sent to the participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4304-000]

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Georgia Power Company

[Docket No. ER99-4308-000]

Take notice that on August 31, 1999, Georgia Power Company (Georgia Power), tendered for filing Notice of Cancellation of its FERC Electric Tariff, First Revised Volume No. 3 (Transmission Service). Georgia Power proposes to cancel this rate schedule because it now provides transmission service under Southern's open access transmission tariff. Georgia Power's action has no effect on its Integrated Transmission Service Agreements with Georgia Transmission Corporation, Municipal Electric Authority of Georgia and the City of Dalton, Georgia.

Since no customers would be affected by this action, Georgia Power requests that the cancellation be made effective August 31, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER99-4309-000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with PacifiCorp.

A copy of the filing was served upon PacifiCorp.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. American Electric Power Service Corporation

[Docket No. ER99-4310-000]

Take notice that on August 31, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Reliant Energy Services, Inc. Both of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after August 1, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER99-4311-000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City of Pasadena Department of Water & Power (Pasadena).

A copy of the filing was served upon Pasadena.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Puget Sound Energy, Inc.

[Docket No. ER99-4312-000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Pacific Northwest Generating Cooperative (PNGC).

A copy of the filing was served upon PNGC.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER99-4313-000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long Term Firm Point-To-Point Transmission Service with Power Resources Cooperative (PRC), as Transmission Customer.

A copy of the filing was served upon PRC.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Electric and Gas Company

[Docket No. ER99-4314-000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to GPU Advanced Resources, Inc. (GPU), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon GPU and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. The Detroit Edison Company

[Docket No. ER99-4317-000]

Take notice that on August 31, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS-2), FERC Electric Tariff No. 3 (the WPS-2 Tariff), between Detroit Edison and Constellation Power Source, Inc.

Detroit Edison requests that the Service Agreement be made effective as of August 31, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Entergy Services, Inc.

[Docket No. ER99-4318-000]

Take notice that on August 31, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Letter Agreement

between Entergy Services, Inc. and Cajun Electric Power Cooperative, Inc., for the installation of the Holton delivery point off of Entergy's Line No. 114 (69kV).

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Electric and Gas Company

[Docket No. ER99-4319-000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to The Mack Services Group (Mack) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon Mack and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Electric and Gas Company

[Docket No. ER99-4320-000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to UGI Utilities, Inc. (UGI), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon UGI and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Public Service Electric and Gas Company

[Docket No. ER99-4321-000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Cleco Corporation (Cleco), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the

agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon Cleco and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Pacific Gas and Electric Company

[Docket No. ER99-4323-000]

Take notice that on September 1, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing proposed changes in its Transmission Owner Tariff (TO Tariff) and Cost Support for PG&E specific rates associated with the TO Tariff.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. PG&E provides cost support for PG&E's proposed transmission access charges and PG&E requests that the Commission establish the transmission revenue requirement to be used in designating wholesale and retail transmission access charges, but that it defer to the California Public Utilities Commission (CPUC) on the allocation of costs among retail classes and the design of retail access charges based on the allocated costs.

PG&E requests that its filing be made effective upon the end of the 60-day prior notice period specified in Section 35.3 (18 CFR 35.3).

Copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. GreenMountain.com

[Docket No. ER99-4324-000]

Take notice that on August 30, 1999, Green Mountain Energy Resources, L.L.C., tendered for filing pursuant to the Commission's June 2, 1999 Order issued in Docket No. ER99-2489-000, notification of change in status. Green Mountain Energy Resources advises that Green Mountain Energy Resources, L.L.C., merged into GreenMountain.com Company a Delaware Corporation. The company's ownership, affiliate status, operation, and assets were unaffected by the merger. GreenMountain.com does not have the ability to engage in anti-competitive actions, does not own or control generation or transmission facilities, and does not have an affiliation with any entity that owns generation or transmission facilities nor has a franchised service area. In

addition GreenMountain.com notes that the company has not engaged in wholesale sales with a wholesale company.

GreenMountain.com hereby adopts, ratifies, and makes its own in every respect rate schedule FERC No. 1, previously filed by Green Mountain Energy Resources L.L.C.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. New England Power Pool

[Docket No. ER99-4325-000]

Take notice that on August 31, 1999, the New England Power Pool (NEPOOL or Pool) Participants Committee filed a request for termination of membership in NEPOOL, with an effective date of September 1, 1999, of Columbia Energy Power Marketing Corporation (CEPM). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by CEPM. The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that termination of CEPM's membership with an effective date of September 1, 1999 would relieve this entity, at CEPM's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove CEPM from membership in the Pool.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. New England Power Pool

[Docket No. ER99-4326-000]

Take notice that on August 31, 1999, the New England Power Pool Participants Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Northeast Generation Company (Northeast Generation). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Northeast Generation's signature page would permit NEPOOL to expand its membership to include Northeast Generation. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Northeast Generation a member in NEPOOL.

The Participants Committee requests an effective date of November 1, 1999,

for commencement of participation in NEPOOL by Northeast Generation.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Southwest Power Pool, Inc.

[Docket No. ER99-4327-000]

Take notice that on August 31, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing changes to its Open Access Transmission Tariff intended to replace the use of a megawatt-mile pricing structure for determining the rates for short-term and non-firm point-to-point transmission services with the use of a zone-based structure.

SPP requests an effective date of November 1, 1999 for these changes.

Copies of this filing were served upon members and customers of SPP, and on all affected state commissions.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Pennsylvania Power Company

[Docket No. ER99-4328-000]

Take notice that on August 31, 1999, Pennsylvania Power Company (Penn Power), tendered for filing a supplement to its Electric Service Agreement (Agreement) with the Borough of Wampum, Pennsylvania (Borough), designated as Penn Power's Rate Schedule FERC No. 48. Penn Power states that the supplement extends service under the Agreement for an additional five-year period beginning September 1, 1999.

Penn Power requests an effective date of September 1, 1999, for the supplement.

Penn Power states that it has served a copy of the filing upon the Borough and the Pennsylvania Public Utility Commission.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. California Independent System Operator Corporation

[Docket No. ER99-4329-000]

Take notice that on August 31, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and East Bay Municipal Utility District for acceptance by the Commission.

The ISO states that this filing has been served on East Bay Municipal Utility District and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective August 19, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-4339-000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc., (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-24018 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11480-001, Alaska]

Haida Corporation; Notice of Availability of Draft Environmental Assessment

September 9, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the

application for an original license for Haida Corporation's proposed Reynolds Creek Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project would be located about 10 miles east of Hyaburg, Alaska on Prince of Wales Island. The DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Commission's Public Reference Room, Room 2A, at 888 First Street, NE., Washington, DC 20426, and on the web at <http://www.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

Any comments to this DEA should be filed within 45 days from the date of this notice and addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, please contact Nan Allen, Project Coordinator, at (202) 219-2238.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-24021 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

September 9, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Declaration of Intention.
- b. *Docket No:* D199-9-000.
- c. *Date Filed:* August 11, 1999.
- d. *Applicant:* San Juan Guest Ranch.
- e. *Name of Project:* Coal Creek Hydro Project.
- f. *Location:* In Ouray County, at the MacTierman's San Juan Guest Ranch, 2882 County Road 23, Ridgeway, CO 814324. The project does not utilize Federal or tribal lands.
- g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
- h. *Applicant Contact:* Scott MacTiernan, San Juan Guest Ranch,

2882 County Road 23, Ridgeway, CO 814324, telephone number (970) 626-5360, or E-Mail address: sjgr@rmi.net.

i. *FERC Contact*: Any questions on this notice should be addressed to Diane M. Murray at (202) 219-2682, or E-mail address: Diane.murray@ferc.fed.us.

j. *Deadline for filing comments and/or motions*: October 18, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the docket number (DI99-9-000) on any comments or motions filed.

k. *Description of Project*: The site consists of: (1) An intake; (2) a 2,300-foot-long penstock; (3) a powerhouse with a total generating capacity of 100 kW; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not to project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

1. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A Washington, DC 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Dos. 99-24023 Filed 9-14-99; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00617; FRL-6096-5]

Application for an Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only; Renewal of Information Collection and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Application for an Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only (OMB Control No. 2070-0040; EPA No. 0276.09)." This is a request to renew an existing ICR that is currently approved and is due to expire November 30, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number "OPP-00617," must be received on or before November 15, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 703-305-5454, fax: 703-305-5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

An application for an EUP may be submitted by any company or person wishing to generate information necessary to register a product under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in accordance with the regulations found in 40 CFR 172.2(a). The applicant may be a potential registrant, an independent researcher or testing laboratory, or any similar agent or consultant of a manufacturer.

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals	Persons seeking an experimental use permit

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
		287—Agricultural chemicals	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have a conditional pesticide registration with the Agency. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register - Environmental Documents** entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgstr/>). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice.

B. Fax-on-Demand

Using a faxphone call 202-401-0527 and select item 6075 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number OPP-00617, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703-305-5805.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP-00617, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703-305-5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP-00617. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked 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 also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the EPA and OMB ICR numbers, if available.

IV. What Information Collection Activity or ICR Does This Notice Apply to?

EPA is seeking comments on the following ICR:

Title: Application for an Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

ICR numbers: EPA ICR No. 0276.09; OMB No. 2070-0040.

ICR status: This is a renewal of an existing ICR that is currently approved by OMB and is due to expire November 30, 1999. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: This information collection program provides the EPA with the data necessary to determine whether to issue an EUP under section 5 of FIFRA, as amended. FIFRA requires that before a pesticide product may be distributed or sold in the U.S. it must be registered by EPA. However, section 5 authorizes EPA to issue EUP's which allow pesticide companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUP's are either issued for a pesticide not registered with the Agency or for a registered pesticide for a use not registered with the Agency.

The information collected and reported under an EUP is a summary of that which is routinely submitted in connection with registration. The EUP allows for large scale field testing, if necessary, in order to collect sufficient data to support registration. An EUP is not required if the person conducting the tests does not expect to receive benefits in pest control.

EPA Form 8570-17, Application for an Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only, is filed by the prospective registrant for a permit to generate information or data necessary to register a pesticide under section 3 of FIFRA. This information from the applicant is necessary in order to grant and effectively monitor the EUP. Beyond the information as supplied on EPA Form 8570-17, is a final report on

the results of the experimental program which includes information such as: Amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticide material, and affected food/feed commodities. If the food/feed commodities treated under the terms of an experimental use permit are to be shipped in commerce, the applicant must also submit a petition for temporary tolerance pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Application for an Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only program is estimated to average 10.10 hours per application. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: EUP applicants.

Estimated total number of potential respondents: 75.

Frequency of response: Only when an application is made.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 757.5.

Estimated total annual burden costs: \$61,297.50.

VI. Are There Changes in the Estimates from the Last Approval?

Yes. The change in respondent burden hours, from 1,262.50 to 757.50

hours per year is a result of the estimated reduction in the number of annual respondents, from 125 to 75. The change in annual respondent cost is a result of the estimated increase in hourly rates.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection,
Information collection requests.

Dated: September 2, 1999.

Susan H. Wayland,

*Deputy Assistant Administrator for
Prevention, Pesticides and Toxic Substances.*

[FR Doc. 99-23710 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6439-4]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this notice, the Environmental Protection Agency (EPA) is requesting applications for consideration at the Twelfth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol) to be held in 2000, for exemptions to the production and import phaseout in 2001 and subsequent years for ozone-depleting substances (including halons 1211 and 1301, CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, CFC-13, CFC-111, CFC-112, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, CFC-216, CFC-217, carbon tetrachloride, and methyl chloroform).

DATES: Applications for essential use exemptions must be submitted to EPA no later than November 1, 1999 in order for the United States (U.S.) government to complete its review and to submit nominations to the United Nations Environment Programme (UNEP) and the Protocol Parties in a timely manner.

ADDRESSES: Send three copies of application materials to: Erin Birgfeld, Stratospheric Protection Division (6205J), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. If submitting applications by courier, the office address is 501 3rd Street, NW, Washington, DC 20001. Send one copy of application materials to: Air Docket A-93-39, 401 M Street, S.W. (6102), Room M1500, Washington, D.C. 20460.

Confidentiality: Applications should not contain confidential or proprietary information. Such information should be submitted under separate cover and should be identified by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth at 40 CFR Part 2, Subpart B (41 FR 36902). If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Erin Birgfeld at the above address or at (202) 564-9079 telephone, (202) 565-2095 fax, or birgfeld.erin@epa.gov. General information may be obtained from the Stratospheric Ozone Hotline at 1-800-296-1996.

SUPPLEMENTARY INFORMATION:

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- I. Background—The Essential Use Nomination Process
- II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2001 and Subsequent Years

I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) notices (58 FR 29410, May 20, 1993; 59 FR 52544, October 18, 1994; 60 FR 54349, October 23, 1995; 61 FR 51110, 0 30, 1996, 62 FR 51655, October 2, 1997; and 63 FR 42629, August 10, 1998), the Parties to the Protocol agreed during the Fourth

Meeting in Copenhagen on November 23–25, 1992, to accelerate the phaseout schedules for Class I ozone-depleting substances. Specifically, the Parties agreed that non-Article 5 Parties (developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other Class I substances, except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing "essential use" exemptions from the phaseout of production and importation of controlled substances. Language regarding essential uses was added to the Protocol provisions in Article 2 governing the control measures. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25 states that "* * * a use of a controlled substance should qualify as "essential" only if: (i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances. * * *

At the Eighth Meeting of the Parties in 1996, the Parties established a new timetable for nomination of essential uses. Pursuant to Decision VIII/9, Parties may nominate a controlled substance for an exemption from the production and consumption phaseout by January 31 of each year to the Ozone Secretariat. Further detail on the essential use process is provided later in this section.

Each year, the Parties to the Protocol have approved an unlimited, global essential use exemption for the production and consumption of high purity ozone depleting substances for use in laboratory and analytical techniques. EPA has implemented this exemption domestically through regulation. However, beginning January 1, 2000 EPA will no longer be able to allow laboratory essential use

exemptions for CFCs and carbon tetrachloride for the following reasons. The Clean Air Act (the Act) provides for specific exemptions to the phaseout of ozone-depleting substances, while the Protocol does not specify exemptions but establishes a process for the parties to determine what are essential uses beyond the phaseout dates. Thus, a use that is permitted under the Protocol may or may not be permitted under the Act. The phaseout schedule for class I substances in section 604 of the Act is less stringent than the Protocol phaseout schedule. For the past several years, EPA has been able to modify its regulations to authorize production of ozone-depleting substances for essential uses allowed under the Protocol, without regard to whether the Act contains exceptions for those uses, as long as the total authorized production did not exceed the amount permitted under section 604 of the Act. However, January 1, 2000 is the phaseout date under section 604 of the Act for all class I substances with the exception of methyl chloroform and methyl bromide. The phaseout dates for methyl chloroform and methyl bromide are January 1, 2002 and January 1, 2005, respectively. After the phaseout date for a particular substance has passed, EPA will no longer be able to authorize production of that substance unless the Act specifically authorizes it do so.

The Act's specific exemption provisions include the following. Section 604 (d)(2) of the Act states that notwithstanding the phaseout, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I substances for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary. Section 604(d) (3) states that EPA may, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of halon-1211, halon-1301, and halon-2402 solely for the purpose of aviation safety, if the Federal Aviation Administration, in consultation with EPA, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes. Section 604(d)(1) provides that during the period from January 1, 2002 to January 1, 2005, EPA may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications for which no safe and effective substitute is available. EPA cannot use any of these three exemptions to authorize any person to

produce a class I substance in annual quantities greater than 10 percent of that person's baseline. Section 604(g)(3) of the Act provides that EPA may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 after December 31, 1999 and before December 31, 2004 for use in fire suppression and explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if EPA, in consultation with the U.S. Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes. EPA cannot use this exemption to authorize any person to produce any of these halons in an amount greater than 3 percent of that person's baseline. Finally, section 604(f) states that the President may, to the extent consistent with the Montreal Protocol, provide an exemption for production of CFC-114, halon-1211, halon-1301, and halon-2402 as necessary to protect U.S. national security interests, if the President finds that adequate substitutes are not available and that the production and use of the substance are necessary to protect national security interests.

Since the Act does not specifically list laboratory uses as an exemption to the ban on production and consumption of class I substances, EPA cannot exempt CFCs and carbon tetrachloride for laboratory use after January 1, 2000. The exemptions for laboratory use of methyl chloroform and methyl bromide will cease on January 1, 2002, and January 1, 2005 respectively.

Applicants should be aware that essential use exemptions granted to the U.S. for the year 2000 under the Protocol were limited to chlorofluorocarbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The first step in the process to qualify a use as essential under the Protocol is for the user to consider whether the use of the controlled substance meets the Decision IV/25 criteria. The user should then notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under Decision IV/25. A full description of the application process is given in section II.

Upon receipt of the essential use exemption application, EPA reviews the information provided and works with

other interested Federal agencies to determine whether it meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs is to determine that the aggregate request for a particular out-year adequately reflects the market penetration potential and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not incorporate such assumptions, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted to the Ozone Secretariat by the U.S. and other Parties are then forwarded to the UNEP Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential and issue the necessary exemption from the production phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Act.

The timing of the reviews is such that in any given year the Parties review nominations for exemption from the production phaseout intended for the following year and any subsequent years. This means that, if nominated, applications submitted in response to today's notice for production in 2001 and beyond will be considered by the Parties in 2000 for final action.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2001 and Subsequent Years

Through this notice, EPA requests applications for essential use exemptions for all Class I substances, except methyl bromide, for 2001 and subsequent years. This is the last opportunity to submit applications for 2001; applicants will have an opportunity to submit applications for 2002 and beyond next year. All requests for exemptions submitted to EPA must present the information relevant to the application as prescribed in the TEAP "Handbook on Essential Use Nominations" (Handbook) as last published in 1997. The Handbook is available electronically on the web at

www.teap.org. As noted earlier, the TEAP handbook was revised to incorporate Decision VIII/10 adopted by the Parties at their Eighth Meeting, in November 1996. Decision VIII/10 requires applicants to expand on information provided in previous nominations as well as provide new information. Since the U.S. government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 43) and the accounting framework matrix (page 41). Applicants should also note that reformulation information is required from all drug sponsors, irrespective of whether they manufacture their own product or contract with a filler to produce their product.

The accounting framework matrix in the Handbook is titled, "IV. Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical Applications." The data requested in column H, On Hand Start of Year, is the total quantity of each controlled substance that an applicant has on hand as of January 1st of the year in question, whether the material is held for the applicant under contract or is on-site at the facility, and whether the material was produced prior to the phaseout or obtained after the phaseout. The data requested in column J, Used for Essential Use, is the gross total quantity of the controlled substance that was used in the essential-use process, including amounts emitted, used in cleaning equipment, recycled or destroyed. Parties have been asked to request this information from companies, and these forms will assist the EPA in preparing a complete and comprehensive nomination. In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society
- Alternatives to use, including education programs on alternatives
- Steps to minimize use, including development of CFC-free alternatives
- Steps to minimize emissions
- Amount of substance available through recycling and stockpiling
- Quantity of controlled substances requested by year.

EPA anticipates that the 2000 review by the Parties of MDI essential use requests will focus extensively on research efforts underway to develop alternatives to CFC MDIs, on education programs to inform patients and providers of the phaseout and the transition to alternatives, and on steps

taken to minimize CFC use and emissions including efforts to recapture or reprocess the controlled substance. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants can strengthen their exemption requests by submitting a complete set of education materials and including copies of printed, electronic or audio-visual tools. Applicants are given notice that exemption requests without adequate information on research and education will not be considered complete.

Applicants should submit their exemption requests to EPA as noted in the Addresses section at the beginning of today's notice.

Dated: September 9, 1999.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 99-24046 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6438-9]

Draft Guidance for Improving Air Quality Through Economic Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Today EPA announces the availability of draft guidance for States that wish to use an economic incentive program (EIP) to achieve air quality improvements. The draft guidance—"Draft Economic Incentive Program Guidance (EPA-452/D-99-001, July 1999)"—is a comprehensive update of EPA's 1994 EIP rule and guidance. (59 FR 16690), with regard to discretionary EIPs. It also incorporates some components of EPA's 1995 proposed model rule for open market trading (60 FR 39668), as well as the comments received on that proposed rule. With this guidance, EPA seeks to encourage cost effective and innovative approaches for achieving air quality requirements, and at the same time, maintain the enforceability and accountability of more traditional air quality management approaches.

DATES: The EPA is establishing a 60-day comment period, ending on November 15, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to:

Air and Radiation Docket and Information Center (6101), Attention: Docket No. A-99-27, U.S. Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460, telephone (202) 260-7548, between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For specific questions and comments on this guidance, contact Ms. Nancy Mayer, U.S. EPA, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5390, e-mail "mayer.nancy@epa.gov"; or Mr. Eric Crump, U.S. EPA, MD-15, Research Triangle Park NC 27711, telephone (919) 541-4719, e-mail "crump.eric@epa.gov".

SUPPLEMENTARY INFORMATION: The EIP guidance will have no direct regulatory consequences when finalized. The proposed draft outlines a variety of economic incentive programs, and provides advice to States on choosing the best type of program to meet their objectives. States can then develop or revise their implementation plans to incorporate an EIP that will meet national air quality objectives, and achieve an overall benefit to the environment.

Electronic Availability—A World Wide Web (WWW) site has been developed so that you can obtain a copy of the draft EIP guidance for review and comment. The Uniform Resource Location (URL) for the home page of the web site is <http://www.epa.gov/ttn/oarpg>. You can find the draft EIP guidance on this web site under the heading titled "What's New." If you need additional assistance with these web sites, call the TTN Helpline at (919) 541-5384. If you lack access to the World Wide Web, you may request a copy of the draft EIP guidance from the individuals listed above under **FOR FURTHER INFORMATION CONTACT**.

The EPA has established an official record for this draft guidance (which will include the draft guidance, plus any public comments and data submitted) under docket number A-99-27. A public version of this record, including printed, paper versions of electronic comments—but excluding any information claimed as CBI—is available for inspection from 8 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: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-99-27. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Dated: September 3, 1999.

John S. Seitz,

Director, Office of Air Quality, Planning and Standards.

[FR Doc. 99-24045 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6438-9]

Proposed Agreement Pursuant to Sections 122(g) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Zionsville Third Site Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed *de minimis* settlement.

SUMMARY: In accordance with section 122(I)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given of a proposed administrative agreement concerning the Zionsville Third Site hazardous waste site located approximately 150 feet east of U.S. Route 421 in Zionsville, Indiana (the "Site"). EPA proposes to enter into this agreement under the authority of sections 122 (g) and (h) and 107 of CERCLA. In addition to the review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. The proposed agreement has been executed by the following *de minimis* parties: A.E. Staley Manufacturing Company; Advance Circuits, Inc.; Nilfisk-Advance, Inc. (Formerly Advance Machine Company); AlliedSignal, Inc. and Sinclair & Valentine Company; Allina Health System (United Hospital, Mount Sinai Hospital, Metropolitan Medical Center); American Industrial Corp.; American Packaging Corporation;

American Printing House for the Blind, Inc.; AMF Incorporated; AlliedSignal Inc. on behalf of Amphenol Corporation; Amphenol Corporation (Bendix; Allied); Diamond Chain Company division of AMSTED Industries Incorporated; Aristech Chemical Corporation; ATEC Associates, Inc.; AWB Division of Magnode Corporation (Wright Manufacturing Corporation); Ball Corporation; Best Access Systems; HealthEast Bethesda Hospital (formerly known as Bethesda Lutheran Hospital); Bliley Electric Company; Blissfield Mfg. Co. (Berne Tube Products); Bootz Mfg. Company; Bowes Industries, Inc.; Brown Printing Company; Bruce Fox, Inc.; Bruner Engineering & Mfg.; Cabot Corporation; Carrier Corporation on behalf of BDP Company division of Carrier Corp.; Casket Shells, Inc.; Century Mfg. Co.; Cerdan and Son Mfg., Inc.; CHEMCENTRAL Corporation; Cissell Mfg. Co.; City Machine Tool & Die Co., Inc.; CMW Inc.; Coca-Cola Foods ("The Minute Maid Company," a division of The Coca-Cola Company); Crucible Materials Corporation; Collwell/General, Inc.; Sybron International Corp. (Sybron Corporation, Taylor Instruments Division, Combustion Engineering, Inc.); Parker-Hannifin Corporation (including Commercial Filters Division); Conco Inc.; Conoco, Inc.; Jefferson Smurfit Corporation (U.S.) (formerly known as Container Corporation of America); Crown Beverage Packaging, Inc. (For Continental Can Company); Corning Incorporated (f/k/a Corning Glass Works); Cosco, Inc.; The Courier-Journal Co.; Bestfoods (formerly CPC International Inc.); CTS Corporation; D & L Paint Co.; Da-Lite Screen Co.; Dana Corporation; Dealers Mfg. Co.; Dehart Paint & Varnish Company, Inc.; Dellen Oldsmobile, Inc.; Delta Faucet; Deluxe Corporation (f/k/a Deluxe Check Printers); Dennis Chemical Company; DePauw University; Dimensional Designs, Inc.; Nordson Corporation (Domain, Inc.); Donaldson Company, Inc.; Halliburton (formerly Dresser Industries (Elec. Mach.; McGraw-Edison)); Inverness Casting Group (formerly Du-Well Products); Ed Tutwiler Cadillac, Inc.; Edeco Products, Inc.; Amerace Corporation; Fairmont Railway Motors (a Division of Harsco Corporation); Fire King International, Inc.; Flint Ink Corporation; FMC Corporation; Fort Snelling State Park; Franklin Electric Co., Inc.; Gemtron Corporation; General Alum & Chemical Corporation; Ex-GPHC Liquidating Trust on behalf of itself and on behalf of General Polymers Corporation; Georgia-Pacific Corporation; GK Technologies,

Inc.; Gould Inc.; Graco Inc.; Great Dane Trailers; Grote Industries, Inc.; The Glidden Company (successor to Grow Group, Inc.); Pulse Engineering (formerly known as GTI Corporation); B&B Leathers, Inc. (formerly known as Gunnison Bros. Tannery); Robertson-Ceco Corporation (formerly H.H. Robertson Co.); Haas Cabinet Co., Inc.; Hansen Mfg. Co.; Harmenson Mfg. Co., Inc. (now The Kay Company, Inc.); Hella North America, Inc.; Henkel Corporation; Hiawatha Rubber Co.; National Service Industries, Inc. (d/b/a Lithonia Lighting d/b/a Hi-Tek); Holcomb & Hoke Mfg. Co. Inc.; Home Crest Corp.; Hoover Universal, Inc.; Schwitzer, Inc. (formerly the Schwitzer Division of Household Manufacturing, Inc., c/o Borg-Warner Automotive, Inc.); Hudson Machine Tool Inc.; Huff Corporation; AC Humko (Kraft, Inc.) n/k/a Kraft Foods, Inc.; Huot Manufacturing Company; Hurco Companies, Inc.; Hyster Company; ICI Americas n/k/a Zeneca Inc.; Indiana University; City of Indianapolis—Department of Public Works; Indianapolis Star News; Industrial Sewer Service, Inc.; Ingersoll-Rand Company; International Paper Company; Introl c/o Hartzell Corporation Liquidating Trust; ITT Industries, Inc. f/k/a ITT Corporation; IVC Industrial Coating, Inc.; Jefferson Products Company; Johnson Controls, Inc. (Globe-Union); Kauffman Engineering, Inc.; Kelley Technical Coatings, Inc.; Kettering Medical Center; Kidde Merchandising Equipment Group, Inc.; The Scott Fetzer Company (Kingston Products); Kraft General Foods (Battery Properties) n/k/a Kraft Foods, Inc.; Leader Industries Inc.; Lexington Standard Corporation; Loranger Manufacturing Corp.; Lord Corporation; Madison Chemical Co., Inc.; Magnavox; Mallinckrodt, Inc.; Manus Products, Inc.; Masco Corp. (Electra); Mayhill Publications, Inc.; MCB Manufacturing c/o EM Industries, Incorporated; McCord Heat Transfer Corporation; McCord Heat—Textron, Inc.; McCormick & Company, Inc.; McGill/Jensen Inc.; Mercury Minnesota Inc.; Midmark Corp.; Minnesota Department of Transportation; City of Minneapolis; Minnesota Rubber; MVE, Inc. a/k/a Minnesota Valley Engineering; Minnesota Department of Corrections; Moorfeed Corp.; Murray Ohio Mfg./Tomkins Industries, Inc.; National Latex Products; IFC-YP, Inc. on behalf of National Metals Products (Amedco); Navistar International Transportation Corp. (f/k/a International Harvester); NCR Corporation; New Idea Farm Equipment—Textron, Inc.; The

New York Blower Co.; Nice-Pak Products, Inc.; Northern States Power Company; Northern Telecom Inc.; Northland Aluminum Products, Inc.; Nortronics Co., Inc.; Northrup King Co. (n/k/a Novartis Seeds, Inc.); O.K.P., Inc. (Kyanize Paints); Oglebay Norton Company; Northrop Grumman Corporation as successor to Olson Bodies (Grumman); Olson Bodies (Grumman); Orchard Corp. (Borden Inc.); Osborne Coinage Co.; Owens-Illinois (Brockway); Owens-Illinois (Glass Container); P.B. & S. Chemical Company, Inc.; Packaging Products Corporation; Paper Corp. of America n/k/a Unisource Worldwide, Inc.; Paper, Calmenson and Co.; Paulo Products Company; Perma-Fix of Dayton, Inc.; Perry Chemical & Mfg. Co.; Cadbury Beverages Inc. on behalf of Peter Paul Cadbury; Phelps Dodge Industries, Inc.; Philips Industries, Inc. (Lau Industries)/Tomkins Industries, Inc.; Pioneer Metal Finishing; Potlatch Corporation; Queens Group, Inc. c/o Shorewood Packaging Corp.; Raygo (Caterpillar); Reclaimed Energy Co. Inc.; Reichold, Inc. f/k/a Reichold Chemicals, Inc.; The Sam Miller Corporation, formerly Sam Miller Bag Company; Sears Roebuck, and Co.; Seaway Manufacturing Corp.; Select-Tron Ind. Inc.; SERCO Laboratories; Shell Oil Company; Sheller-Globe Corporation and Sheller-Globe Corporation, successor in interest for City Machine Tool and Die Co., Inc.; Sherwood Medical Company c/o The Kendall Company; Smith System Manufacturing Co.; Snap-Tite, Inc.; SnyderGeneral Corp. n/k/a AAF-McQuay Inc.; Sommer Metalcraft Corporation; Dura Operating Corp. for Sparton Corporation; Spill Recovery of Indiana, Inc.; Standard Gravure Corporation; The Standard Products Company; Stant Inc.; Stewart Warner South Wind Corporation; Stone Container Corporation (formerly known as National Packaging Company and Great Plains Bag Company); Sullair Corporation; Summit Finishing Company, Inc.; Sunnen Products Company; Talon-Textron, Inc.; Thermoset Plastics, Inc./Lord Corporation; Thanks Fred, Inc. (formerly Thermoset Plastics); Hasbro, Inc. and Tonka Corporation; Triangle Pacific Corporation; Tuchman Cleaners, Inc.; Ulrich Chemical, Inc.; United Parcel Service, Inc.; Ritrama, Inc. (formerly Universal Coating Co.); Grassland Holding, Inc. (formerly Universal Woods, Inc.); University of Minnesota; Van Waters & Rogers Inc.; Vermont American Corporation; Windway Capital Corp. (f/k/a The Vollrath Company); West Publishing Company;

Westvaco Corporation; Weyerhaeuser Co.; Wintek Corporation; Woodall Paint/Aeroquip Corporation; Yenkin-Majestic Paint Corp.; York International Corporation; U.S. Postal Service; and U.S. Department of Veterans Affairs.

Under the proposed agreement, the Settling Parties will pay a total of approximately \$1,512,012 into an escrow account to be used for response costs incurred and to be incurred at the Site. A group of non-de minimis settlors under this agreement will perform an Engineering Evaluation/Cost Analysis ("EE/CA") for the Site, pay \$28,102.59 in response costs incurred by EPA at the Site, and pay EPA's costs of overseeing the EE/CA. EPA incurred response costs overseeing response activities conducted to mitigate an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site. The non-de minimis settlors under this proposed agreement are: A.O. Smith Corporation; Ahlstrom Filtration Inc.; Alco Industries, Inc. (Synthane-Taylor); Alcoa, Inc. (f/k/a Aluminum Company of America); Allen-Bradley Company/Rockwell International Corporation; American National Can Co.; American Recovery Company, Inc. c/o The Union Corporation; American Waste Processing, Ltd.; Anderson Development Company; Arvin Industries, Inc.; Ashland Chemical Company, a division of Ashland Inc.; Lucent Technologies Inc. for AT&T Corp.; Batesville Casket Corp.; Beazer East, Inc.; Bemis Company, Inc.; Bridgestone/Firestone, Inc.; Brulin & Company, Inc.; Carlisle Tire & Wheel Company; Champion Int'l (St. Regis); Chase Packaging Corp.; IWD Waste Inc. and Chemical Waste Management; Kewanee Industries, Inc. for Bruning Pain Company c/o Chevron Environmental Management Company; Cintech Industrial Coatings, Inc.; Printpack, Inc. (Cloudsley Co.); Commercial Sewer Cleaning Co., Inc.; Belden Wire & Cable Company (for Cooper Industries); Cummins Engine Company, Inc.; Dertex Corporation; Egyptian Lacquer Mfg. Co., Inc.; Emhart Industries, Inc. (on behalf of its former Mallory, USM, Bailey and Bostik subsidiaries and divisions); Ericsson, Inc., successor in interest to Anaconda-Ericsson/Wire & Cable; Federal-Mogul Corporation; Ford Motor Company; Freightline Corporation; Freudenberg-NOK General Partnership; Davis-Frost, Inc. (formerly Frost Paint & Oil Co.); GenCorp., Inc.; General Electric Company and its subsidiary RCA; General Motors Corporation; HC

Industries Inc.; Mueller Copper Tube Products, Inc. f/k/a Halstead Industries, Inc.; Hill-Rom Company, Inc.; Honeywell, Inc. and Alliant Techsystems Inc.; Fort James Corporation (James River II—Crown Zellerbach); Jeffboat LLC; Jenn—Air, a division of Maytag Corporation; JCI Jones Chemicals, Inc.; The Kendall Company; Kimberly-Clark Corporation; King Adhesives Corporation; Knauf Fiber Glass; Tru Serv Corporation, successor in interest to Kurfees Coatings; Lilly Industries, Inc.; Ludlow Corporation; Seagate Technology, Inc. (Magnetic Peripherals, Inc.); Marathon Oil Company; Marathon Oil Company on behalf of Marathon Pipe Line Company; Marcus Paint Company; Marisol, Inc.; McDonnell Douglas Corporation; McLaughlin Gormley King Company; Mobil Oil Corporation; National Railroad Passenger Corporation (Amtrak); North American Philips Corp.; Onan Corporation; Porter Paint Co./Courtaulds; Potter Paint Co. of Indiana Inc.; Pratt & Lambert Inc.; R.R. Donnelley & Sons Company; Red Spot Paint & Varnish Co., Inc.; Reliance Electric Company; RHI Holdings, Inc., successor to Rexnord Holdings, Inc.; Marathon Oil Company (successor to Rock Island Refining Corporation); S.C. Johnson & Son, Inc.; Sequa Corporation; Modine Manufacturing Company (successor in interest to Signet Systems, Inc.); Child Craft Industries, Inc. (Smith Cabinet Mfg. Co. Inc.); SRS of New Jersey; David L. Wade, Inc.; Standard Paints, Inc.; Stolle Corporation; Superior Oil Company (Superior Solvents & Chemicals); Devro-Teepak, Inc.; the Timken Company; TRW Inc.; Union Carbide Corporation; Unisys Corp. (Sperry Univac; Amer. Div.); United Technologies Corporation (for Essex Group, Inc.); United Technologies Corporation (for BASF as successor to Inmont Corporation); United Technologies Automotive, Inc. on behalf of Alma Plastic Company); US Gypsum Company, on behalf of the former Durabond Products Company; The Valspar Corporation; Wabash Products Co.; Borg-Warner Automotive, Inc. on behalf of Warner Gear Division (Borg-Warner); Waste Research & Reclamation; CBS Corporation f/k/a Westinghouse Electric Corporation; Thermo King Corporation; Whirlpool Corporation; White Consolidated Industries, Inc.; Whittaker Corporation; Heatcraft, Inc.; as related to Wickes Mfg.; World Color Press, Inc.; Federal Bureau of Prisons; U.S. Navy; Buckbee Mears Company (now known as BMC Industries, Inc.); Champion International Corporation as successor to Hoerner Waldorf Corp and

St. Regis Corp. as well as Champion Pkg.; Chemical Manufacturing Corp. (Chemart); Electro-Spec, Inc.; Farm Credit Services; Federal-Mogul Corporation (Switches, Inc.); H.B. Fuller Company; Herff Jones, Inc.; Valhi, Inc. as successor to Impex and Mid-States Steel & Wire Company; IWD Waste, Inc.; KCL Corporation; Liberty Solvents & Chemicals; Moormann Bros. Mfg.; PPG Industries, Inc.; Radio Materials Corporation; Robbie Manufacturing, Inc.; Rockwell International Corporation; The Sherwin-Williams Company; and Wyandotte Paint Co. (dba: Akzo Nobel Coatings Inc.). Approximately \$1,360,811 of the funds paid by the de minimis parties under this proposed agreement will be held in escrow until needed to help fund the performance of the further response actions to be required by EPA based on the results of the EE/CA.

For thirty days following the date of publication of this document, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before October 15, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, and should refer to: In the Matter of Zionsville Third Site, Zionsville, Indiana, U.S. EPA Docket No. V-W-99C-545.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C-14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, (312) 886-0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response,

Compensations, and Liability Act, as amended, 42 U.S.C. 9601-9675.

William E. Munro,

Director, Superfund Division, Region 5.

[FR Doc. 99-24043 Filed 9-14-99; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 9, 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 November 15, 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: 3060-0057.

Title: Application for Equipment

Authorization 47 CFR 2.911, 2.963(a), 2.983, 2.1033(a).

Form Number: FCC 731.

Type of Review: Extension of an Existing Collection.

Respondents: Business or other for profit.

Number of Respondents: 5,600.

Estimated Time Per Response: 18-30 hours.

Total Annual Burden: 134,400 hours.

Total Annual Cost: \$200 per respondent.

Needs and Uses: Commission rules require approval prior to marketing of equipment regulated under certain Part 15 and Part 18 rule sections, based on showing of compliance with technical standards established in the Rules for each device operated under the applicable Rule part. Rules governing certain equipment operating the licensed service also require equipment authorization as established in the procedural Rules in Part 2. Such a showing of compliance aids in controlling potential interference to radio communications, and the data gathered, as is necessary may be used for investigating complaints of harmful interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-24033 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 9, 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(s), 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 November 15, 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 A-804, 445 Twelfth 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: 3060-0178.

Title: Section 73.1560 Operating Power and Mode Tolerances.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 280.

Estimated Time per Response: 1 hour.

Frequency of Response: Reporting, on occasion.

Annual Burden: 280 hours.

Annual Costs: \$0.

Needs and Uses: Section 73.1560(d) requires that licensees of AM, FM or TV stations file a notification with the FCC in Washington, DC when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30 day period, an informal written request must be made for any additional time as may be necessary to restore normal operations. The data is used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-24034 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2357]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding; Correction

September 8, 1999.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 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 30, 1999. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.49b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Replacement of part 90 by part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them (PR Docket No. 92-235) and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services.

Number of Petitions Filed: 8.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-23978 Filed 9-14-99; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, September 22, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 23, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999-22: J. Blair Richardson, Jr. on behalf of Aristotle Publishing, Inc.

Status of PricewaterhouseCoopers (PwC) Recommendations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99-24204 Filed 9-13-99; 3:02 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217-011676.

Title: CCNI/CTE Space Charter Agreement.

Parties: Compania Chilena de Navegacion, Interoceanica S.A. (CCNI), Compania Transatlantica Espanola S.A. (CTE).

Synopsis: The proposed agreement would authorize CCNI to charter space to CTE in the trade between Puerto Rico and both Europe and the Mediterranean.

By order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99-24082 Filed 9-14-99; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

U.S. Brokers Inc., 331-333 Northern Avenue, Boston, MA 02210,
Officers: Steven M. Wilson, Export Manager, (Qualifying Individual), Louise Mailly, President

Mishi International, Inc., 2800 N.W. 112th Avenue, Miami, FL 33172,
Officers: Isabel C. Montejo, President, (Qualifying Individual), Loida Montejo, Secretary

Professional Services International Inc., 1850 Airport Exchange Blvd., Suite 600, Erlanger, KY 41018, Officers: Pam Stapleton, President, Stephen J. Stapleton, Vice President, (Qualifying Individual)

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99-24083 Filed 9-14-99; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 October 8, 1999.

A. Federal Reserve Bank of Chicago
(Philip Jackson, Applications Officer)
230 South LaSalle Street, Chicago,
Illinois 60690-1413:

1. *Lakes Bancorporation, Inc.*, Storm Lake, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Banshares, Inc., Lake Park, Iowa, and thereby indirectly acquire Security State bank, Lake Park, Iowa, and Security State Bank, Milford, Iowa.

2. *Commercial Financial Corp.*, Storm Lake, Iowa; to acquire 100 percent of the voting shares of Lakes Bancorporation, Inc., Storm Lake, Iowa, and First Security Banshares, Inc., Lake Park, Iowa, and thereby indirectly acquire Security State Bank, Lake Park, Iowa, and Security State Bank, Milford, Iowa.

B. Federal Reserve Bank of Dallas
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Overton Financial Corporation*, Overton, Texas, and Overton Delaware Corporation, Dover, Delaware; to acquire an additional 4.13 percent of the voting shares of Longview Financial Corporation, Longview Financial Corporation, Longview, Texas, and thereby indirectly acquire Longview Bank & Trust Company, Longview, Texas, and First State Bank, Van, Texas.

2. *TransPecos Financial Corporation*, San Antonio, Texas; to acquire 100 percent of the voting shares of The Security State Bank of Pecos, Pecos, Texas.

Board of Governors of the Federal Reserve System, September 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-24011 Filed 9-14-99; 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 29, 1999.

A. Federal Reserve Bank of Cleveland
(Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *PNC Bank Corp.*, Pittsburgh, Pennsylvania; to acquire First Data Investor Services Group, Inc., Westborough, Massachusetts; and thereby indirectly acquire Actuarial Computer Technology, Inc., Westborough, Massachusetts; Applied Mailing Systems, Inc., Westborough, Massachusetts; First Data Distributors, Inc., Westborough, Massachusetts; and United States Pension Services, Inc., Westborough, Massachusetts, and thereby engage in various administrative service activities as previously approved in Board Orders (*see Bankers Trust New York Corp.*, 83 Fed. Res. Bull. 780 (1997) and *Commerzbank AG*, 83 Fed. Res. Bull. 679 (1997)) and in financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; agency transactional services, pursuant to § 225.28(b)(7) of Regulation Y; employee benefits consulting services, pursuant to § 225.28(b)(9)(ii) of Regulation Y; support services, pursuant to § 225.28(b)(10) of Regulation Y; data

processing services, pursuant to § 225.28(b)(14) of Regulation Y; and in serving as a transfer agent to investment companies, pursuant to § 225.28(b)(5) of Regulation Y.

In addition to this application, Applicant also has applied to acquire NA Insurance Services, Inc., Seal Beach, California, and thereby engage in operating as a necessary incident to retirement plan services, (*see Mellon Bank Corp./Buckeye Consultants*, 83 Fed. Res. Bull. 681 (1997)) and section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, September 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-24012 Filed 9-14-99; 8:45 am]

BILLING CODE 6210-01-F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, September 20, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:
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: September 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-24095 Filed 9-10-99; 4:24 pm]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed alteration to record system.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is proposing to alter the Government-wide system of records, FRTIB-1, Thrift Savings Plan Records. Under the proposed alteration, new categories of records will be added to cover records maintained for spouses, former spouses, and beneficiaries of Thrift Savings Plan (TSP) participants to state routine uses which may be made of records on these individuals, and to clarify that the term "participant" includes a former participant.

DATES: Comments must be received on or before November 15, 1999.

ADDRESSES: Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005. FAX (202) 942-1676.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942-1662.

SUPPLEMENTARY INFORMATION: The Board was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99-335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401-8479 (1994), to administer the Thrift Savings Plan (TSP). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. There are over two million TSP participants, and funds are held in trust for each participant. 5 U.S.C. 8437(g).

The Board is an independent agency established in the executive branch of the United States Government which is subject to the Privacy Act, 5 U.S.C. 552a. On May 7, 1990, initial notice of the Board's systems of records, including FRTIB-1, was published in the **Federal Register** at 55 FR 18949. A minor amendment to FRTIB-1 was published in the May 20, 1994, **Federal Register** at 59 FR 26469, to delete routine use provisions allowing disclosure to the Department of Veterans Affairs, the Federal Housing Administration, and private financial institutions, because disclosure to those entities could be made at the written request of the participant. The provision

allowing disclosure to beneficiaries of deceased participants was also deleted as unnecessary.

This alteration is necessary because the Board is updating its computerized data base for the TSP record keeping system. FRTIB-1 currently lists TSP participants as the only category of individuals covered by this system of records. Under the new TSP record keeping system, spouses, former spouses, and beneficiaries of participants will be added to this system of records.

The TSP Service Office processes domestic relations court orders and legal process for the enforcement of a participant's obligation to pay alimony or child support or for child abuse to determine if these orders qualify to award funds from a participant's account. The decision whether or not a spouse or former spouse is entitled to a payment from the participant's account is mailed to the address provided for that individual. A record that is retrieved by the Social Security number (SSN) of the participant's spouse or former spouse will be created at the same time that the decision letter is mailed, if the SSN is known. If that individual's SSN is not known, a record will be created as soon as the SSN is provided to the TSP Service Office.

In addition, following a participant's death, the amount remaining in the account will be paid as a death benefit payment to the participant's beneficiary or beneficiaries in accordance with the order of precedence set forth in 5 U.S.C. 8424(d). A record that is retrieved by the SSN of the participant's beneficiary or beneficiaries will be created at the same time that a notice of pending Thrift Savings Plan payment and tax withholding information is mailed, if the SSN is known (or as soon as the SSN is provided thereafter). This notice is sent to the beneficiary or beneficiaries following a determination that the beneficiary(ies) is entitled to receive the death benefit payment.

A further change is being made to clarify that the term "participant" includes former participants, *i.e.*, participants whose accounts have been closed. While the current list of covered individuals names only current participants, the record system also covers former participants on whom TSP records are maintained. The system notice now specifically includes them in the record system.

Further changes are being made to the routine uses for which information may be disclosed. Routine use (a) is revised to specify that the address of the subject of the record may be provided to tax enforcement agencies. Routine use (d) is

revised to provide for disclosure to the attorney for the participant's current or former spouse, and to state that the disclosure is made to allow those individuals to protect spousal rights and receive benefits to which they may be entitled. Routine use (l) is revised to clarify the circumstances under which disclosure may be made to a Federal, state, or local agency. Routine use (q) is added to allow for disclosure to contractors engaged by the Board.

Two other minor changes are also being made. In the system location, the subsets for records located at the system manager's address have been eliminated, because all records will be maintained at the location of the TSP record keeper. In addition, the category of records in the system has been rewritten for clarity, and minor grammatical changes have been made throughout this record system notice.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

FRTIB-1

SYSTEM NAME:

Thrift Savings Plan Records.

SYSTEM LOCATION:

These records are located at the offices of the entity engaged by the Board to perform record keeping services for the TSP. Currently, the TSP record keeper is the National Finance Center, Department of Agriculture, whose mailing address is TSP Service Office, National Finance Center, PO Box 61500, New Orleans, Louisiana 70161-1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All participants (which term includes former participants, *i.e.*, participants whose accounts have been closed), as well as spouses, former spouses, and beneficiaries of TSP participants. Participants in the TSP consist of present and former Members of Congress and Federal employees covered by the Federal Employees' Retirement System Act of 1986, (FERSA) as amended, 5 U.S.C. chapter 84; all present and former Members of Congress and Federal employees covered by the Civil Service Retirement System who elect to contribute to the TSP; Supreme Court Justices, Federal judges, and magistrates who elect to contribute; certain union officials, those individuals described in 5 CFR part 1620, and any other individual for whom an account has been established.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain the following kinds of information: Records of TSP account activity, including account balances, employee contributions, agency automatic (one percent) and agency matching contributions, earnings, interfund transfers, contribution allocation elections, investment status by fund, loan and withdrawal information, employment status, retirement code and whether employee is vested, error correction information, participant's date of birth and designated beneficiary; records of spousal waivers and consents; powers of attorney and conservatorship and guardianship orders; participant's name, current or former employing agency, and servicing payroll and personnel office; records of Social Security number and home address for participants, spouses, former spouses, and beneficiaries and potential beneficiaries; records of bankruptcy actions; information regarding domestic relations court orders to divide the account; child support, child abuse, and alimony orders; information on payments to the participant's spouse, former spouse, or children and their attorneys; information on notices sent to participants, spouses, former spouses, and beneficiaries; and general correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

PURPOSE(S):

The purpose of this system of records is to ensure the integrity of the Plan, to record activity concerning the TSP account of each Plan participant, to communicate with the participant, spouse, former spouse, and beneficiary concerning the account, and to make certain that he or she receives a correct payment from the Plan.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose financial data and addresses to Federal, state, and local governmental tax enforcement agencies so that they may enforce applicable tax laws.

b. To disclose to the designated annuity vendor in order to provide TSP participants who have left Federal service with an annuity.

c. To disclose to sponsors of eligible retirement plans for purposes of transferring the funds in the participant's account to an Individual Retirement Arrangement or into another eligible retirement plan.

d. To disclose to current and former spouses and their attorneys in order to protect spousal rights under FERSA and to receive benefits to which they may be entitled.

e. When a participant to whom a record pertains dies, to disclose the following types of information to any potential beneficiary and anyone handling the decedent's estate: Information in the participant's record which could have been properly disclosed to the individual when living and the name and relationship of any other person who claims the benefits or who is entitled to share the benefits payable.

f. To disclose information to any person who is named by the participant, spouse, former spouse, or beneficiary of the participant in a power of attorney and to any person who is responsible for the care of the participant or the spouse, former spouse, or beneficiary of the participant to whom a record pertains, and who is found by a court to be incompetent or under other legal disability, information necessary to manage the participant's account and to ensure payment of benefits to which the participant, spouse, former spouse or beneficiary of the participant is entitled.

g. To disclose information to a congressional office from the record of a participant or of the spouse, former spouse, or beneficiary of a participant in order for that office to respond to a communication from that person.

h. To disclose to agency payroll or personnel offices in order to calculate benefit projections for individual participants, to calculate error corrections, to reconcile payroll records, and otherwise to ensure the effective operation of the Thrift Savings Plan.

i. To disclose to the Department of the Treasury information necessary to issue checks from accounts of participants in accordance with withdrawal or loan procedures or to make a payment to a spouse, former spouse, child, or his or her attorney, or to a beneficiary.

j. To disclose to the Department of Labor and to private sector audit firms so that they may perform audits as provided for in FERSA.

k. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the address of a participant, spouse, former spouse, or beneficiary of the participant for the purpose of enforcing child support obligations against that individual.

l. To disclose pertinent information to the appropriate Federal, foreign, state, local, or tribal agency, or to other public authority responsible for investigating, prosecuting, enforcing, or implementing

a statute, rule, regulation, or order, upon its request, when presented with an indication that the information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of that agency or authority.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

n. To disclose to a Federal agency, in response to its request, the address of a participant, spouse, former spouse, or beneficiary of the participant and any other information the agency needs to contact that individual concerning a possible threat to his or her health or safety.

o. To disclose information to the Department of Justice, where:

(1) The Board or any component of it, or

(2) Any employee of the Board in his or her official capacity, or

(3) Any employee of the Board in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or

(4) The United States (where the Board determines that litigation is likely to affect the agency or any of its components) is a party to litigation or has an interest in such litigation, and the Board determines that use of such records is relevant and necessary to the litigation. However, in each such case, the Board must determine that disclosure of the records to the Department of Justice is a use of the information contained in the records which is compatible with the purpose for which the records were collected.

p. In response to a court subpoena, or to appropriate parties engaged in litigation or preparing for possible litigation. Examples include disclosure to potential witnesses for the purpose of securing their testimony to courts, magistrates, or administrative tribunals, to parties and their attorneys in connection with litigation or settlement of disputes, or to individuals seeking information through established discovery procedures in connection with civil, criminal, or regulatory proceedings.

q. To disclose to contractors and their employees who have been engaged to assist the Board in performing a contract service or agreement, or who have been engaged to perform other activity related to this system of records and who need access to the records in order to perform the activity. Recipients of TSP records are required to comply with the requirements of the Privacy Act.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on electronic or magnetic media, on microfilm, or in folders.

RETRIEVABILITY:

These records are retrieved by SSN and other personal identifiers of the individual to whom they pertain.

SAFEGUARDS:

Hard copy records are kept in metal file cabinets in a secure facility, with access limited to those whose official duties require access. Personnel are screened to prevent unauthorized disclosure. Security mechanisms for automatic data processing prevent unauthorized access to the electronic or magnetic media.

RETENTION AND DISPOSAL:

TSP documents are retained for 99 years. Manual records are disposed of by compacting and burning; data on electronic or magnetic media are obliterated by destruction or reuse, or are returned to the employing agency.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

Individuals who want notice of whether this system of records contains information pertaining to them and to obtain access to their records may contact the TSP Service Office or their employing agency, as follows:

- a. Participants who are current Federal employees may call or write their employing agency for personnel or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees may call or write the TSP Service Office.
- b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants may call or write the TSP Service Office.

Individuals calling or writing the TSP Service Office must furnish the following information for their records to be located and identified:

- a. Name, including all former names;
- b. Social Security number; and

c. Other information, if necessary. For example, a participant may need to provide the name and address of the agency, department, or office in which he or she is currently or was formerly employed in the Federal service. A spouse, former spouse, or beneficiary of a participant may need to provide information regarding his or her communications with the TSP Service Office or the Board.

Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP Web site and the ThriftLine (the TSP's automated telephone system). The TSP Web site is located at www.tsp.gov. To use the TSP ThriftLine, the participant must have a touch-tone telephone and call the following number (504) 255-8777. The following information is available on the TSP Web site and the ThriftLine: Account balance; available loan amount; the status of a monthly withdrawal payment; the current status of a loan or withdrawal application; and an interfund transfer request. Because a PIN is required to use these features, they are not available to former participants.

CONTESTING RECORD PROCEDURE:

Individuals who want to amend TSP records about themselves must submit a detailed written explanation as to why information regarding them is inaccurate or incorrect, as follows:

- a. Participants who are current Federal employees must write their employing agency to request amendment of personnel records regarding employment status, retirement coverage, vesting code, and TSP service computation date, or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees must submit a request to the TSP Service Office.
- b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants must submit a request to the TSP Service Office.
- c. Individuals must provide their Social Security number and name, and they may also need to provide other information for their records to be located and identified.

The employing agency or the TSP Service Office will follow the procedures set forth in 5 CFR part 1605,

Error Correction Regulations, in responding to requests to correct contribution errors.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

- a. The individual to whom the information pertains;
- b. Agency payroll and personnel records;
- c. Court orders; or
- d. Spouses, former spouses, other family members, beneficiaries, legal guardians, and personal representatives (executors, administrators).

[FR Doc. 99-23830 Filed 9-14-99; 8:45 am]

BILLING CODE 6760-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Cooperative Agreement With Minority Health Professions Foundation

AGENCY: Office of the Secretary

ACTION: Notice of a cooperative agreement with Minority Health Professions Foundation.

The Office of Minority Health (OMH), Office of Public Health and Science (OPHS), announces its intent to continue support of the umbrella cooperative agreement with the Minority Health Professions Foundation (MHPPF), the educational arm of the Association of Minority Health Professions Schools (AMHPS). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various agencies during the project period.

The purpose of this cooperative agreement is to: (1) Foster cooperation and collaboration among the minority health professions schools, and (2) to assist the AMHPS member institutions in expanding and enhancing their educational and research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to the MHPF. During the last 5 years, through the collective efforts of its member institutions, the MHPF has successfully demonstrated the ability to work with its academic institutions and official health agencies on mutual education, service and research endeavors. The MHPF is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It is the only national organization whose member institutions are all predominately minority health professions institutions with excellent professional performance records;
- It has the ability to provide continuity for AMHPS educational and research endeavors through its infrastructure and expertise;
- It has an established comprehensive data base related to teaching and other activities of all African-American medical, dental, pharmacy and veterinary schools;
- It has an inventory of essential disease prevention and health promotion activities for students and its member institutions;
- It has demonstrated leadership in attracting minority students to health professions careers; and,
- It has an inventory of critical knowledge, skills and abilities related to instruction in medical and health professional preparation.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will received approximately \$250,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594-0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: September 3, 1999.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 99-23987 Filed 9-14-99; 8:45 am]

BILLING CODE 4160-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY-23-99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Birth Defects Prevention Study (Formerly called Metro Atlanta Birth Defects and Risk Factor Surveillance System)—(0920-0010)—Revision—National Center for Environmental Health (NCEH). The Division of Birth Defects and Pediatric Genetics (DBDPG), NCEH has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the 5 counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. Since 1993, the DBDPG has also been conducting the Birth Defects Risk Factor Surveillance (BDRFS) now called the National Birth Defects Prevention Study (and formerly called the Metro Atlanta Birth Defect and Risk Factor Surveillance System), a case-control study of risk factors for selected birth defects. Infants with birth defects are identified through the MACDP and maternal interviews. Clinical/laboratory tests are conducted on approximately 300 cases and 100 controls per year. Controls are selected from among

normal births in the same population. OMB approval (OMB 0920-0010) for MACDP and BDRFS which is now called the National Birth Defects Prevention Study (and formerly called the Metro Atlanta Birth Defects and Risk Factor Surveillance System) was renewed in 1996 and will expire 30 September 1999.

This request is for a 3-year renewal with two changes listed below including a change in the study name:

A. In 1996, MACDP was still obtaining assistance from more than 10 Atlanta hospitals to conduct birth defects surveillance. Therefore, MACDP renewed its OMB approval at that time. In 1997, however, the State of Georgia exercised its option to require the reporting of birth defects under the state's disease reporting regulations, which list birth defects as a condition whose reporting is required by law. The Georgia Division of Health authorized the CDC to serve as its agent in the collection of these case reports. MACDP findings are shared with the state. Since birth defects surveillance in Atlanta is now a state requirement, the CDC is no longer requesting OMB clearance for this activity. Therefore, the Division of Birth Defects and Pediatric Genetics is not seeking renewal of its OMB clearance for the surveillance activities involved in MACDP.

B. The BDRFS is now called the National Birth Defects Prevention Study (and formerly called the Metro Atlanta Birth Defects and Risk Factor Surveillance Program). The major components of this study have not changed. Infants with birth defects are identified through MACDP. Control infants are selected from birth hospitals in the same population. Mothers of case and control infants are interviewed by phone about their medical history, pregnancies, environmental exposures and lifestyle. The interview still takes about 1 hour, but it is now a computer-based interview and answers are entered directly into the database instead of recorded on paper. Another change from the BDRFS is that we are no longer asking participants to come to a clinic for blood drawing. Instead of using blood to study genetic risk factors for birth defects, we will be studying DNA from cheek cells. After completing the interview, participants are sent a packet in the mail and are asked to collect cheek cells using small brushes from the mother, father, and infant. The brushes containing cheek cells are then sent back to the lab by mail. The cheek cell kits will include \$20.00 as an incentive to complete them and send them back. The total annual burden hours are 600.

Forms	Number of respondents	No. of responses/re-spondents	Avg. burden/re-sponse (in hrs.)
NBDPS case/control interview	400	1	1
Biologic specimen collection	1,200	2	.1666

2. Case-Control Study of Lifetime Exposure to Drinking Water Disinfection By-products (DBPs) and Bladder Cancer in Pet Dogs—New—National Center for Environmental Health (NCEH). Current drinking water treatment practices in the U.S. typically include disinfection to control the pathogenic organisms responsible for waterborne diseases. Chlorine is the most commonly used chemical for drinking water disinfection; however, chlorine reacts with other drinking water contaminants

to generate compounds that may cause cancer (*e.g.*, bladder cancer) in people. The long latency period for the development of bladder cancer and the difficulty in reconstructing water consumption and exposure history make it difficult to verify the association between DBPs exposure and bladder cancer occurrence that has been reported in human epidemiologic studies. It would be useful to have an alternative method to examine this association. We propose to conduct a

case-control study of pet dogs to test the hypothesis that consumption of water containing chlorination DBPs increases the dogs' risk for canine bladder cancer in a dose-dependent manner. Specifically, we are interested in examining the type of water disinfection treatment (chlorination, chloramination, or no disinfection) of the tap water consumed by dogs with and without bladder cancer. The total annual burden hours are 309.

Respondents	Number of respondents	Responses/re-spondents	Avg. burden per respondent (in hrs.)
Recruiting Project Participants	430	1	.26666
Telephone Interview	400	1	.08333

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-24001 Filed 9-14-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY-24-99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235;

Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Hospital Discharge Survey—(0920-0212)—Extension—National Center for Health Statistics (NCHS)—The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field.

NHDS data have been used extensively in the production of goals for the Year 2000 Health Objectives and the subsequent monitoring of these goals. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States. Data for the NHDS are collected annually on approximately 300,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS). Data for approximately fifty-five percent of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time. The total annual burden hours are 2,465.

Respondents (hospitals)	Number of respondents	Number of responses/re-spondent	Avg. burden/re-sponse (in hrs)
Medical Record Abstracts:			
Primary Procedure Hospitals	73	250	.08333
Alternate Procedure Hospitals	189	250	.01667

Respondents (hospitals)	Number of re- spondents	Number of re- sponses/re- spondent	Avg. burden/re- sponse (in hrs)
In-House Tape or Printout Hospitals	37	12	.18333
Update Form (Abstract Service Hospitals)	175	2	.03333
Quality Control Forms	50	40	.01667
Induction Forms	15	1	2

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-24002 Filed 9-14-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY-25-99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the

Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Sexually Transmitted Disease Morbidity Surveillance System—Extension—(0920-0011)—The National Center for HIV, STD, and TB Prevention (NCHSTP)—The reports used for this surveillance system provide ongoing surveillance data on national sexually transmitted disease morbidity. The data are used by health care planners at the national, state, and local (including selected metropolitan and territorial health departments)

levels to develop and evaluate STD prevention and control programs. In addition, there are many other users of the data including scientists, researchers, educators, and the media. STD data gathered in these reports are used to produce national statistics published in the annual STD Surveillance Report, MMWR articles, and serve as a progress report to meet objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions*. It is important to note that these reporting forms are in the process of being phased out and replaced by electronic, line-listed STD data collected in the *National Electronic Telecommunications System for Surveillance* (NETSS).

Costs are covered by way of cooperative agreements to the project areas. The total annual burden hours are 828.

Forms	No. of respondents	No. of re- sponses/re- spondent	Avg. burden (in hrs.)
CDC 73.688*	36	4	1
CDC 73.688**	27	4	1
CDC 73.998	36	12	0.5833
CDC 73.2638	36	3	3

* *State-level reporting:* Respondents for the state-specific CDC 73.688 forms now include 26 state health departments (Originally, respondents included 50 states, but 24 states have now discontinued hardcopy reporting and send all STD data as electronic line-listed records through NETSS), seven large city health departments and three outlying areas.

** *City-level reporting:* The health departments for the 26 states and one of the outlying regions (Puerto Rico) also prepare and submit reports for additional large cities within their jurisdictions.

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-24003 Filed 9-14-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY-26-99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Training Intervention Effectiveness Research of Vocational Education Safety and Health Instructional Materials—New—The National Institute for Occupational Safety and Health (NIOSH) is proposing to study the

effectiveness of safety and health curricula to be made available for secondary vocational schools. Studies conducted by NIOSH suggest that over half of all young workers injured on-the-job believe that they did not receive adequate safety and health training in school or from their employers. The National Safety Council estimates that nearly one-half (48.1%) of all occupational injuries are sustained by employees with less than one year of work experience. Further-more, feedback from end-users of past NIOSH vocational education materials indicates that these materials do not adequately meet the needs of vocational teachers and students. Given these considerations, further training intervention effectiveness research is

needed to identify those educational approaches that are most effective in shaping the attitudes and behaviors of new workers.

Trade-specific safety and health materials will be tested for two vocations: electrical trades and cosmetology. Both sets of instruction are designed for vocational secondary school students enrolled in courses on either of these subjects. These curricula cover the following topics: hazard recognition and control, personal protection, safe work practices, and safe working environments. This instruction is expected to improve students' knowledge and attitudes in the area of occupational safety and health, thereby reducing the incidence of illness, injury, and death in tomorrow's workplace. Students will receive this instruction in a pedagogically conceived manner, within the classroom setting, as part of their overall vocational training. A variety of instructional approaches are

available to convey information and affect attitudes. The purpose of this study is to identify approaches that readily and consistently produce desired outcomes among vocational students. The electrical safety curriculum, which contains a videotaped program, will be used to explore the effectiveness of television as a delivery mechanism. The cosmetology safety curriculum will be used to examine the effectiveness of problem solving exercises, especially with regard to group size.

The time-line for this study is approximately one year. In May of the 1998–99 school year, a baseline assessment of safety knowledge and attitudes of vocational secondary school students will be performed. The NIOSH training materials will not be used with this group of students. For the Fall of 1999, participating schools will each be assigned one of the instructional approaches under investigation. At the

beginning of the 1999–2000 school year, knowledge and attitude pretests for both trades will be administered to students. During the school year, as the prescribed safety topics are taught, knowledge and attitudes will be assessed. Teachers and students will be surveyed regarding their perceptions of the instructional materials and their cognitive and attitudinal impacts. During this phase of the study, the most effective approaches will emerge.

A final assessment will be administered to all students in May 2000, allowing comparison with the assessments taken the previous May of students who had not been exposed to any of the curricular elements under study.

The identities and performances of individual students, teachers, and schools will be held in confidence. The total annual burden hours are 2,964.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response
Electrical teachers	80	1	1.00
Electrical students:			
Baseline data	1600	1	.50
Early video	800	4	.25
Late video	800	4	.25
Cosmetology teachers	80	1	1.00
Baseline data:			
All discussion groups	1600	.....	.50
	1600	1	.33
		3	

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24004 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–27–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance

Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Aggregate report of follow-up for contacts of tuberculosis, and aggregate report of screening and preventive therapy for tuberculosis infection: two revised tuberculosis program management reports—New—National Center for HIV, STD, and TB Prevention (NCHSTP)—To ensure the elimination of tuberculosis in the United States, key program activities such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected, and providing prevention therapy, must be monitored. The Division of Tuberculosis Elimination (DTBE), is implementing two revised program management reports for annual submission:

Aggregate report of follow-up for contacts of tuberculosis, and aggregate report of screening and preventive therapy of tuberculosis infection. The respondents for these reports are the 68 state and local tuberculosis control programs receiving federal cooperative agreement funding through (DTBE). The revised reports phase out two, twice-yearly program management reports in the Tuberculosis Statistics and Program Evaluation Activity (OMB 0920–0026): *Contact Follow-up* (CDC 72.16) and *Completion of Preventive Therapy* (CDC 72.21). The revised reports, which are being submitted for an OMB approval outside of OMB 0920–0026, have several improvements over the old reports for the respondents and for DTBE, such as the emphasis on preventive therapy outcomes, the focus on high-priority target populations vulnerable to tuberculosis, and programmed electronic report generation and submission through the Tuberculosis Information Management System. The old reports, CDC 72.16 and

CDC 72.21, which have been submitted at least in some form by the respondents since 1961, are tabulated by hand.

Three program management reports in the previous series already have been phased out. They are Bacteriologic

Conversion of Sputum (CDC 72.14), Case Register (CDC 72.15), and Drug Therapy (CDC 72.20). These three reports have been superseded by integrated reporting in Tuberculosis Statistics and Program Evaluation

Activity (OMB 0920-0026). The discontinuation of these reports has resulted in an estimated reduction in the annual response burden of 159 hours. The total annual burden hours are 136-340.

Report	No. of respondents	No of responses per respondent	Average burden per response (in hrs.)
Aggregate report of follow-up for contacts of tuberculosis	68	1	2.5
Aggregate report of screening and preventive therapy for TB infection	68	1	2.5

Date: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-24005 Filed 9-14-99; 8:45 am]

BILLING CODE 4163-18-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY-25-99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

1. Proposed Project

Evaluating the Effectiveness of Tailored Occupational Safety and Health Information on the World Wide Web: Increasing Knowledge and

Changing Behavior of Residential Building Construction Contractors—New—The National Institute for Occupational Safety and Health (NIOSH)—Workers in the construction industry face higher than normal risks of fatal injury, nonfatal injury, and illness resulting from on-the-job exposures. According to the NIOSH, during the period from 1980 through 1992, construction had the highest number of deaths resulting from workplace injury—over 14,000 deaths, or more than 1,000 deaths per year. According to the Bureau of Labor Statistics (BLS) and the Center to Protect Workers' Rights (CPWR), construction had the highest number of deaths resulting from injury (1,039) and the third highest rate of fatal injury (13.9 deaths per 100,000 workers) in 1996.

The majority of construction companies are very small. According to Dun and Bradstreet, 96% of residential building contractors employ less than 15 workers on average; over 80% employ less than 5 workers. In general, small companies have insufficient resources to identify and apply risk and prevention information relevant to their operations. According to a recent study (conducted by NIOSH), lack of tailored, relevant, and timely occupational safety and health information is a major barrier identified by small construction contractors.

The goals of this investigation are to: (1) explore the effectiveness of tailored safety and health information that is developed based on the individual

contractor's construction specialties and specific operations, as well as the contractor's psychosocial factors; and (2) explore the effectiveness of the Internet World Wide Web as a mechanism for delivering tailored safety and health information. Specifically, the goal of this data collection is to compare the effectiveness of tailored Internet messages (based on interactive Internet and computer-tailoring technologies), non-tailored Internet messages (based on current static, menu-driven, non-interactive models), tailored print messages delivered by direct mail, and non-tailored print messages delivered by direct mail in influencing changes in safety-and health-related knowledge, intentions, and behaviors. Messages will address two leading cases of injuries and illnesses in construction: Falls and silicosis.

The data collected in this study will be used to further current understanding of tailoring safety and health information utilizing the Internet and the relative effectiveness of this approach when compared to traditional and current mechanisms of communicating safety and health information. The data collected in this study will also be used to provide a basis for developing industry-specific occupational safety and health information systems that provide relevant, timely risk and prevention information, especially to small business owners. The total annual burden hours are 249.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)
Residential Building Construction Contractors	250	2	.33

2. The development and implementation of a theory-based health communications intervention to decrease silica dust exposure among masonry workers—New—The National

Institute of Occupational Safety and Health (NIOSH)—Construction is the most frequently recorded industry on death certificates with mention of silicosis. Overexposure to crystalline

silica is well documented in the construction industry, especially in brick laying and masonry. According to 1993 BLS data, there are 136,139 (at 24,362 establishments) masonry and

brick laying workers in the U.S., and according to a recent study, approximately 17,400 masonry and plastering workers are exposed to at least five times the NIOSH recommended exposure limit (REL for crystalline silica), and of these workers, an estimated 80 percent of them are exposed to at least 10 times the NIOSH REL.

To effectively prevent silicosis, not only must control measures be improved, but workers must be persuaded to protect themselves and employers must be motivated to provide workers with proper engineering controls and training. Previous research has too often focused on the behaviors and attitudes of workers and not on employers. Since employers have a tremendous influence on the health of workers and since their motivations may differ from workers', it is

important to focus on them as well. Well-designed and theory-driven communication interventions have the capacity to promote protective health behaviors. To develop messages that will have the greatest success at motivating workers to protect themselves and employers to protect their workers from silicosis, information on workers' and employers' beliefs, attitudes, and behaviors regarding silicosis must be determined. A recently completed pilot-study indicated a need to motivate employers to provide appropriate engineering controls and respiratory protection and a need to persuade workers to protect themselves.

The goal of this project is to develop a health communication intervention program targeting both masonry contractors and workers that will increase the use of engineering controls (specifically, wet-sawing) and

respiratory protection. The aforementioned pilot study will serve as a foundation upon which the intervention will be developed. The effectiveness of the intervention will be evaluated using a pre-post test questionnaire.

The study results will provide a basis for intervention programs that masonry contractors can use to educate their workers regarding risk of exposure to silica dust on masonry work sites. The methodology could be applied to other construction procedures such as jack hammering, sand blasting, and similar dust producing procedures to produce similar intervention programs. Eventually we would hope, silica exposures among construction workers would decrease significantly. The total annual burden hours are 146.

Respondents	No. of respondents	No. of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Workers	200	2	0.33	132
Contractors	20	2	0.33	13.2
Total .....	.....	.....	.....	145.2

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-24006 Filed 9-14-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention Meeting: Change of Time

Federal Register Citation of Previous Announcement: August 20, 1999, Volume 64, Number 161, Page 45552.

Summary: Notice is given that the meeting time of the Ethics Subcommittee of the Advisory Committee to the Director, CDC has changed. The meeting date, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

There will be no change in the meeting location of the Advisory Committee to the Director, CDC, which will be meeting at Center for Disease Control and Prevention, 1600 Clifton Road, NE, Building 16, Room 5126, Atlanta, Georgia 30333.

Original Time and Date: 8:30 a.m.-5 p.m., September 23, 1999.

New Time and Date: 10 a.m.-4 p.m., September 23, 1999.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D-24, Atlanta, Georgia 30333. Telephone 404/639-7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 9, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99-24007 Filed 9-14-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Call for Public Comment: Changing the Conversation—A National Plan To Improve Substance Abuse Treatment

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Request for public comment on five issues (domains) of concern to the substance abuse treatment field when assessing substance abuse treatment.

SUMMARY: This notice announces that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) is formally inviting public comment on five issues (domains) that are of concern to the substance abuse treatment field and require development and exploration. Via several mechanisms, including public hearings, CSAT intends that findings from the exploration of individual domains will ultimately be synthesized into a coherent national strategy to guide substance abuse treatment program and policy development for the future. Individuals and organizations are encouraged to comment in one of several ways: (1) In writing, by submission through the U.S. Mail or courier service; (2) via the National Treatment Plan web site (<http://www.NaTxPlan.org>); or (3) in person at one of the remaining three public hearings scheduled at locations across the country. The final cutoff date for comments is December 1, 1999. This notice discusses the public hearings at which interested individuals/ organizations may testify regarding the

five substance abuse treatment domains discussed below.

DATES/LOCATIONS: In addition to the public hearings held on July 8 in Hartford, Connecticut, and on September 16 in Chicago, Illinois, CSAT plans to conduct three more public hearings in 1999—October 18 in Washington, DC; October 26 in Portland, Oregon; and November 9 (tentative date) in Tampa/St. Petersburg, Florida. The next hearing will be held at the Metropolitan Washington Council of Governments, 777 N. Capitol Street, NE, Washington, DC 20002-4226, on October 18, 1999, between the hours of 8:30 a.m. and 5 p.m. Specific details regarding subsequent hearings will be published in the **Federal Register** approximately one month prior to each hearing.

Requests to testify at the Washington, DC, public hearing must be submitted to the addressee indicated below by October 12, 1999. Seating is limited. In the event that interpretive services for the hearing-impaired are required, please indicate these special needs to the addressee.

FOR INFORMATION CONTACT: Requests for additional information regarding the hearing and/or testimonies, as well as requests to testify must be addressed to: Cynthia Graham, [Tele: (301) 443-8390; e-mail: cgraham@samhsa.gov; Fax: (301) 480-6077] Center for Substance Abuse Treatment, SAMHSA, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857.

Written comments (without a request to personally testify) will also be accepted by the above addressee. Written testimonies are limited to five (5) typed pages using 1.5 line spacing and 12 point font.

SUPPLEMENTARY INFORMATION:

Background

Building on recent advances and studies, CSAT has initiated plans to focus on how to apply its extensive knowledge to the practical objective of improving treatment outcomes. The plans include synthesizing current knowledge and recommendations about treatment, service systems, application of best practices, diffusion methods, and organization and financing of substance abuse treatment services. Federal Government and outside experts, as well as the interested public, will explore the current state of the knowledge, resources, needs, and service and organizational capacity. The objective is the culling of priorities for action by the government and by others in the substance abuse treatment field. As noted above, CSAT is inviting the

public to comment on five domains as part of the initial step of the plan. The domains, as well as some initial questions for exploration, include:

(1) Closing the Treatment Gap: Where are the gaps? How big are they for different populations? For different types of settings and treatment modalities? How big are gaps in other related systems of care, e.g., welfare, child welfare, housing? What are the policy, organization, and financing issues that must be addressed in the private and public systems, including Medicaid and Medicare, to close the treatment gap?

(2) Reducing Stigma and Changing Attitudes: What are the nature, causes and consequences of addiction stigma? What can CSAT, the treatment field, consumers and families do to address stigma related to addiction, substance abuse treatment and individuals with substance abuse disorders? How do other stigmas impact/compound the stigma of addiction?

(3) Improving and Strengthening Treatment Systems: What are the clinical and organizational challenges facing treatment organizations in the public and private sectors? What can CSAT, the treatment field, consumers and families do to improve and strengthen treatment organizations so that they can adapt to the new imperatives of the changing treatment system, and to improve the relationship between the general health care system and the specialty substance abuse treatment system? What should be done at the State, county and/or local levels to improve and strengthen substance abuse treatment?

(4) Connecting Services and Research: What are the best methods by which CSAT, the treatment field, consumers and families can foster and support evaluation of proven research findings in community-based settings and identification and adoption of best practices?

(5) Addressing Workforce Issues: What are the issues facing clinicians treating addictions? What can CSAT, the treatment field, consumers and families, and professional associations do to foster training, appropriate credentialing, and licensure in all settings in which treatment occurs, and to support treatment organizations in developing appropriate policies for clinical training?

Hearing Format

The hearings will be divided into five segments (i.e., the five domains described above) of approximately 60 minutes each. Each individual/organization participant will be limited

to three (3) minutes of oral testimony and five (5) pages of typed testimony per domain. All oral testimonies must be accompanied by a written testimony of no more than five (5) typed pages using 1.5 line spacing and 12 point font. Five copies of written testimonies may either be submitted before the hearing to the addressee listed above or to the registrar at the hearing. As the hearing schedule allows, unscheduled testimonies will be accommodated. All testimonies (recorded and written) will become a part of the public domain.

Dated: September 3, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99-23971 Filed 9-14-99; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-05; N-63112]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a public park.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E., Sec. 24
E½ NE¼ SE¼

Containing 20 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under

applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 60 feet in width along the East boundary, 30 feet in width along the South boundary, and 30 feet in width along the North boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: August 31, 1999.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99-23746 Filed 9-14-99; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-350-1492-01]

Firearms Use Restrictions; Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure to discharge of firearms, Lassen County, California.

SUMMARY: Under the authority of 43 CFR 8364.1(a), notice is hereby given that an emergency area closure to the discharge of firearms is in effect on BLM-managed public lands, in Lassen County, described as T.30N., R.12E., Sec. 21, E½SE, Sec. 22, N½, SE, W½SW, Sec. 27, NW, Sec. 28, E½NE, containing 880.00 acres more or less. The emergency area closure shall remain in effect until the official end of fire season as authorized by the California Department of Forestry and Fire Protection. Exceptions to this are as follows: Federal, State and local law enforcement officers in the performance of their official duties.

EFFECTIVE DATE: The emergency area closure, effective September 9, 1999, shall remain in effect until the official end of the 1999 fire season as authorized by the California Department of Forestry and Fire Protection.

FOR FURTHER INFORMATION CONTACT: Linda D. Hansen, Field Manager, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, CA 96130 (530) 257-0456.

SUPPLEMENTALRY INFORMATION: The discharge of firearms on the aforementioned public lands poses a significant threat to the public land resources, public safety, and adjacent private property, including residences. The threat determination was based on the following factors: (1) The existence of high and extreme fire danger in this area, and (2) the close proximity of private residences, and outbuildings to the area where discharge of firearms is occurring on public lands, causing projectiles to potentially strike power/phone lines, personal property and persons. Act of 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, California

T.30N., R.12E., Sec. 21, E½SESE, Sec. 27, NW, Sec. 28, E½NE, containing 260.00 acres more or less.

Dated: September 9, 1999.

Linda D. Hansen,

Field Office Manager.

[FR Doc 99-24008 Filed 9-14-99; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Federal Oil and Gas Royalty-In-Kind Pilot Programs

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a Notice of Intent that was published in the **Federal Register** on July 13, 1999 (64 FR 37809), in connection with MMS's royalty-in-kind projects. The Notice of Intent addressed practices to which MMS plans to adhere in exercising the options available to the Secretary of the Interior to take the government's royalty share of production in kind from Federal oil and gas leases. In response to industry requests for additional time to submit comments, MMS will extend the comment period 14 days, from September 13 to September 27.

DATES: Comments must be submitted on or before September 27, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bonn Macy, Special Assistant to the Director, Minerals Management Service, 1849 C Street, NW., MS 4230, Washington, DC 20225. You may also comment via the Internet (E-mail) to Bonn.Macy@mms.gov. Please submit Internet comments as a WordPerfect 6.0 or an MS Word 97 document (earlier versions of these formats are acceptable) avoiding the use of special characters and any form of encryption. Please also include your name and return address and phone number in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Bonn Macy directly at (202) 208-3827.

FOR FURTHER INFORMATION CONTACT: Bonn Macy, Special Assistant to the Director, Minerals Management Service, 1849 C Street, NW., MS 4230,

Washington, DC 20225, telephone number (202) 208-3827.

Dated: September 10, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99-24087 Filed 9-14-99; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the 1992 Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996, Reclamation revised the document and renamed it to Criteria for Evaluating Water Management Plans (Criteria).

James Irrigation District has developed a water management plan which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

The 1996 Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water management plans developed by Central Valley Project contractors. The Criteria were developed and the plans have been evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's water management plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by October 15, 1999.

ADDRESSES: Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any

subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978-5215 (TDD 978-5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405(e) of the CVPIA (Title 34 Public Law 102-575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices".

The Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water management plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water management plans. The steps are:

1. Describe the district.
2. Inventory water resources available to the District.
3. Best Management Practices (BMP's) for Agricultural Contractors.
4. BMP's for Urban Contractors.
5. Exemption Process.

Public comment on Reclamation's preliminary (i.e., draft) determinations of James Irrigation's water management plan is invited at this time. A copy of the plan will be available for review at Reclamation's MP Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California. If you wish to review a copy of the plan, please contact Ms. Billingsley to find the office nearest you.

Dated: August 30, 1999.

Robert F. Stackhouse,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 99-23982 Filed 9-14-99; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-856 (Preliminary)]

Certain Ammonium Nitrate From Russia

Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of solid fertilizer grade ammonium nitrate (as defined by the Department of Commerce (Commerce)), provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On July 23, 1999, a petition was filed with the Commission and Commerce by the ad hoc Committee for Fair Ammonium Nitrate Trade (COFANT)

¹ The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR § 207.2(f)).

(consisting of Air Products & Chemicals, Inc., Allentown, PA; Mississippi Chemical Corp., Yazoo City, MS; El Dorado Chemical Co., Oklahoma City, OK; Nitram, Inc., Tampa, FL; LaRoche Industries, Inc., Atlanta, GA; and Wil-Gro Fertilizer, Inc., Celina, TX), alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject ammonium nitrate from Russia. Accordingly, effective July 23, 1999, the Commission instituted antidumping investigation No. 731-TA-856 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 2, 1999 (64 FR 41948). The conference was held in Washington, DC, on August 13, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 7, 1999. The views of the Commission are contained in USITC Publication 3232 (September 1999), entitled "Certain Ammonium Nitrate from Russia: Investigation No. 731-TA-856 (Preliminary)."

By order of the Commission.

Issued: September 8, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-24063 Filed 9-14-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final)]

Certain Cut-to-Length Steel Plate From France, India, Indonesia, Italy, Japan, and Korea

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701-TA-387-391 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping

investigations Nos. 731-TA-816-821 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from France, India, Indonesia, Italy, and Korea and less-than-fair-value imports from France, India, Indonesia, Italy, Japan, and Korea of certain cut-to-length steel plate, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 23 (CVD) and July 26 (AD), 1999.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202-205-3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in France, India, Indonesia, Italy, and Korea of certain cut-to-length steel plate, and that such products from France, India, Indonesia, Italy, Japan, and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on February 16, 1999, by Bethlehem Steel Corp. (Bethlehem, PA); U.S. Steel Group, a unit of USX Corp. (Pittsburgh, PA); Gulf States Steel, Inc. (Gadsden, AL); IPSCO Steel, Inc. (Muscatine, IA); Tuscaloosa

Steel Co. (Tuscaloosa, AL); and the United Steelworkers of America (Pittsburgh, PA).¹

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 1, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 14, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 7, 1999. A nonparty who has testimony that may aid the Commission's

¹ Gulf States Steel, Inc., is not a petitioner with respect to France. Tuscaloosa Steel Co. is not a petitioner with respect to France and Italy.

deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 10, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is December 8, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 21, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 21, 1999. On January 11, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 13, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-24064 Filed 9-14-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-432 (Review)]

Drafting Machines From Japan

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on drafting machines from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to § 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—On September 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 29339, June 1, 1999) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 12, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 15, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 15, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

² The Commission found the response submitted by Vemco Drafting Machines Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 9, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24066 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–18; 701–TA–276; and 731–TA–328, 331, and 333 (Review)]

Certain Fresh-Cut Flowers From Chile, Ecuador, Mexico, and Peru

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in February 1999 to determine whether revocation of the existing countervailing and antidumping duty orders would be likely to lead to continuation or recurrence of subsidization and/or dumping and of material injury to a domestic industry. On September 3, 1999, the Department of Commerce published notice that it was revoking the orders because the domestic interested parties had withdrawn, in full, their participation in the ongoing sunset reviews (64 FR 48346 and 48347). Accordingly, pursuant to § 207.69 of the Commission's rules of practice and procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: September 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24062 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–413–415 and 419 (Review)]

Certain Industrial Belts From Germany, Italy, Japan, and Singapore

AGENCY: International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office

of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On September 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.

With regard to industrial belts from Japan and Singapore, the Commission found that both the domestic interested party group responses¹ and the respondent interested party group responses to its notice of institution² were adequate and voted to conduct full reviews.

With regard to industrial belts from Germany and Italy, the Commission found that the domestic interested party group responses were adequate³ and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: September 9, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24069 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–U

¹ Chairman Bragg and Commissioners Crawford and Askey determined that the domestic interested party group response with respect to all power transmission belts other than V-type and synchronous-type from Japan was inadequate.

² The notice of institution for all of the subject reviews was published in the **Federal Register** on June 1, 1999 (64 FR 29342).

³ Chairman Bragg and Commissioners Crawford and Askey determined that the domestic interested party group response with respect to industrial belts from Germany was inadequate.

INTERNATIONAL TRADE COMMISSION**[Investigations Nos. 731-TA-96 and 439-445 (Review)]****Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia****AGENCY:** International Trade Commission.**ACTION:** Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: September 3, 1999.**FOR FURTHER INFORMATION CONTACT:**

Robert Carpenter (202-205-3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by

accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On September 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.

With regard to industrial nitrocellulose from France, Germany, and United Kingdom, the Commission found that both the domestic interested party group responses and the respondent interested party group responses to its notice of institution¹ were adequate and voted to conduct full reviews.

With regard to industrial nitrocellulose from Brazil, China, Japan, Korea, and Yugoslavia, the Commission found that the domestic interested party group responses were adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.²

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 9, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-24067 Filed 9-14-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION**Investigation No. 731-TA-429 (Review)****Mechanical Transfer Presses from Japan****AGENCY:** International Trade Commission.**ACTION:** Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on mechanical transfer presses from Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with a full

¹ The notice of institution for all of the subject reviews was published in the **Federal Register** on June 1, 1999 (64 FR 29344).

² Commissioner Crawford dissenting.

review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on mechanical transfer presses from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: September 3, 1999.**FOR FURTHER INFORMATION CONTACT:**

George Deyman (202-205-3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: On September 3, 1999, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (64 FR 29347, June 1, 1999) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 9, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-24068 Filed 9-14-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-297 (Review) and 731-TA-422 (Review)]

Steel Rails From Canada

AGENCY: International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the countervailing and antidumping duty orders on steel rails from Canada.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the countervailing and antidumping duty orders on steel rails from Canada would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—On September 3, 1999, the Commission determined that the

domestic interested party group responses to its notice of institution (64 FR 29353, June 1, 1999) were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 25, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to these reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to these reviews may file written comments with the Secretary on what determination the Commission should reach in these reviews. Comments are due on or before October 28, 1999, and may not contain new factual information. Any person that is neither a party to these five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 28, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

² The Commission found the responses submitted by Pennsylvania Steel Technologies and Rocky Mountain Steel Mills to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: September 9, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-24065 Filed 9-14-99; 8:45 am]

BILLING CODE 7020-02-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Rescission of Various Policy Letters

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Proposed rescission of Office of Federal Procurement Policy (OFPP) Policy Letters 77-2, 78-2, 78-3, 78-4, 79-1, 79-2, 80-3, 80-6, 80-8, 81-1, 81-2, 82-1, 83-1, 83-2, 83-3, 84-1, 85-1, 89-1, 91-2, 91-4, 92-5, and 95-1.

SUMMARY: OMB is undertaking a thorough review of its government-wide procurement issuances. Based on this review, OMB requests comments on the proposed rescission of the following Office of Federal Procurement Policy (OFPP) Policy Letters: 77-2, Section 502(c) of P.L. 95-89; 78-2, Preventing "Wage Busting" for Professionals; Procedures for Evaluating Contractor Proposals for Service Contracts; 78-3, Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement; 78-4, Field Contract Support Cross-Servicing Program; 79-1, Implementation of Section 15(k) of the Small Business Act, as amended; Office of Small and Disadvantaged Business Utilization; 79-2, Boards of Contract Appeals; Position Allocation Pursuant to Public Law 95-563; 80-3, Regulatory Guidance on P.L. 95-563, the Contract Disputes Act of 1978; 80-6, Regulatory Guidance on Section 221 of Public Law 95-507; 80-8, Establishment of Procurement Data Reporting Requirements to Comply with Public Law 96-39 (as amended by Transmittal Memoranda Nos. 1, 2, and 3); 81-1, Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases; 81-2, Policy Guidance for the Labor Surplus Area Programs; 82-1, Policy Guidance Concerning Government-wide

Debarment, Suspension, and Ineligibility; 83-1, Withholding of Funds from Construction Contract Progress Payments; 83-2, Publicizing the Development of Procurement Policies and Regulations; 83-3, Procurement of Architect-Engineer Services; 84-1, Federally Funded Research and Development Centers; 85-1, Federal Acquisition Regulations System; 89-1, Conflict of Interest Policies Applicable to Consultants; 91-2, Service Contracting; 91-4, Use of Irrevocable Letters of Credit; 92-5, Past Performance Information; and 95-1, Subcontracting Plans for Companies Supplying Commercial Items.

There have been substantial changes to the body of acquisition law and regulations since many of these policy documents were issued. As indicated in the **SUPPLEMENTARY INFORMATION** below, the requirements and provisions of the OFPP Policy Letters listed above have been incorporated in the Federal Acquisition Regulation (FAR), 48 CFR 1, or for other reasons have either been superseded or are no longer necessary.

DATES: Persons who wish to comment on the proposed rescission of any of the OFPP Policy Letters should submit their comments no later than November 24, 1999.

ADDRESSES: Comments should be addressed to Michael Gerich, Office of Federal Procurement Policy, Room 9013, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Michael Gerich, Office of Federal Procurement Policy, 202-395-3501. Copies of the OFPP Policy Letters can be obtained at the ARNet world wide website, http://www.arnet.gov/References/Fwd_Index.html.

SUPPLEMENTARY INFORMATION: OFPP has been a leader in overall acquisition reform. One theme of acquisition reform is less reliance on regulation and more reliance on streamlined, customer-oriented, acquisition practices to improve support for agency missions. In keeping with this overall theme, OFPP is reviewing all of its policy letters, memoranda, and other issuances with the intent to: rescind those that are essentially covered by other regulations or policy documents; issue new policy letters and similar documents sparingly and only when necessary; and issue "best practices" instead. There have been substantial changes to the body of acquisition law and regulations since many of these policy documents were issued.

OFPP has recently completed a review of all of its policy issuances for possible rescission, by comparing them

with relevant statutory provisions and sections of the Federal Acquisition Regulation (FAR). The rescissions proposed in this notice reflect OFPP's preliminary conclusion that the FAR, as written, contains the current policy. Any policy embodied in the policy letters proposed for rescission by this notice that is not reflected in the current FAR has been either superseded by subsequent statutory changes or is otherwise no longer necessary. No substantive FAR change is required by this action.

Earlier this year, OFPP rescinded Policy Letter 79-4, Contracting for Motion Picture Productions and Videotape Productions. 64 FR 8631 (February 22, 1999). On April 2, 1999, OFPP published notice in the **Federal Register** requesting comments on two proposed policy letters: Policy Letter 99-X, Policy on Promoting Subcontracting Opportunities and Administering Subcontracting Plans (64 FR 16001); and Policy Letter 99-1, Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts (64 FR 16003). Those two proposed policy letters would supersede OFPP Policy Letters 80-1, 80-2, 80-4, and 91-1. In this notice, OFPP is proposing to rescind an additional 22 policy letters, for the reasons explained below.

OFPP Policy Letter 77-2, Section 502(c) of P.L. 95-89

Section 502(c) of Public Law 95-89 amended the Small Business Act (15 U.S.C. 631 *et seq.*) to allow certain nonprofit agencies employing people who are blind or severely disabled to compete for agency procurements conducted during fiscal year 1978 that would otherwise have been reserved exclusively for competition among small businesses. Policy Letter 77-2 implemented section 502(c). Similar statutory provisions were enacted in subsequent years. For example, section 133 of Public Law 100-590 (November 3, 1988) (102 Stat. 3005) authorized such nonprofit agencies to compete in procurements otherwise set aside for small businesses in fiscal years 1989 through 1993. Section 305 of Public Law 103-403, the Small Business Administration Reauthorization and Amendments Act of 1994, revived this authority to compete for fiscal year 1995. The statutory authority has expired.

OFPP Policy Letter 78-2, Preventing "Wage Busting" for Professionals: Procedures for Evaluating Contractor Proposals for Service Contracts

OFPP Policy Letter 78-2 addressed "wage busting" practices of government contractors who employ professional employees who traditionally have not been represented by union collective bargaining agreements. 78-2 required contracting agencies to evaluate applicable proposals from offerors by taking into account the cost realism of the contractor's proposed personnel compensation plan. Unrealistically low labor rates proposed for professional employees could indicate a lack of understanding of the resources required to perform high quality contract work on an uninterrupted basis. 78-2 was superseded, in purpose, by the provisions of 10 U.S.C. 2331 (Contracts for professional and technical services) which is implemented in FAR 37.115 (Uncompensated overtime) and FAR 52.237-10 (Identification of Uncompensated Overtime).

OFPP Policy Letter 78-3, Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement

OFPP Policy Letter 78-3 prescribed a uniform approach to handling requests filed under the Freedom of Information Act for information disclosed by government contractors and offerors. 78-3 was superseded, in purpose, by FAR Subpart 24.2, which implements statutory provisions at 10 U.S.C. 2305(g) and 41 U.S.C. 253b(m).

OFPP Policy Letter 78-4, Field Contract Support Cross-Servicing Program

Policy Letter 78-4 encouraged agencies that require contract support services (e.g., contract administration, audit services) from field offices to use cross-servicing arrangements with existing contract administration and contract audit organizations of other agencies. The Policy Letter was intended to treat contractors more consistently and, where possible, preclude duplication of effort attributable to multiple agency reviews, inspections, and examination of contractor records. The provisions of the Policy Letter were incorporated in FAR Subpart 42.1.

OFPP Policy Letter 79-1, Implementation of Section 15(k) of the Small Business Act, as Amended: Office of Small and Disadvantaged Business Utilization

Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) established an Office of Small and Disadvantaged

Business Utilization (OSDBU) in each contracting agency to implement and execute the functions and duties under sections 8 and 15 of the Small Business Act which relate to such agency. Policy Letter 79-1 provided guidance on the organization and function of the OSDBUs. The provisions of Policy Letter 79-1 were incorporated in FAR subsections 19.201(c) and (d).

OFPP Policy Letter 79-2, Boards of Contract Appeals: Position Allocation Pursuant to Public Law 95-563

Policy Letter 79-2 made an initial allocation of positions for agency boards of contract appeals pursuant to Public Law 95-563, the Contract Disputes Act of 1978. Section 8(a) of the Contract Disputes Act of 1978, as amended, (41 U.S.C. 607(a)) states that a board of contract appeals may be established within an executive agency, when the agency head, after consultation with the Administrator for Federal Procurement Policy, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board. Since issuance of Policy Letter 79-2 over 20 years ago, there has been little need for guidance in this area. OFPP will issue new guidance, if necessary.

OFPP Policy Letter 80-3, Regulatory Guidance on P.L. 95-563, the Contract Disputes Act of 1978

Policy Letter 80-3 provided guidance on developing regulations to implement provisions of the Contract Disputes Act of 1978, including resolution of contract claims, contractor certification requirements, payment of interest on contractor claims, and a contract disputes clause. The provisions of Policy Letter 80-3 were incorporated in FAR Subpart 33.2 and the contract disputes clause at FAR 52.233-1.

OFPP Policy Letter 80-6, Regulatory Guidance on Section 221 of Public Law 95-507

Policy Letter 80-6 provided regulatory guidance on section 15(j) of the Small Business Act (15 U.S.C. 644(j)), which set aside small purchase procurements for small businesses. Section 15(j) was amended to apply the set aside provisions to agency purchase of goods or services that have an anticipated value greater than \$2,500 but not greater than \$100,000. The regulatory guidance in Policy Letter 80-6, as amended by the statutory changes, is implemented by the provisions of FAR 19.502-2.

OFPP Policy Letter 80-8, Establishment of Procurement Data Reporting Requirements to Comply with Public Law 96-39 (as amended by Transmittal Memoranda Nos. 1, 2, and 3)

Policy Letter 80-8 established procurement data reporting requirements. Transmittal Memoranda Nos. 1, 2, and 3 amended those reporting requirements. The provisions of Policy Letter 80-8 and the Transmittal Memoranda are implemented in FAR Subpart 4.6 and the FPDS Reporting Manual described therein.

OFPP Policy Letter 81-1, Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases

Policy Letter 81-1 required agencies to establish advance procurement planning procedures to allow sufficient lead time to prepare procurement solicitations, obtain and evaluate bids or proposals, audit, negotiate, and make contract awards in an orderly manner. The Policy Letter also required agencies to develop procedures for review of procurements, particularly major procurements, made in the last quarter to assure they are consistent with advance procurement plans. The provisions of Policy Letter 81-1 were essentially incorporated in FAR Part 7 and partially superseded by procedures found in Part 3 of OMB Circular A-11, Planning, Budgeting, and Acquisition of Capital Assets, and the Capital Programming Guide which further integrate the budget and procurement processes.

OFPP Policy Letter 81-2, Policy Guidance for the Labor Surplus Area Programs (as amended by Supplement No. 1)

Policy Letter 81-2, as amended by Supplement No. 1, provided guidance on implementing subsections 15(d), (e), and (f) of the Small Business Act (as amended and added by section 117 of Public Law 96-302, July 2, 1980) that gave priority in awarding contracts and subcontracts to firms performing in areas of unemployment or underemployment known as labor surplus areas. Subsection 7101(a) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, October 13, 1994) deleted subsections 15(e) and (f) from the Small Business Act, thus removing the labor surplus area set-aside and subcontracting programs. The statutory changes were implemented in FAR Part 19. For more information, see the final rule amendment to the FAR published in the **Federal Register** on September 18, 1995 (60 FR 48258).

OFPP Policy Letter 82-1, Policy Guidance Concerning Government-wide Debarment, Suspension, and Ineligibility

Policy Letter 82-1 established policies and procedures for debarment and suspension of persons from contracting with Federal Departments and agencies. The provisions of Policy Letter 82-1 are implemented in FAR Subpart 9.4.

OFPP Policy Letter 83-1, Withholding of Funds from Construction Contract Progress Payments

Policy Letter 83-1 provided guidance on retention or withholding of funds from progress payments made under Federal construction contracts. The provisions of the Policy Letter are implemented in FAR section 32.103.

OFPP Policy Letter 83-2, Publicizing the Development of Procurement Policies and Regulations

Policy Letter 83-2 established uniform criteria and procedures for soliciting the views of all interested parties in the development by executive Departments and agencies of procurement policies, regulations, procedures and forms. The provisions of Policy Letter 83-2 were codified in section 22 of the OFPP Act, as amended (41 U.S.C. 418b), and implemented in FAR Subpart 1.5.

OFPP Policy Letter 83-3, Procurement of Architect-Engineer Services

Policy Letter 83-3 provided guidance on procurement of architect-engineer services under the Brooks Architect-Engineers Act (Public Law 92-582, 40 U.S.C. 541 *et seq.*). The Policy Letter delineated the type of services to be procured using source selection procedures prescribed by the Brooks Architect-Engineers Act versus using standard source selection procedures. The provisions of Policy Letter 83-3 were implemented by FAR section 36.601.

OFPP Policy Letter 84-1, Federally Funded Research and Development Centers

Policy Letter 84-1 established policy for the establishment, use, periodic review, and termination of sponsorship of Federally Funded Research and Development Centers (FFRDCs). The provisions of Policy Letter 84-1 were implemented by FAR section 35.017.

OFPP Policy Letter 85-1, Federal Acquisition Regulations System

Policy Letter 85-1 implemented provisions of the OFPP Act (Public Law 93-400 as amended, 41 U.S.C. 401 *et seq.*) concerning the single system of

simplified Government-wide procurement regulations now known as the Federal Acquisition Regulation (FAR) (48 CFR 1). The Policy Letter covered establishment of the FAR System, FAR maintenance, and resolution of differences among executive agencies in development of FAR provisions. The provisions of Policy Letter 85-1 were codified in sections 6 and 25 of the OFPP Act (41 U.S.C. 405 and 41 U.S.C. 421, respectively) and incorporated in FAR Subparts 1.1, 1.2, and 1.3.

OFPP Policy Letter 89-1, Conflict of Interest Policies Applicable to Consultants

Policy Letter 89-1 established policy and procedures on applying conflict of interest standards to persons who provide consulting services to the government, pursuant to section 8141 of the 1989 Department of Defense Appropriations Act, Public Law 100-463, 102 Stat. 2270-47 (October 1, 1988). The provisions of Policy Letter 89-1 were incorporated in FAR Subpart 9.5.

OFPP Policy Letter 91-2, Service Contracting

OFPP Policy Letter 91-2 established policy for acquiring services by contract. It encouraged the use of "performance-based contracting," which uses standards to measure quality and timeliness of contractor performance and surveillance plans to assure that the standards are met. Policy Letter 91-2 is implemented in FAR Subpart 37.6. For more information on this subject, see OFPP's "A Guide to Best Practices for Performance-Based Service Contracting" (October 1998) at the ARNet world wide website, <http://www.arnet.gov/BestP/PPBSC/BestPPBSC.html>.

OFPP Policy Letter 91-4, Use of Irrevocable Letters of Credit

OFPP Policy Letter 91-4 established policy for use of irrevocable letters of credit in lieu of sureties for Federal construction contracts requiring Miller Act bonds. The Miller Act (40 U.S.C. 270a *et seq.*) requires the use of performance and payment bonds for Federal construction contracts in excess of \$25,000. Policy Letter 91-4 determined that: irrevocable letters of credit serve much of the same function and provide the same redeemable value as bonds, postal orders, and certified checks; Federal agencies are authorized to accept such letters; and their usage in lieu of sureties would help to achieve greater access by small and small disadvantaged businesses to Federal construction contracts. The Policy Letter

permitted agencies to use irrevocable letters of credit in lieu of sureties for Federal construction contracts requiring Miller Act bonds. Policy Letter 91-4 is implemented in FAR section 28.204-3.

OFPP Policy Letter 92-5, Past Performance Information

Policy Letter 92-5 established requirements for evaluating contractor performance and for using past performance information in the contractor selection process. The provisions of Policy Letter 92-5 have been implemented in FAR Subpart 42.15 and FAR sections 15.304 and 15.305. For more information on this subject, see "A Guide to Best Practices for Past Performance" (May 1995) at the ARNet world wide website, <http://www.arnet.gov/BestP/BestPract.html>.

OFPP Policy Letter 95-1, Subcontracting Plans for Companies Supplying Commercial Items

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds \$500,000 (\$1 million in the case of construction) and that offers subcontracting opportunities include a requirement that the apparently successful offeror negotiate a subcontracting plan which shall become a material part of the contract. Policy Letter 95-1 revised the policy on subcontracting plans to reduce the burden of government-unique requirements on prime contractors and subcontractors that supply commercial items. The Policy Letter allows such contractors and subcontractors to meet the requirements of Section 8(a) of the Small Business Act by submitting an annual "commercial plan" rather than an individual contract-by-contract or subcontract-by-subcontract plan. A commercial plan is a subcontracting plan that covers a contractor's or subcontractor's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line). The provisions of Policy Letter 95-1 were implemented in FAR sections 19.701, 19.704(d), and 19.705-7.

OFPP requests comments on these proposed rescissions.

Deidre A. Lee,

Administrator.

[FR Doc. 99-23998 Filed 9-14-99; 8:45 am]

BILLING CODE 3110-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99-110)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Kent N. Stone, Patent Attorney, John H. Glenn Research Center at Lewis Field, Mail Stop 500-118, Cleveland, Ohio 44135-3191; telephone (216) 433-8855.

NASA Case No. LEW 16,682-1: Rare Earth Optical Temperature Sensor;

NASA Case No. LEW 15,805-2: Soft Tissue Implants with Microscopic Surface Roughness;

NASA Case No. LEW 16,644-1: Wave Augmented Diffuser for Centrifugal Compressor;

NASA Case No. LEW 16,684-1: Provisional Thermal Barrier Braided Rope Seal.

Dated: September 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99-23813 Filed 9-14-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99-111)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681-0001; telephone (757) 864-9260.

NASA Case No. LAR 15449-1: A Method to Prepare Processable Polyimides with Reactive Endgroups Using 1,3-Bis (3-Aminophenoxy) Benzene;

NASA Case No. LAR 15459-1: A Method to Prepare Processable Polyimides with Non-Reactive Endgroups Using 1,3-Bis (3-Aminophenoxy) Benzene;

NASA Case No. LAR 15612-1-SB: System for Multiplexing Acoustic Emission (AE) Instrumentation;

NASA Case No. LAR 15849-1: Process to Fabricate a Full-Consolidated Fiber Reinforced Composite Tape/Ribbon From Solution-Coated Prepreg for Automated Tow/Tape Placement;

NASA Case No. LAR 15712-1-CU: Catalytic Oxidation Sensor for Hydrocarbons and Volatile Organic Compounds;

NASA Case No. LAR 15817-1: A Method of Encouraging Physiological Self-Regulation through Modulation of an Operator's Control Input to a Video Game or Training Simulator;

NASA Case No. LAR 15894-1: Versatile Software Package for Near Real-Time Analysis of Experimental Data;

NASA Case No. LAR 15922-1: An Active Noise Control System with Reduced Actuator Force and Control Processing Requirements;

NASA Case No. LAR 15926-1: Reference Sample Technique to Measure Material Non-Linearity;

NASA Case No. LAR 15936-1: Laser Diode Ultrasound Generation System;

NASA Case No. LAR 15938-1: A Method for the Reduction of Signal-Induced Noise in Photomultiplier Tubes Using an External Electrode;

NASA Case No. LAR 15962-1-CU: Poly (Aryl Ether Ketones) Bearing Alkylated Side Chains.

Dated: September 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99-23814 Filed 9-14-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99-113]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Thursday, September 23, 1999, 8:30 a.m. to 5:00 p.m., and Friday, September 24, 1999, 8:30 a.m. to 4:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

- Membership Changes
- Report from the Theme Director
- Report from the Associate Administrator for Space Science
- Status of Chandra Observatory
- Report from the Structure and Evolution of the Universe Forum
- Status of Office of Space Science Strategic Planning Effort
- Review of Structure of Evolution of the Universe Effort

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99-23964 Filed 9-14-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99-114]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Propulsion Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Propulsion Systems Subcommittee meeting.

DATES: Tuesday, September 28, 1999, 8:00 a.m. to 5:00 p.m. and Wednesday, September 29, 1999, 8:00 a.m. to 4:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, Building 86, Room 100, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135, 216/433-2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Overview
- Propulsion Systems Base R&T Program Review
- GPRA Milestones Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: September 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99-23965 Filed 9-14-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99-112)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Nicholson Manufacturing Company, with headquarters in Seattle, Washington, and MTS Corporation, with headquarters in Eden Prairie, Minnesota, have both applied for co-exclusive licenses to practice the invention described and claimed in U.S. Patent No. 5,893,507 entitled "Auto-Adjustable Pin Tool for Friction Stir Welding," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Marshall Space Flight Center.

DATES: Responses to this notice must be received by November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Schramm, Technology Transfer Office, Mail Code CD30, Marshall Space Flight Center, Huntsville, AL 35812.

Dated: September 3, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99-23963 Filed 9-14-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

Agenda; National Transportation Safety Board

TIME AND DATE: 9:30 a.m., Tuesday, September 21, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

7010A—Highway Special Investigation Report: Bus Crashworthiness.

7120A—Hazardous Materials Accident Report: Overflow of Gasoline and Fire at a Service Station-Convenience Store, Biloxi, Mississippi on August 9, 1998.

NEWS MEDIA CONTACT: Telephone: (202) 314-6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314-6220 by Friday, September 17, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314-6065.

Dated: September 10, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99-24094 Filed 9-10-99; 4:21 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-302]

In the Matter of Florida Power Corporation et al. (Crystal River Unit 3); Order Approving the Transfer of License and a Conforming Amendment

I

Florida Power Corporation (FPC), owner of 90.4473 percent of Crystal River Unit 3 (CR-3), has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Operating License DPR-72. The City of Tallahassee (the City), one of the several joint owners of the facility, holds a 1.3333-percent ownership interest in CR-3. The Nuclear Regulatory Commission (NRC or Commission) issued License No. DPR-72 on December 3, 1976, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50). The facility is located in Citrus County, Florida.

II

By application dated December 29, 1998, as supplemented on June 18, 1999 (collectively hereinafter referred to as the application), FPC requested approval of the proposed transfer of the City's rights under the Operating License for CR-3 to FPC. FPC also requested approval of a conforming amendment to reflect the transfer.

According to the application, the City has agreed to sell its 1.3333-percent ownership interest in CR-3 to FPC, subject to obtaining all necessary regulatory approvals. FPC would continue to have exclusive responsibility for the management, operation, and maintenance of CR-3. The conforming amendment would remove the City from the Facility Operating License and indicate that the City is no longer a licensee.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 26, 1999 (64 FR 9544). No hearing requests were filed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application, the NRC staff has determined that FPC is qualified to hold the license with respect to the additional ownership interest of the City, and that the transfer of the license, to the extent it is held by the City, to FPC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Ch. I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of

the public; and the issuance of the proposed license amendment is in accordance with 10 CFR part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The findings previously set forth herein are supported by a Safety Evaluation dated September 8, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the license transfer referenced above is approved, subject to the following conditions:

(a) The use of assets in the City's existing non-qualified decommissioning trust fund for CR-3 (Decommissioning Trust Fund) shall be limited to the expenses related to decommissioning of CR-3 as defined by the NRC in its regulations and issuances, and as provided in the CR-3 license and any amendments thereto.

(b) Decommissioning Trust Fund investments in the securities or other obligations of the City or FPC, or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

(c) No disbursements or payments from the Decommissioning Trust Fund shall be made by the trustee until the trustee has first given the NRC thirty (30) days notice of payment. No disbursements or payments from the Decommissioning Trust Fund shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation, NRC.

(d) The agreement governing the Decommissioning Trust Fund shall be amended, to the extent necessary, to be consistent with this Order. It then shall not be modified in any material respect without prior written consent of the Director, Office of Nuclear Reactor Regulation, NRC.

(e) FPC shall take all necessary steps to ensure that the maintenance of, and disbursement of funds from, the Decommissioning Trust Fund is in accordance or consistent with the application, this Order, and the supporting safety evaluation.

(f) After receipt of all required regulatory approvals of the transfer of the City's interest in CR-3 to FPC, FPC shall inform the Director, Office of Nuclear Reactor Regulation, in writing, of such receipt within five business

days, and of the date of the closing of the sale and transfer of the City's interest to FPC no later than seven business days prior to the date of closing. Should the transfer not be completed by December 31, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 29, 1998, and supplement dated June 18, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Dated at Rockville, Maryland, this 8th day of September 1999.

or the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99-24056 Filed 9-14-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold a meeting on October 13, 1999, at the Embassy Suites Hotel, 4315 Swenson St., Las Vegas, Nevada. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94-463, 86 Stat. 770-776).

AGENDA: The meeting will begin at 8:30 a.m. on Wednesday, October 13, 1999, and continue that day until completed. The purpose of the meeting is to discuss issues relating to the design, development, and operation of the Licensing Support Network (LSN), the

Internet-based successor to the Licensing Support System (LSS).

As was explained in the final rule establishing the LSN, which was published in the **Federal Register** on January 29, 1999 (63 FR 71729), the LSN is intended to provide a pre-application discovery database consisting of Internet-accessible sites that would be operated by the potential parties to the proceeding, including the United States Department of Energy (DOE) and the NRC. The pre-application availability of these discovery materials is intended to ensure compliance with the schedule for a decision on the construction authorization for the high-level nuclear waste (HLW) repository contained in Section 114(d) of the Nuclear Waste Policy Act.

SUPPLEMENTARY INFORMATION: In 1999, the NRC re-established the LSNARP as a successor to the LSS Advisory Review Panel (LSSARP). Like the LSSARP, the LSNARP is to provide advice and recommendations to the NRC, including the LSN Administrator, concerning the design, development, and operation of an LSN electronic information management system for the storage and retrieval of information relevant to the Commission's future licensing proceeding for a geologic repository for HLW disposal. When the NRC Rules of Practice in 10 CFR part 2, Subpart J, recently were modified to provide an Internet-based technological solution to the submission and management of records and documents relating to the licensing of a HLW repository, pursuant to 10 CFR 2.1011(e) the LSNARP was re-established to provide advice on such issues as the type of computer system necessary to comply with the requirements for electronic document production and service; the operation, maintenance, and compliance monitoring of the electronic document databases established for the potential participants to the HLW repository licensing proceeding; and solutions to improve the LSN functioning once it is operational.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Mail Stop T-3-F23, Washington, DC 20555 Attn: John C. Hoyle (telephone 301-415-7467; fax 301-415-5599; e-mail JCH@NRC.GOV) or Jack G. Whetstone (telephone 301-415-7391; fax 301-415-5599; e-mail JGW@NRC.GOV).

Public Participation

Prior to the LSNARP meeting, the LSN Administrator will make available to interested persons materials that

outline policies and issues relating to LSN design, development, and operation. Interested persons may make oral presentations to the LSNARP or file written statements regarding these matters. Requests for oral presentations should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made. Any person having a written statement that they wish to have before the LSNARP at the time of the meeting should provide that statement so that it is received electronically, by facsimile transmission, or by mail by one of the contacts listed above on or before Wednesday, October 6, 1999.

A number of HLW repository-related meetings and conferences are being held in the Las Vegas, Nevada area in October 1999. Nonetheless, interested persons should be aware that LSN design options will be developed based on the input from those attending this LSNARP meeting and any written statements provided by interested persons in connection with this meeting. Accordingly, all interested persons are urged to attend the October 13, 1999 meeting at which these matters will be discussed and/or to submit written statements providing their views on these matters.

Dated: September 9, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99-24052 Filed 9-14-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Public Stakeholder Meeting Concerning the Revision of the Safety Inspection Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: The NRC published a meeting notice in the **Federal Register** on September 9, 1999 (64 FR 49031). The location of that meeting has been changed to the NRC's Commissioner's Hearing Room (see **ADDRESSES** section). The meeting is necessary to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its safety inspection program for nuclear fuel cycle facilities. Similar to the revisions of the inspection and oversight program for commercial nuclear power plants, NRC has initiated an effort to

improve its programs for nuclear fuel cycle facilities. This is described in SECY-99-188 titled, Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Safety Inspection Program. SECY-99-188 is available in the Public Document Room and on the NRC Web Page at <http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html>.

PURPOSE: To explain the planned revision of the fuel cycle safety inspection program and obtain stakeholder's views. The baseline safety inspection program applies to nuclear fuel cycle facilities regulated under 10 CFR parts 40, 70 and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF₆) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, or environment. In revising the inspection program, the goals are to have an inspection program that: (1) Provides earlier and more objective indications of acceptable and changing safety performance, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness and efficiency. In this regard, the NRC desires the revised inspection program to be more risk-informed and performance-based and more focused on significant risks. Where practicable, the program will use more objective safety performance indicators (PIs) with accompanying performance thresholds.

DATES: This meeting is scheduled for Thursday, September 16, 1999, from 9 am to 4 pm and is open to the public.

ADDRESSES: NRC's Commissioner's Hearing Room, 1st Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7253, e-mail wss@nrc.gov.

Dated at Rockville, Maryland this 2nd day of September, 1999.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 99-24054 Filed 9-14-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 29, 1999, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, September 29, 1999—1 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised

of any changes in schedule, etc., that may have occurred.

Dated: September 7, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99-24053 Filed 9-14-99; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of September 13, 20, 27, October 4, and October 18, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 13

There are no meetings scheduled for the Week of September 13.

Week of September 20—Tentative

Tuesday, September 21

9:25 a.m.

Affirmation Session (Public Meeting) (if needed).

9:30 a.m.

Briefing by DOE on Draft Environmental Impact Statement (DEIS) for a Proposed HLW Geologic Repository (Public Meeting).

Wednesday, September 22

9:00 a.m.

Meeting on Center for Strategic and International Studies Report, "The Regulatory Process for Nuclear Power Reactors—a Review" (Public Meeting).

Week of September 27—Tentative

There are no meetings scheduled for the Week of September 27.

Week of October 4—Tentative

There are no meetings scheduled for the Week of October 4.
and

Week of October 18—Tentative

Thursday, October 21

9:30 a.m.

Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301-415-6825) (SECY-99-201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material*, is available in the NRC Public Document Room or

on NRC web site at "www.nrc.gov/NRC/COMMISSION/SECYS/index.html". Download the *zipped version* to obtain all attachments.)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 10, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99-24169 Filed 9-13-99; 1:12 pm]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between the Nuclear Regulatory Commission and the National Science Foundation

AGENCY: Nuclear Regulatory Commission.

ACTION: Memorandum of Understanding Between the Nuclear Regulatory Commission and the National Science Foundation.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the National Science Foundation (NSF) have entered into a Memorandum of Understanding (MOU) to ensure the protection of the public health and safety and the environment from the hazards of radioactive materials that may be used in Antarctica pursuant to the Antarctic Treaty, the Protocol on Environmental Protection to the Antarctic Treaty, and the Antarctic Conservation Act. The MOU is intended to clarify the responsibilities of the NSF and the NRC with respect to the safe use of radioactive materials in Antarctica to avoid any duplication of effort and ensure efficient management of those materials. The text of the MOU between

the Nuclear Regulatory Commission and the National Science Foundation follows.

FOR FURTHER INFORMATION CONTACT: Trip Rothschild, Office of the General Counsel, telephone (301) 415-1611, e-mail tbr@nrc.gov.

Dated at Rockville, Maryland, this 9th day of September 1999.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

Memorandum of Understanding Between the National Science Foundation and the Nuclear Regulatory Commission Concerning the Management of Radioactive Material in Antarctica

I. Introduction

This Memorandum of Understanding (MOU) describes the responsibilities of the National Science Foundation (NSF) and the U.S. Nuclear Regulatory Commission (NRC) in ensuring the protection of the public health and safety and the environment from the hazards of radioactive materials that may be used in Antarctica pursuant to the Antarctic Treaty, the Protocol on Environmental Protection to the Antarctic Treaty, and the Antarctic Conservation Act.

II. Purpose and Scope

The purpose of this MOU is to clarify the responsibilities of the NSF and the NRC with respect to the safe use of radioactive materials in Antarctica in order to avoid any duplication of effort and ensure efficient management of those materials. Radioactive materials within the scope of this MOU mean byproduct, source, and special nuclear materials as defined in Sections 11e., 11z., and 11aa. of the Atomic Energy Act of 1954 ("AEA"), as amended, and the NRC's regulations thereunder. Antarctica is defined as that area of the world south of 60° South latitude, as described in the International Antarctic Treaty (1959) and the Antarctic Conservation Act (16 U.S.C. 2401 et seq.)

III. Authority and Regulatory Program

A. NSF

Presidential Memorandum #6646, dated February 2, 1982, designates NSF as the executive Federal manager for the United States Antarctic Program, assigning the entire management responsibility to the NSF. The Antarctic Conservation Act (ACA) of 1978, as amended (16 U.S.C. 2401 et seq.) implements the Antarctic Treaty and the

Protocol on Environmental Protection to the Antarctic Treaty and recognizes NSF as the lead civilian agency with responsibility for overseeing United States scientific activities in Antarctica. These include activities involving the use of source, byproduct, and special nuclear material. Under the ACA, NSF is directed to issue regulations as are necessary and appropriate to implement the Treaty, the Protocol and the ACA, including its waste management and disposal requirements. NSF requires U.S. citizens to obtain an NSF permit for the use of certain materials in Antarctica, including radioactive materials, in accordance with NSF's implementing regulations at 45 CFR Part 671. Within its regulatory framework, the NSF has adopted as policy the radiation protection standards for byproduct, source, and special nuclear material set forth in the NRC regulations at 10 CFR Part 20 and the Department of Transportation regulations for packaging and transport of such radioactive materials; and it ensures that the disposal of radioactive waste generated in Antarctica (but returned to the U.S. for disposal) is consistent with NRC, EPA and Agreement State requirements. NSF's "authorized user" review/approval process includes protocol review, certification of training, utilization of appropriate standard operating procedures/facilities, waste management procedures, and periodic surveys and inventory control of radioactive material. The NSF will continue to ensure that any use of source, byproduct, and special nuclear materials within the NSF's jurisdiction in Antarctica requires the NSF's authorization through the issuance of permits or other approvals.

B. NRC

Under the Atomic Energy Act of 1954 (AEA) as amended, the NRC is responsible for regulating the use of byproduct, source, and special nuclear material within the United States and its territories, consistent with its mission to ensure adequate protection of the public health and safety, to promote the common defense and security, and to protect the environment. This MOU reflects the understanding of both parties that the NRC will not exercise any authority under the AEA to regulate the use of byproduct, source, or special nuclear material in Antarctica and recognizes the NSF's regulatory oversight, as described in 45 CFR Part 671 and Foundation policies. The NRC or its Agreement States, as appropriate, will resume regulatory authority over any byproduct, source, or special nuclear material that is regulated by the

NSF in Antarctica if and when such material re-enters the United States or its territories.

IV. Agency Responsibilities

The following are the offices responsible for this agreement:

For the National Science Foundation:
Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230

For the Nuclear Regulatory Commission:
Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Each agency shall designate the agency organizational unit responsible for the coordination and management of activities covered by this MOU. Each agency shall designate the individual(s) who will serve as the respective coordination officer(s) or point(s) of contact (POC). The coordination officers or POCs will coordinate and facilitate actions required by their respective agencies.

V. Elements of Coordination

Both agencies agree to exchange information with respect to relevant programs and lessons learned, resources permitting. The purpose of these exchanges is to provide expert technical assistance to both agencies. The NSF may send designated individuals to NRC-sponsored training, on a space-available basis, so that NSF staff is familiar with the NRC programs and its regulatory interpretations. As appropriate and necessary, the NSF may consult with the NRC for guidance regarding the interpretation or application of the NRC's regulations.

VI. Other Laws and Matters

Nothing in this MOU shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the MOU be construed as modifying the existing authority of either agency.

VII. Effective Date, Modification, and Termination of MOU

This MOU will take effect when it has been signed and dated by the authorized representatives of the NSF and the NRC. It may be modified by mutual written consent, or terminated by either agency upon 60 days advance written notice to the other agency.

Approved and accepted for the National Science Foundation
Date: August 30, 1999.

By:
Karl A. Erb
Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, Tel: (703) 306-1030

By:
William A. Bryant
Contracting Officer, Division of Contracts, Policy and Oversight, Office of Budget, Finance and Award Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230

Approved and accepted for the Nuclear Regulatory Commission
By:

Carl J. Paperiello
Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Tel: (301) 415-7357

[FR Doc. 99-24058 Filed 9-14-99; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213].

Connecticut Yankee Atomic Power Co.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a petition dated March 11, 1997, filed by Rosemary Bassilakis pursuant to Title 10 of the Code of Federal Regulations, § 2.206 (10 CFR 2.206), on behalf of the Citizens Awareness Network and the Nuclear Information Resource Service (Petitioners). The petition requested that the NRC (1) commence enforcement action against the Connecticut Yankee Atomic Power Company (CY) by means of a large civil penalty to assure compliance with safety-based radiological control routines; (2) modify CY's license for the Haddam Neck Plant, pursuant to 10 CFR 2.202, to prohibit any decommissioning activity, which would include decontamination or dismantling, until CY manages to conduct routine maintenance at the facility without the occurrence of any contamination events for at least 6 months; and (3) place the Haddam Neck Plant on the NRC Watch List.

The Director, Office of Nuclear Reactor Regulation, determined that a decision on the first request listed above should be deferred and that the second and third requests should be denied for the reasons stated in Partial Director's Decision DD-97-19, issued on September 3, 1997. Subsequently, the Director has determined that the first

request listed above should be granted in part and denied in part for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD-99-11) the complete text of which follows this notice and is available for public inspection and copying at the Commission's Public Document Room, the Gelman Building, 2210 L Street, NW, Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review. As provided by 10 CFR 2.206(c), this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of September 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,
Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206 Completion of Previously Issued Partial Director's Decision

I. Introduction

On March 11, 1997, Rosemary Bassilakis submitted a petition pursuant to Title 10 of the Code of Federal Regulations, Section 2.206 (10 CFR 2.206), on behalf of the Citizens Awareness Network and the Nuclear Information Resource Service (Petitioners) requesting that the NRC (1) commence enforcement action against the Connecticut Yankee Atomic Power Company (CY, or licensee) by means of a large civil penalty to assure compliance with safety-based radiological control routines; (2) modify CY's license for the Haddam Neck Plant, pursuant to 10 CFR 2.202, to prohibit any decommissioning activity, which would include decontamination or dismantling, until CY manages to conduct routine maintenance at the facility without any occurrence of contamination events for at least 6 months; and (3) place the Haddam Neck Plant on the NRC Watch List. The Petitioners stated that their particular concern was the inability of CY management to maintain proper radiological controls at the Haddam Neck Plant.

In support of their requests, the Petitioners noted three radiological deficiencies that occurred at the Haddam Neck Plant. The first occurred on various dates in 1996 and involved inadequate calibration of various

detectors in the radiation monitoring system. The second occurred in November 1996 and involved two individuals who received an unplanned exposure while working in the fuel transfer canal. The third occurred in February 1997 and involved the release of contaminated video equipment to a nonlicensed vendor.

The Petitioners' requests and the NRC's evaluation and conclusions are discussed in the sections below. The Background section provides relevant information on NRC oversight and enforcement activities at Haddam Neck and briefly describes the Partial Director's Decision sent to the Petitioners in September 1997. The Discussion section describes the enforcement actions taken in response to the events noted in the petition and explains the purpose of assessing civil penalties. The Conclusion section presents the Director's Decision.

II. Background

CY submitted certifications of permanent cessation of operations at the Haddam Neck Plant and permanent defueling of its reactor on December 5, 1996. Prior to that date, the NRC identified a number of significant regulatory concerns regarding the licensee's performance. The NRC took a number of actions over the next few months to bring the licensee into compliance with applicable regulations. The actions most relevant to the Petitioners' requests and concern were the issuance of Confirmatory Action Letter (CAL) No. 1-97-007 on March 4, 1997, a civil penalty of \$650,000 on May 12, 1997, and a supplement to the CAL on November 17, 1997. The CAL was issued in response to weakness in managing and controlling radiological work at the Haddam Neck Plant. The three events noted in the petition were identified in the CAL as examples of radiological weaknesses. The civil penalty did not specifically address radiological issues, but did identify programmatic weaknesses that required prompt and comprehensive correction of violations. In the November 17, 1997, supplement to the CAL, the NRC found, after conducting several inspections, that CY had achieved radiation program improvement in several areas. Subsequently, on May 5, 1998, the NRC found that the licensee had completed all the commitments listed in the CAL and that it could safely conduct significant radiological work.

The NRC issued a Partial Director's Decision (DD-97-19) on September 3, 1997, in response to the three requests contained in the petition. The first request, to take enforcement action and

impose a large civil penalty on the licensee, was deferred until inspections and investigations could be completed and enforcement actions evaluated for the deficiencies noted. The Partial Director's Decision did not consider the May 12, 1997, civil penalty to be a response to the Petitioners' first request because radiological issues were not included in the notice of violation. The second request, to impose a 6-month moratorium on decommissioning activities, was denied because (1) on the basis of experience, there was no reason to expect that 10 CFR Part 20 dose limits would be exceeded at the Haddam Neck Plant, (2) a senior resident inspector was on site to monitor and inspect the licensee's performance on a day-to-day basis, and (3) a confirmatory action letter was issued to CY on March 4, 1997, to document the licensee's commitments to improve its radiation protection program. The third request, to place Haddam Neck on the NRC Watch List, was denied on the basis that the inspection program in place at the plant was sufficient to monitor licensee performance at a permanently shutdown and defueled reactor.

III. Discussion of Petitioners' Deferred Request

The three radiological deficiencies noted by the Petitioners have been inspected and investigated. In considering the Petitioners' deferred request, the NRC determined whether violations of NRC requirements occurred. Identified violations were then dispositioned in accordance with the NRC's Enforcement Policy.

The first deficiency, involving inadequate calibration of various detectors in the radiation monitoring system (RMS) during 1996, was identified as a violation by NRC letter dated January 15, 1998. The NRC determined that a violation of regulatory requirements occurred in that the licensee failed to establish and implement RMS test procedures as required by Technical Specification 6.8. Such programmatic deficiency on the part of a licensee would normally be subject to escalated enforcement action. However, the NRC determined that the provisions of Section VII.B.2, "Violations Identified During Extended Shutdowns or Work Stoppages," of the Enforcement Policy applied, and it decided to exercise enforcement discretion in this case. Therefore, the NRC did not issue a notice of violation or propose a civil penalty. This decision was made on the basis that (1) the events leading to the violation took place before the permanent shutdown of the plant in December 1996 and (2) the

licensee had already been issued a \$650,000 civil penalty on May 12, 1997, for technical and safety review program inadequacies that led to the inadequate RMS calibrations and other violations.

The second deficiency, involving an unplanned radiation exposure, resulted in a notice of violation issued to the licensee on April 5, 1999. The NRC identified several violations that occurred during the event and classified them in the aggregate as a Severity Level III violation. In accordance with the Enforcement Policy, a civil penalty is normally considered for a Severity Level III violation or problem. However, the NRC determined that Section VII.B.6 of the Enforcement Policy, "Violations Involving Special Circumstances," applied to the event, and it exercised enforcement discretion to not impose a civil penalty in this case. Therefore, the NRC did not propose a civil penalty because (1) the violations occurred before CY's decision, in December 1996, to permanently shut down and defuel the Haddam Neck facility and (2) CY had already been issued a \$650,000 civil penalty on May 12, 1997, to address poor performance that existed before the decision was made to permanently shut down the reactor.

The third deficiency, involving release of contaminated equipment, was the subject of two enforcement actions, both issued on May 12, 1999. The first enforcement action was issued as a notice of violation to an individual on the basis that he attempted to conceal the release of contaminated video equipment to a nonlicensed vendor. The NRC classified the violation as Severity Level III. The NRC considered issuing an Order to the individual to prevent him from engaging in licensed activities at NRC licensed facilities. The NRC did not issue an Order to the individual because, among other factors, he was not in a management or supervisory position at the facility, and was no longer employed in, nor seeking work in, the nuclear industry. The second enforcement action was issued to CY for failure to perform an adequate survey, with subsequent loss of control of material. However, CY promptly achieved compliance by retrieving the contaminated equipment. CY then investigated the cause of the release and took corrective actions to prevent recurrence. Therefore, because the release of the contaminated material and the resultant loss of control of material were not willful on the part of the licensee, the NRC classified the violation as Severity Level IV and treated it as a noncited violation in accordance with Appendix C of the Enforcement Policy. Violations treated

in this manner are not subject to a civil penalty.

As discussed above, although the events noted by the Petitioners constituted violations of the NRC's regulations and certain enforcement actions were taken, a civil penalty was not assessed on the licensee. This result partially fulfills the Petitioners' request to take enforcement action against the licensee. With regard to imposing a civil penalty, the NRC Enforcement Policy (NUREG-1600, Revision 1, Section VI.B) states, "Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern." Based on numerous inspections, the NRC has concluded that the licensee has taken timely and comprehensive corrective actions to improve its radiation protection program, has achieved adequate compliance in the time after the events occurred, and has focused its attention on maintaining adequate radiological controls. An additional civil penalty is unnecessary in light of the improvement in the licensee's performance. Consequently, consistent with the Enforcement Policy, discretion was exercised to not impose civil penalties for these violations. Therefore, the request to take enforcement action by means of a large civil penalty on CY in response to the events noted in the petition is granted in part, in that enforcement action has been taken against the licensee, and denied in part, since no civil penalty was imposed.

IV. Decision

For the reasons stated above and in Director's Decision DD-97-19, issued September 3, 1997, the petition is granted in part and denied in part. The decision and the documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street, NW., Washington, DC.

In accordance with 10 CFR 2.206(c), a copy of the decision will be filed with the Secretary of the Commission for the Commission's review. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of September 1999.

For The Nuclear Regulatory Commission.
Samuel J. Collins,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 99-24059 Filed 9-14-99; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Revised NRC Form 3, Notice to Employees

The Nuclear Regulatory Commission has issued a revised NRC Form 3, "Notice to Employees", dated August 1999, effective September 15, 1999. The form has been revised to include information that the Occupational Safety and Health Administration (OSHA) promulgated in 29 part CFR 24. The inclusion of this information into NRC Form 3 and OSHA's endorsement of the form simplifies the existing process in which interested parties were advised to copy the 29 CFR part 24 notice from OSHA's Internet website. The notice will still be available on OSHA's Internet website. All licensees will receive an administrative letter explaining the revisions with a copy of the revised form attached.

A copy of NRC Form 3 has been placed in the NRC's Public Document Room in the Gelman Building, 2120 L Street, NW (Lower Level), Washington, DC 20037, for review and copying by interested persons. A copy of the form will be mailed to interested parties who request the form from the NRC Forms Manager, Beverly Martin, at (301) 415-5877, by e-mail BAM1@NRC.gov, or by mail at NRC—Washington, DC 20555, Mail Stop T-4 E16.

Dated at Rockville, Maryland this 9th day of September 1999.

For the Nuclear Regulatory Commission.
Edward T. Baker, III,
Agency Allegation Advisor, Office of the Director, Office of Nuclear Reactor Regulation.
[FR Doc. 99-24055 Filed 9-14-99; 8:45 am]
BILLING CODE 7590-01-P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (<http://www.pbgc.gov>).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in September 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in October 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in September 1999 is 5.16 percent (*i.e.*, 85 percent of the 6.07 percent yield figure for August 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between October 1998 and September 1999.

For premium payment years beginning in:	The assumed interest rate is:
October 1998	4.42
November 1998	4.26
December 1998	4.46

For premium payment years beginning in:	The assumed interest rate is:
January 1999	4.30
February 1999	4.39
March 1999	4.56
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08
September 1999	5.16

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in October 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of September, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99-23850 Filed 9-14-99; 8:45 am]

BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Form N-17D-1, SEC File No. 270-231, OMB Control No. 3235-0229

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (OMB) a request for extension and approval of the collections of information discussed below.

Section 17(d) [15 U.S.C. 80a-17(d)] of the Investment Company Act of 1940 (the Act) authorizes the Commission to adopt rules that protect companies and

their security holders from overreaching by affiliated persons where the investment company and the affiliated person participate jointly or a jointly and severally in a transaction. Rule 17d-1 under the Act [17 CFR 270.17d-1] prohibits any such participation, unless an application regarding the transaction has been filed with and approved by the Commission. The rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (investments) made by a affiliated bank and a small business investment company (SBIC), provided that reports about the investments are made on such forms as the Commission may prescribe. For this purpose, Rule 17d-2 [17 CFR 270.17d-2] prescribes Form N-17D-1.

Form N-17D-1 is used by SBICs and their affiliated banks to report any investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have a high potential for overreaching at the expense of shareholders.

Form N-17D-1 requires SBICs to report identifying information about the small business concern and the affiliated bank. SBICs must list, among other things, the outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of such person) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration received or to be received by the affiliate.

The Commission estimates that up to 5 SBICs may use the form annually. The estimated burden of filling out the form is approximately 5 hours per response and would likely be completed by an accountant or other professional. At \$114 per hour of time, completion of the form will cost approximately \$570 per filer. The total annual hour burden would be 25 hours with a total annual cost of \$2,850.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 9, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23989 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 10a-1, SEC File No. 270-413, OMB Control No. 3235-0475

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for approval of an extension of a collection of information on the following rule: 17 CFR 240.10a-1.

Rule 10a-1 (17 CFR 240.10a-1) under the Securities Exchange Act of 1934 (Exchange Act) is designed to limit short selling of a security in a declining market, by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a particular marketplace. Rule 10a-1 requires each broker or dealer that effects any sell order for a security registered on or admitted to unlisted trading privileges on, a national securities exchange to mark the relevant order ticket either "long" or "short."

There are approximately 1,500 brokers and dealers registered with the national securities exchanges. The Commission has considered each of

these responses for the purposes of calculating the reopening burden under Rule 10a-1. Each of these approximately 1,500 registered broker-dealers effects sell orders for securities registered on, or admitted to unlisted trading privileges, on a national securities exchange. In addition, each respondent makes an estimated 60,933 annual responses, for an aggregate total of 91,400,000 responses per year. Each response takes approximately .000139 hours (.5 seconds) to complete. Thus, the total compliance burden per year is 12,705 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Deck Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23990 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Local Financial Corporation, Common Stock, \$.01 Par Value) File No. 1-13949

September 9, 1999.

Local Financial Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration on the Amex include the following:

The Security of the Company has been listed on the Amex since April 22, 1998. The Company now believes that it might realize a more diverse ownership of its Security through the variety of market makers available on the NASDAQ National Market ("Nasdaq") than through the auction system of the Exchange. On January 27, 1999, the company's Board of Directors voted to authorize the filing of applications to withdraw the Security from listing and registration on the Exchange and to have the Security quoted on the Nasdaq. Shares of the Security subsequently began trading on the Nasdaq on July 15, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company wished to avoid the duplicative costs associated with registering its Security for trading in two different markets. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the Exchange.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the continued listing on the Amex of the Company's 11.0% Senior Notes due September 8, 2004. By reason of Sections 12(b) and (g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before September 30, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99-24035 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23997; File No. 812-11730]

Transamerica Occidental Life Insurance Company, et al.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities.

SUMMARY OF APPLICATION: Applicants request an order to permit a registered unit investment trust to substitute securities issued by two portfolios of Transamerica Variable Insurance Fund, Inc., a registered open-end investment company, and two portfolios of EQ Advisors Trust, a registered open-end investment company, for securities issued by four portfolios of The Hudson River Trust, a registered open-end investment company, currently held by the unit investment trust.

APPLICANTS: Transamerica Occidental Life Insurance Company and Separate Account VL of Transamerica Occidental Life Insurance Company (collectively, the "Applicants").

FILING DATE: The application was filed on July 29, 1999, and amended and restated on September 7, 1999.

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 Secretary of the Commission 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 29, 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street,

NW, Washington, D.C. 20549-0609. Applicants: Transamerica Occidental Life Insurance Company, 1150 South Olive Street, Los Angeles, California 90015, Attn: Regina M. Fink, Esq.

FOR FURTHER INFORMATION CONTACT:

Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549-0102 (tel. (202) 942-8090).

Applicants' Representations

1. Transamerica Occidental Life Insurance Company ("Transamerica Occidental") is a California stock life insurance company. It principally engages in the sale of life insurance and annuity policies, and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"). Transamerica Occidental serves as depositor for Separate Account VL of Transamerica Occidental Life Insurance Company ("Separate Account VL").

2. Transamerica Occidental is an indirect wholly-owned subsidiary of Transamerica Corporation. On February 18, 1999, Transamerica Corporation announced that it had signed a merger agreement with AEGON N.V. ("AEGON"), an international insurance group, providing for AEGON's acquisition of all of Transamerica Corporation's outstanding common stock. The transaction closed in July 1999.

3. Separate Account VL is a segregated asset account of Transamerica Occidental and is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account VL is divided into four sub-accounts. Separate Account VL funds certain variable life insurance policies issued by Transamerica Occidental (the "Policies"). The Policies consist of flexible premium individual variable life insurance policies. Transamerica Occidental no longer offers the Policies, but the Policies are still outstanding and net premiums are still accepted.¹

¹ Applicants represent that, in reliance on a no-action letter that they received in 1990 (Transamerica Life Insurance Company Separate Account VL, pub. avail. March 16, 1990), they provide certain information to Policy owners about their Policies, Separate Account VL, and the underlying fund in lieu of filing post-effective amendments to the registration statement relating to

4. The Hudson River Trust ("HRT") is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the Securities Act of 1933 (the "1933 Act"). HRT is a series investment company, as defined by Rule 18f-2 under the 1940 Act, and currently offers shares of 14 separate portfolios. HRT sells shares to Separate Account VL to serve as an investment medium for the Policies.² The shares of four of the HRT portfolios are currently held by Separate Account VL and would be involved in the proposed substitutions (collectively referred to as the "Current Funds"). The HRT shares held by Separate Account VL currently account for less than 1% of HRT's total assets. HRT currently offers two classes of shares, Class 1A and Class 1B shares, which differ only in that the Class 1B shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. Separate Account VL holds only Class 1A shares. Each Current Fund is advised by Alliance Capital Management L.P. ("Alliance"), an investment adviser registered under the Advisers Act. As HRT's investment adviser, Alliance is responsible for managing the day-to-day investment operations of HRT and exercises responsibility for the investment and reinvestment of HRT's assets.

5. Transamerica Variable Insurance Fund, Inc. ("TVIF") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N-1A. TVIF is a series investment company, as defined by Rule 18f-2 under the 1940 Act, and currently has nine separate portfolios of shares registered with the Commission. TVIF currently sells shares to certain registered separate accounts ("Transamerica Separate Accounts") used as the underlying investment options for certain variable annuity contracts and/or variable life insurance policies issued by Transamerica Occidental and two of its affiliates. Two

the Policies and delivering updated prospectuses to Policy owners. Applicants further represent that their no-action letter is a predecessor to, and substantially the same as, Great-West Life Insurance Company (pub. avail. Oct. 23, 1990).

² The Commission issued an exemptive order granting exemptions from the 1940 Act to permit shares of HRT to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or variable annuity contracts. See *Equitable Variable Life Insurance Company, Investment Company Act Rel. Nos. 14899 (Jan. 14, 1986) (order) and 14860 (Dec. 18, 1985) (notice)*.

of the TVIF portfolios (the "TVIF Funds") would be involved in the proposed substitutions. Transamerica Occidental serves as the investment adviser for each of the TVIF Funds, and it has engaged Transamerica Investment Services, Inc. to act as the sub-adviser providing day-to-day portfolio management services to the TVIF Funds. TVIF is not a "multi-manager" company and has not applied for or received any exemptive order from the Commission that would permit a change of an investment adviser or sub-adviser, or a change in the terms of any advisory agreement, without the approval of shareholders.

6. EQ Advisors Trust ("EQAT") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N-1A. EQAT is a series investment company, as defined by rule 18f-2 under the 1940 Act, and currently offers 25 separate portfolios of shares. EQAT currently sells shares to certain registered and unregistered separate accounts ("Equitable Separate Accounts") used as the underlying investment options for certain variable annuity contracts and/or variable life insurance policies issued by The Equitable Life Assurance Society of the United States ("Equitable"). EQAT currently offers two classes of shares, Class IA and Class IB shares, which differ only in that the Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. EQ Financial Consultants, Inc. ("EQ Financial"), an indirect wholly-owned subsidiary of Equitable, serves as investment manager of each of the current 25 portfolios of EQAT under an investment management agreement with EQAT.³ EQ Financial is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities Exchange Act of 1934, as amended. Pursuant to the investment management agreement, the investment manager ("Manager") is responsible for the general management and administration of EQAT, including selecting the investment advisers for each of EQAT's portfolios ("Advisers"), monitoring their investment programs and results, reviewing brokerage matters, overseeing compliance issues, and carrying out the directives of the

³ On July 12, 1999, the Board of Trustees of EQAT approved a transfer of the Investment Management Agreement to Equitable. That transfer of the Investment Management Agreement is expected to occur prior to October 1, 1999.

Board of Trustees. EQAT has received an exemptive order from the Commission ("Multi-Manager Order") that permits EQ Financial, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with EQ Financial, subject to certain conditions, including approval of the Board of Trustees of EQAT, and without the approval of shareholders, to: (a) employ a new Adviser or Advisers for any portfolio pursuant to the terms of a new Investment Advisory Agreement, in each case either as a replacement for an existing Adviser or as an additional Adviser; (b) change the terms of any Investment Advisory Agreement; and (c) continue the employment of an existing Adviser on the same contract terms where a contract has been assigned because of a change of control of the Adviser.⁴ In such circumstances, Policy owners would receive notice of any such action, including information concerning any new Adviser, that normally is provided in proxy materials.

7. EQAT has filed a post-effective amendment to its registration statement on Form N-1A in order to register 14 new portfolios for which Alliance will provide the day-to-day investment advisory services ("Alliance Funds"), including the two portfolios (the "EQAT Funds") that the Applicants propose to substitute for two of the Current Funds. The Applicants represent that the Manager of the 25 current portfolios of EQAT will also serve as Manager of the EQAT funds and that Alliance will serve as the portfolio manager (adviser) to each of the EQAT Funds, just as it serves as portfolio manager to each of the corresponding Current Funds. EQAT intends to sell shares of the EQAT

Funds to, among others, the Equitable Separate Accounts, as well as the Separate Account VL and other insurance company separate accounts.⁵

8. The prospectus describing the Policies expressly reserves to Transamerica Occidental the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by Separate Account VL.

9. Applicants represent that they are not affiliates of HRT, EQAT or Equitable.

10. The Applicants propose to substitute the securities issued by the TVIF Funds (Growth and Money Market) for Class IA shares issued by two of the Current Funds (Common Stock and Money Market) and to substitute Class IA shares issued by the EQAT Funds (Aggressive Stock and Balanced) for Class IA shares issued by the other two Current Funds (Aggressive Stock and Balanced). The substitutes of the two TVIF Funds will be cash transactions. Equitable, directly or through the Equitable Separate Accounts, owns over 99% of the shares of the Current Funds. Equitable and each Equitable Separate Account that is registered under the 1940 Act that currently invests in HRT have filed an application with the Commission ("Equitable Application") requesting, *inter alia*, an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of securities issued by the Alliance Funds for the securities issued by the 14 portfolios of HRT.⁶ If approved, Equitable will redeem more than 99% of HRT's assets in connection with those substitutions. Applicants state that, given the very small position that Separate Account VL holds in the

Current Funds and especially considering that the Policies are no longer offered, it is their belief that it is reasonable to conclude that, following the proposed substitutions by Equitable: (1) The expense level of the Current Funds will increase dramatically as a percentage of net assets due to the smaller asset base, which is highly unlikely to increase; (2) the Current Funds will be difficult to manage in conformity with the applicable diversification regulations under the Internal Revenue Code of 1986, as amended ("Code"); and (3) the asset levels of the Current Funds will be small enough to raise concerns as to whether the Current Funds will remain viable investment options. Applicants submit that, therefore, it is imperative (and in the best interest of the Policy owners) that the shares of other comparable funds be substituted for shares of HRT held by Separate Account VL.

11. The Applicants represent that the TRIF Funds and the EQAT Funds will have investment objectives, policies and anticipated risks that are either reasonably comparable (in the case of the TVIF Funds) or identical in all material respects (in the case of the EQAT Funds) to the corresponding Current Funds. The Applicants also state that, since the TVIF funds are Transamerica Occidental advised portfolios, the quality of reports and service to Policy owners investing in those portfolios should improve. The investment objectives of the four Current Funds and the corresponding TVIF Funds and EQAT Funds (together with the TVIF Funds, the "New Funds") are as follows:

Current fund	Investment objective	New fund	Investment objective
HRT Common Stock	Seeks long-term growth of its capital and increase in income.	TVIF Growth	Seeks to maximize long-term growth.
HRT Money Market	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.	TVIF Money Market	Seeks to maximize current income consistent with liquidity and preservation of principal.
HRT Aggressive Stock	Seeks to achieve long-term growth of capital.	EQAT Aggressive Stock	Seeks to achieve long-term growth of capital.
HRT Balanced	Seeks to achieve a high return through both appreciation of capital and current income.	EQAT Balanced	Seeks to achieve a high return through both appreciation of capital and current income.

12. The Applicants state that, with respect to the EQAT Funds, it is

expected that the management fees (*i.e.*, total paid to the investment manager

and day-to-day investment advisers) will be the same as the management fees

⁴ See EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Rel. Nos. 23128 (April 24, 1998) (order) and 23-093 (March 30, 1998) (notice). Before an Alliance Fund many rely on the Multi-Manager Order, the operation of that Alliance fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the

substitutions proposed in the application, by a majority of that Alliance Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order. See note 5.

⁵ The Commission has issued an order granting exemptions for the 1940 Act to permit EQAT shares to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either

variable life insurance policies or annuity contracts ("EQAT Shared Funding Order"). See EQ Advisors Trust, Investment Company Act Rel. Nos. 22651 (April 30, 1997) (order) and 22602 (April 4, 1997) (notice).

⁶ File No. 812-11602 (filed Apr. 30, 1999, amended and restated August 12, 1999).

currently applicable to the corresponding Current Funds. EQ Financial currently anticipates that there may be a slight increase in the total expense ratios of certain of the EQAT Funds as compared to those of the corresponding Current Funds. The Applicants represents that the chart below shows: (a) the management fees

and total expenses for Class IA shares of each of the Current Funds for the year ending December 31, 1998, (b) the management fees and total expenses of TVIF Growth and Money Market Portfolios for the year ended December 31, 1998 (after fee waivers and/or expense reimbursements); and (c) the anticipated management fees and other

expenses for the Class IA shares of the EQAT Aggressive Stock and Balanced Portfolios for their first year of operations. Anticipated management fees and other expenses for the EQAT Funds are presented on a pro forma basis and are based on the audited financial statements of HRT for the year ended December 31, 1998.

Current fund expenses	Management fees (percentage of average daily net assets)	Total expenses (percentage of average daily net assets)	New fund expenses	Management fees (percentage of average daily net assets)	Total expenses (percentage of average daily net assets) (after waivers and/or reimbursement*)
HRT Common Stock	0.36	0.39	TVIF Growth	0.64	0.85
HRT Money Market	0.35	0.37	TVIF Money Market	0.00	0.60
HRT Aggressive Growth	0.54	0.56	EQAT Aggressive Stock (pro forma) ...	0.54	0.57
HRT Balanced	0.41	0.45	EQAT Balanced (pro forma)	0.41	0.46

*Without such waivers/reimbursements, total expenses would have been 0.96% for TVIF Growth, and 3.03% for TVIF Money Market (consisting of 0.35% for TVIF Money Market management fees and 2.68% of other expenses). TVIF's investment adviser has agreed to waive its management fee and/or reimbursement expenses for the two New Funds so the total fees and expenses do not exceed these total figures for at least one year. Such waivers or reimbursements are voluntary but are expected to continue beyond one year.

13. The Applicants state that the TVIF Funds (Growth and Money Market) have enjoyed investment performance that is better than, or comparable to, that of the Current Funds (Common Stock and Money Market). The Applicants represent that the tables below show the

past investment performance (after expenses) of the Class IA shares of the two Current Funds (Common Stock and Money Market), and the past performance (after expenses) of the TVIF Funds (Growth and Money Market). In addition to the investment

performance information below, the Applicants represent that the 7-day yield as of July 31, 1999, for the HRT Money Market Portfolio was 4.33% and 4.60% for the TVIF Money Market Portfolio.

CURRENT FUNDS—AVERAGE ANNUAL TOTAL RETURNS (PERIODS ENDED 12/31/98)

Current fund	One year (percent)	Five years (percent)	Ten years (percent)
HRT Common Stock	29.39	21.95	18.65
HRT Money Market	5.34	5.17	5.58

TVIF FUNDS—AVERAGE ANNUAL TOTAL RETURNS (PERIODS ENDED 12/31/98)

TVIF fund	One year (percent)	Five years (percent)	Ten years (percent)
TVIF Growth	43.28	34.37	26.05
TVIF Money Market*	4.93	N/A	N/A

*Inception date, January 2, 1998.

14. The Applicants state that, as soon as practicable after the application is noticed, they will send a notice to all Policy owners. The notice will describe each of the New Funds, identify each Current Fund that is being replaced and disclose the anticipated impact of the substitutions on fees and expenses at the underlying fund level. The Applicants state that a prospectus for the New Funds will be sent to all Policy owners before the substitutions are effected. Confirmation of the substitutions will be sent to affected Policy owners within five days after the substitutions are effected.

15. The Applicants state that the substitutions will be effected by

redeeming shares of the Current Funds on the effective date of the substitutions proposed herein and in the Equitable Application ("Substitution Date") at net asset value and using the proceeds to purchase shares of the New Funds at net asset value on the same date. The transactions involving the TVIF Funds will be cash transactions. Based on the Equitable Application and information otherwise provided by Equitable, Applicants expect that the substitutions involving the EQAT Funds will be effected by redeeming shares of the corresponding Current Funds in-kind and contributing those assets in-kind to the corresponding New Fund to purchase shares of the New fund ("in-

kind transactions"). In-kind transactions will be done in a manner consistent with the investment objectives, policies and diversification requirements of each corresponding New Fund. The Manager of each New Fund will review the in-kind transactions to assure that the assets are suitable for the New Fund. All assets subject to in-kind redemption and repurchase will be valued based on the normal valuation procedures of the redeeming and repurchasing funds, as set forth in the HRT and EQAT registration statements. No transfer or similar charges will be imposed on Policy owners by the Applicants and, on the Substitution Date, all Policy values

will remain unchanged and fully invested.

16. The significant terms of the substitutions described above include:

a. The New Funds have investment objectives, investment policies, and anticipated risks that are either reasonably comparable or identical in all material respects to those of the Current Funds, and have been selected to satisfy the Policy owners' objectives in choosing their Current Funds. The Applicant note that the EQAT Funds will continue to employ the same portfolio managers currently employed by the corresponding Current Funds, and are intended to mirror the investment options provided by the corresponding Current Funds.

b. The fees and expenses of the EQAT funds will in all cases be substantially similar to those of the corresponding Current Funds, assuming that the asset levels of the EQAT Funds do not decrease significantly from the Current Funds' present asset levels. The Applicants note in this regard that given the substantial similarity of the EQAT Funds and the corresponding Current Funds, Applicants do not expect there to be a reduction in the asset levels of the EQAT Funds as a result of the substitutions.

c. Policy owners may transfer assets the subaccounts available under their Policy without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date of the initial notice through a date at least 30 days following the Substitution Date.

d. The substitutions, in all cases, will be effected at the net asset value of the respective shares of the Current Fund and the corresponding New Fund in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder, without the imposition of any transfer or similar charge by the Applicants, and with no charge in the amount of any Policy owner's Policy value.

e. Policy owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Transamerica Occidental's obligations under the Policies be altered in any way. Equitable and/or Transamerica Occidental will bear all expenses incurred in connection with the proposed substitutions and related filings and notices, including legal, accounting, brokerage and other fees and expenses. There will be no tax consequences to Policy owners. The proposed substitutions will not cause the fees and charges currently being paid by existing Policy owners to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements, of the applicable Current and New Funds, and the Manger will review the in-kind transactions to assure that the assets are suitable for the New Fund. Consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The Applicants will not count the substitutions as new investment selections in determining the limit, if any, on the total number of funds that Policy owners can select during the life of a Policy.

h. The substitutions will not alter in any way the life insurance benefits, tax benefits or any Policy obligations of the Applicants under the Policies.

i. Policy owners may withdraw amounts under the Policies or terminate their interest in a Policy, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Policy owners affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Policy owner within five days following the Substitution Date.

k. Before an EQAT Fund may rely on the Multi-Manager Order, the operation of that EQAT Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed herein, by a majority of that EQAT Fund's outstanding voting securities in a manner consistent with the terms of the EQAT Shared Funding Order.

17. The Applicants state that they will not complete the substitutions as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the substitutions under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order approving the Equitable Application.

c. Each Policy owner will have been mailed: (1) the disclosure of the proposed substitutions shortly after notice of the application has been published; and (2) an effective prospectus for the New Funds and relevant information about the proposed substitutions prior to the Substitution Date.

d. The Applicants will have satisfied themselves that the Policies allow the substitution of portfolios as described in

the application, and that the transactions can be consummated as described herein under applicable insurance laws and under the Policies.

e. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Policies have been sold.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The Applicants submit that the prospectus describing the Policies expressly reserves to Transamerica Occidental the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by Separate Account VL. Transamerica Occidental asserts that it has reserved this right of substitution both to protect itself and its Policy owners in situations where either might be harmed or disadvantaged by events beyond their control, affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit itself and its Policy owners. The Applicants assert that Equitable's decision to close down HRT has forced Transamerica Occidental to use this reserved right to protect its Policy owners.

3. The Applicants maintain that the proposed substitutions protect Policy owners by: (1) providing an underlying investment option for such subaccounts that is comparable to the current investment option; and (2) eliminating Current Funds that will not be viable due to the extremely low level of assets following the proposed substitutions by Equitable.

4. The Applicants further submit that the proposed substitutions meet the standards that the Commission and its staff generally have applied to other substitutions that have been approved. In addition, the Applicants contend that none of the proposed substitutions is the type of substitution that Section 26(b) was designed to prevent. Unlike traditional unit investment trusts, the

Policies provide each Policy owner with the right to exercise his own judgment and transfer Policy values into any other available variable and/or fixed investment options. Additionally, the Applicants state that the proposed substitutions will not, in any material manner, reduce the number, nature, or quality of the available investment options. The Applicants assert that the Policy owners will be offered the opportunity to transfer amounts among the available subaccounts without any cost or other penalty that may otherwise have been imposed until thirty days after the Substitution Date. For these reasons, the Applicants maintain that the proposed substitutions will not result in the type of costly forced redemptions and sales loads that Section 26(b) was designed to prevent.

5. The Applicants further submit that the proposed substitutions also are unlike the type of substitution that Section 26(b) was designed to prevent in that by purchasing a Policy, Policy owners select much more than a particular underlying fund in which to invest their Policy values. The Policy owners also select the specific type of insurance coverage offered by the Applicants under the applicable Policy, as well as numerous other rights and privileges set forth in the Policy. The Applicants state that it is likely that, in choosing to purchase a Policy from Transamerica Occidental, the Policy owner also may have considered the company's size, financial condition, and reputation for service in selecting the Policy, and that none of these considerations and factors will change as a result of the proposed substitutions.

6. Applicants state that the investment performance of the two proposed TVIF Funds is better than, or at least comparable to, that of the relevant HRT Portfolios. The average annual returns of the TVIF Growth Portfolio for one, five, and ten-year periods are substantially higher than the returns of the HRT Growth Portfolio. With respect to the TVIF Money Market Portfolio, Applicants state that its 7-day yield of 4.60% and effective yield of 4.71% as of July 31, 1999, are substantially better than the yield figures of the HRT Money Market Portfolio for the same period (4.33% and 4.42%, respectively). The average annual total returns for the one-year period ended December 31, 1998, for the HRT Money Market and TVIF Money Market portfolios was 5.34% and 4.93%, respectively.

7. The annual operating expenses of the two TVIF Funds have historically been higher than the expenses of the comparable HRT Portfolios. Applicants

argue that the superior performance of the TVIF Growth Portfolio overwhelms the minor differences in operating expenses and that, as of July 31, 1999, the TVIF Money Market Portfolio's yield substantially exceeds the yield of the HRT Money Market Portfolio.

8. Applicants submit that past operating expense levels may or may not be the same in future years, especially for new portfolios like TVIF Money Market, which commenced operations on January 2, 1998. Applicants state that as its assets increase (increased from \$6.1 million on January 31, 1999, to \$10.7 million on July 1, 1999) operating expenses are likely to decrease.

9. Applicants also submit that Section 26(b) was intended for situations where the depositor of the unit investment trust initiated the substitution (and where investors would directly or indirectly, be forced to bear additional sales charges). Here, Applicants state that Transamerica Occidental did not initiate or instigate the proposed substitutions; rather Equitable instigated it. In response to that, Applicants argue that Transamerica Occidental is taking prudent, appropriate steps to protect its Policy owners, and to continue to fulfill the Policy owner's objectives in purchasing their variable life insurance policies from Transamerica Occidental and making their original investment selections.

10. Applicants submit that, for all the reasons summarized above, the proposed substitutions of two portfolios of TVIF and two portfolios of EQAT are good choices, and consistent with the protection of investors and the purposes fairly intended by the policy and purposes of the 1940 Act in general, and Section 26(b) in particular.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23992 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41843]

Securities Exchange Act of 1934; Application Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934; Order

September 8, 1999.

Notice is hereby given that the American Stock Exchange LLC ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") have sought an order pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act")¹ expressly authorizing them and the New York Stock Exchange ("NYSE"), by and through their members, affiliated member associations, the Securities Industry Automation Corp. ("SIAC"),² the Options Price Reporting Authority ("OPRA"),³ and the International Securities Exchange ("ISE") ("Participants"),⁴ to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic to (1) recommend and propose, individually or jointly, self-regulatory organization or Commission rules or plan amendments in connection therewith, or (2) undertake other options quote message traffic mitigation strategies.

¹ Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive, to facilitate the establishment of a national market system, by rule or order, "to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof."

² SIAC is a registered exclusive securities information processor and is owned by the AMEX and the NYSE. Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372.

³ OPRA is an association governed by a committee consisting of representatives of the four national securities exchanges authorized by the Commission to list options for trading (the AMEX, the CBOE, the PCX, and the PHLX) and the NYSE (which no longer lists options for trading and whose role in these matters accordingly may be limited). In 1976, the Commission granted its registration as a securities information processor. Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372. OPRA was formed and operates pursuant to a plan approved by the Commission on March 18, 1981, as amended. Securities Exchange Act Release No. 17638, as amended. See, e.g., Securities Exchange Act Release No. 40767 (Dec. 16, 1998), 63 FR 69354.

⁴ The ISE, which has filed an application with the Commission to register as a national securities exchange, also will be participating in the SRI study. Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (Jun. 1, 1999).

I. Background

SIAC, which manages the gathering, processing, and dissemination of option exchanges' bid and quote information for OPRA, and Stanford Research, Inc. Consulting ("SRI") are conducting a study to address issues raised by an anticipated increase in options message traffic. OPRA has experienced substantial and accelerating growth in peak message rates. SIAC and SRI attribute this growth to the listing of new options (including the listing of new options series), the development of new products, and the growth in on-line trading.

There also are a number of anticipated market events that OPRA believes and SIAC and SRI estimate could result in a seven-fold increase in peak message traffic above normal baseline forecasts. These market events include decimalization and the increase in multiple listings, as well as the anticipated entry into the options markets of the ISE and the related increase in multiple listings.

This anticipated increase in options quote message traffic has implications for the options industry and the continued maintenance of fair and orderly markets for investors. For example, it creates issues for OPRA concerning its data management and processing capacity. It also creates issues for OPRA's data recipients and vendors concerning whether they have the infrastructure to receive and disseminate OPRA data. Finally, it creates issues concerning the quality of the market data OPRA likely will be able to generate.

The SIAC and SRI project study is intended to: (1) Identify potential options quote message traffic mitigation strategies and quote triage approaches; (2) gauge the feasibility of those strategies through options industry interviews; and (3) analyze and evaluate various approaches.

The project structure includes a Project Steering Committee with representatives of self-regulatory organizations, as well as other participants in the securities markets or industry, and the Commission staff. It is expected that SIAC and SRI will gather information from the membership of the Project Steering Committee and that self-regulatory organizations will work together to assist SRI in conducting the study.

By letter dated August 26, 1999, the AMEX, CBOE, PCX, and PHLX have asked the Commission to authorize expressly by order such joint discussions and joint action by the

Participants, consistent with Section 11A of the Act.⁵

II. Discussion

Section 11A(a)(2) of the Act directs the Commission, having due regard for the public interest, the protection of investors and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a national market system for securities. In exercising its authority to facilitate the establishment of a national market system, the Commission must protect the public interest in maintaining fair and orderly markets in the face of new technology and other significant market developments.⁶ As part of its authority to facilitate the establishment of a national market system, Congress gave the Commission the authority to authorize or require by order the self-regulatory organizations "to act jointly * * * in planning, * * * operating, or regulating a national market system."⁷ This authority is intended, among other things, to enable the Commission to require joint activity that otherwise might be asserted to have an impact on competition, where the activity serves the public interest and the interests of investors. Pursuant to its Section 11A(a)(2) and Section 11A(a)(3)(B) authority, on March 18, 1981, the Commission approved the OPRA Plan.

The Commission is concerned about the increase of options quote message traffic that may result from various anticipated events in the options markets. The proposed SICA/SRI study will provide important information about how to address this increase in options quote message traffic. To achieve the goals of the study, it will be essential for the Participants to work jointly with each other and with SIAC and SRI to provide relevant information and to discuss the feasibility of strategies to avoid quote traffic congestion, including quote mitigation strategies and increasing capacity, and individual or joint action with respect to such strategies for ultimate approval and implementation. The Commission believes that such joint discussions and joint action are unlikely to have adverse effects on competition and that any incidental effects on competition will be outweighed by their benefits to the public interest and the interests of investors. In this respect, the

Commission notes that the parties seeking this Order have represented that the joint discussions contemplated by this Order will be limited to strategies to avoid quote traffic congestion, including quote mitigation strategies and strategies to increase capacity, in response to the increase in options quote message traffic. In addition, this Order covers only discussions in the presence of Commission staff or actions that are approved by the Commission. For that reason, the Commission staff will attend all joint discussions and will participate in developing approaches in response to anticipated increases in options quote message traffic.

The Commission finds that the public interest in maintaining fair and orderly markets is furthered by requiring the Participants to work jointly to evaluate issues resulting from increased message traffic and to develop and recommend strategies to address problems resulting from that increase. The Commission notes that there are various contexts in which market participants are required by law to cooperate to achieve certain national market system objectives. The Commission expects that this cooperation will continue and does not require additional authorization by the Commission. The Commission is issuing this Order only because of recent and expected changes in the options markets, the need for prompt development of appropriate response to those changes, and the concerns expressed by some Participants about their ability to meet collectively to address this situation.

Accordingly, the Commission has determined to issue an order directing the Participants to cooperate with each other and to conduct joint discussions and to take such joint action as is necessary or advisable to plan and develop recommended strategies and approaches with respect to anticipated increases in options quote message traffic.⁸

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act, that the AMEX, CBOE, NYSE, PCX, and PHLX, on their own behalf and acting through their members, affiliated member associations, SIAC, and OPRA, are directed to act jointly in planning, developing, and discussing approaches and strategies with respect to options quote message traffic (including, in particular, by participating in the SRI study) to (1) recommend and propose,

⁵ Letter from Colleen Mahoney to Jonathan Katz, dated August 26, 1999, attached as Exhibit A.

⁶ See generally, Section 11A(a)(1)(B) of the Act, 15 U.S.C. 78k-1(a)(1)(B) and Section 11A(a)(1)(C) of the Act, 15 U.S.C. 78k-1(a)(1)(C).

⁷ Section 11A(a)(3)(B) of the Act, 15 U.S.C. 78k-1(a)(3)(B).

⁸ The Commission reaches this conclusion without in any way considering or deciding whether the conduct expressly authorized by this Order is within the scope of the Commission's March 1981 Order approving the OPRA plan, as amended.

individually or jointly, self-regulatory organization or Commission rules or plan amendments in connection therewith, or (2) undertake other strategies to avoid quote traffic congestion, including options quote traffic mitigation strategies and strategies to increase capacity. To the extent this Order may be construed as reflecting a Commission finding that a particular discussion or action has no adverse effect on competition, or that any such adverse effect is outweighed by the benefits to the public interest and the interests of investors, that finding is limited to discussions in the presence of the Commission staff or actions formally approved by the Commission.⁹

It is hereby further ordered that this Order will be effective until such time as the Commission adopts such rules or plan amendments or September 1, 2000, whichever is earlier.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

August 26, 1999.

Jonathan Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549

Dear Mr. Katz: The Securities Industry Automation Corp. ("SIAC") and Stanford Research, Inc. Consulting ("SRI") have been asked to conduct a study at the request of the Options Price Reporting Authority ("OPRA") to address issues raised by an anticipated increase in options message traffic.

On behalf of the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc., all of which are participants in OPRA, we hereby request that the Securities and Exchange Commission exercise its authority under Section 11A of the Securities Exchange Act of 1934 (the "Act") to issue an order expressly authorizing the self-regulatory organizations, including without limitation the OPRA participants, on their own behalf and through their members and member associations, to act jointly with each other and with SIAC in planning, developing and discussing applications and strategies with respect to options quote message traffic, in order to individually or jointly recommend and propose individual or joint self-

regulatory organization or Commission rules or plan amendments in connection therewith or to undertake other options traffic mitigation strategies.

On March 18, 1981 the Commission approved the OPRA Plan. See Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan, as amended, was developed:

in response to directives of the Securities and Exchange Commission that provision be made for the consolidated reporting of transactions in eligible options contracts * * * and in response to the finding set forth in [the Act], that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

The OPRA Plan was designed to enable the OPRA participants, through OPRA, to "make all policy decisions under the Plan, including, but not limited to * * * setting standards governing the method and format for reporting options last sale reports and quotation information by [the national exchanges, among others]." See Securities Exchange Act Release No. 34-40767 (Dec. 16, 1998), 63 Fed. Reg. 69354. The SIAC/SRI conducted study is intended to address strategies for dealing with the anticipated increase in options quote message traffic, and, accordingly, will require consideration of policies and standards for managing quotation message traffic.

The OPRA participants believe that their joint action in connection with the SIAC/SRI study is encompassed by the approved OPRA Plan. Nonetheless, we request that the Commission authorize expressly, by separate order, such joint discussions and joint action by the self-regulatory organizations, including without limitation the OPRA participants, on their own behalf and through their members and member associations, consistent with Section 11A of the Act, in order to eliminate any possible question that might arise as to the authority of the OPRA participants on their own behalf and through their members to cooperate with each other and with SIAC and SRI to conduct joint discussions and to take such joint action as is necessary or advisable to plan and develop recommended strategies and approaches with respect to anticipated increases in options quote message traffic or undertake other options traffic mitigation strategies.

We have enclosed a draft order that has been the subject of discussions with Commission staff.

Sincerely,
Colleen P. Mahoney

Enclosure

[FR Doc. 99-23991 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41840; File No. SR-Amex-99-31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Publication of Certain Membership, Corporate Governance, and Disciplinary Information in the Amex Weekly Bulletin

September 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 13, 1999, the American Stock Exchange LLC ("Amex or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate references in its Constitution and Rules to the requirement that certain

⁹In issuing this Order, the Commission intends to address only the circumstances the Order expressly discusses. The Commission believes that it would be inappropriate to draw any inference from this Order concerning the Commission's views as to any conduct or circumstance not addressed by the Order. In particular, other than as described in this Order, the Commission expresses no conclusion on any issue concerning joint conduct, whether occurring before or after the date of this Order, or concerning the circumstances under which the Commission would view such joint conduct as in the public interest and the interests of investors.

¹ 15 U.S.C. 78s(b)(1).

membership, corporate governance, and disciplinary information be published in the Weekly Bulletin. The Weekly Bulletin contains information which includes the offering price of a membership sold by the Board, the list of meetings of stockholders after proxy material has been reviewed by the Exchange, notice of proposed admission to membership of proposed members and member organizations, and publication of Exchange disciplinary decisions. Such information is now posted on the Nasdaq Trader web site, thereby reaching a wider audience. Existing references in the Constitution and Rules to the Exchange's bulletin board, located on the trading floor of the Exchange, will remain unchanged. All information contained in the Weekly Bulletin will be available to Amex members and others involved in trading on the Exchange trading floor, and will become available to the general public through the Nasdaq Trader web site. Moreover, information posted on the Nasdaq Trader web site will be available by mail for individuals who do not frequent the trading floor or who do not have access to a computer.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)² of the Act in general and furthers the objectives of section 6(b)(5)³ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

III. 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, N.W., Washington, D.C. 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 in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Rule Change

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below, finds that the proposal is consistent with the requirements of Section 6 of the Act⁴ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act⁵ because it will reduce duplication in the circulation of information and will facilitate the dissemination of information to a wider audience.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that such information is available on the Internet and on the trading floor, so changing the content of the Weekly Bulletin should have no adverse impact on exchange members. In addition, information posted on the Internet will be available by mail for those individuals without access to a computer. By approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**, the Exchange will immediately reduce the costs associated with making such information available

in the Weekly Bulletin. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.⁶

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷ that the proposed rule change (SR-Amex-99-31) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-23993 Filed 9-14-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41834; File No. SR-NYSE-99-17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change Permanently Approving the Pilot Program for the Listing Standards for Domestic and Non-U.S. Companies

September 3, 1999.

I. Introduction

On April 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the Exchange's original listing standards. On May 19, 1999, the Exchange submitted Amendment No. 1 to its proposal.³

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 4, 1999,⁴ and the Commission granted accelerated approval to the pilot program relating to an alternative listing eligibility criteria for U.S. and non-U.S.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 18, 1999 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088 (June 4, 1999).

² 15 U.S.C. 78f(b).

³ 15 U.S.C. 78f(b)(5).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

companies ("Pilot") until September 3, 1999, or until the Commission approves the Exchange's request for permanent approval of the Pilot. On July 15, 1999, the Exchange filed Amendment No. 2⁵ to the proposal and on August 30, 1999, the Exchange filed Amendment No. 3.⁶ The Commission received one comment letter regarding the proposal.⁷ This notice and order approves the proposed rule change, as amended, and solicits comments from interested person on Amendment Nos. 2 and 3.

II. Description of the Proposal

The purpose of the proposed rule change is to add a new original listing standard to the Exchange's domestic and non-U.S. numerical listing criteria and to modify its current original listing criteria applicable to non-U.S. issuers. The Exchange's numerical listing criteria currently include requirements regarding size, earnings and share distribution of a company. The Exchange is proposing to add a new alternative standards that focuses on global market capitalization and revenues for large, global companies.

The specific proposed amendments to the Exchange's original listing criteria are:

1. The Exchange is proposing a Capitalization Standard alternative to its other financial listing eligibility criteria. Under the proposed amendment to Paragraphs 102.01 and 103.01 of the NYSE's Manual, a company with a total global market capitalization of \$1 billion and revenues of \$250 million in its most recent fiscal year would be eligible for listing on the Exchange without satisfying any additional financial eligibility requirements. However, the company would have to meet the Exchange's other original listing criteria. The Exchange believes that companies of this magnitude would be appropriate for listing and trading on the NYSE even if they do not have earnings because the lack of earnings could be indicative of

the company's stage of development, or the transitional nature of its home economy, or the fact that a company could be undergoing short-term variations in profitability. This listing standard is proposed for both domestic and non-U.S. companies.

For companies listing in connection with an initial public offering ("IPO"), the valuation of the company's market capitalization would need to be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by the parent company's investment banker, other financial advisor, or transfer agent, if applicable) of the size of the offering as it pertains to the total market capitalization of the company upon completion of the offering (or distribution). For all other companies, the average market capitalization over the preceding six months would be used to determine the market capitalization of the company. In computing the six month average, the Exchange proposes to take advantage of the daily figures (*i.e.*, share price and shares outstanding) over the preceding six-months.

2. The Exchange currently has alternative numerical listing criteria for non-U.S. companies with limited U.S. distribution.⁸ The Exchange proposes to amend its pre-tax earnings standard for these companies by requiring \$25 million in pre-tax income in each of the two most recent fiscal years. Currently, the company need only have pre-tax earnings of \$25 million in any one of the three most recent years. Thus, to qualify under the proposed criteria, a non-U.S. issuer would need to demonstrate pre-tax income of \$100 million in the aggregate for the last three fiscal years together with a minimum of \$25 million of pre-tax income in each of the two most recent fiscal years.

The Exchange notes that its past experience indicates that non-U.S. companies tend to follow U.S. GAAP/SEC disclosure guidelines, which only require U.S. GAAP reconciliation for the most recent two years and any relevant interim period. Thus, the third year back is generally reported only in local GAAP and, therefore, is of little quantitative value to the Exchange without reconciliation to U.S. GAAP. As a result the proposed rule change would

obviate the need to reconcile the third year back to U.S. GAAP except where the Exchange determines that that information is necessary to assure the Exchange that the aggregate \$100 million threshold has been satisfied.

III. Summary of Comments

The Commission received one comment letter from the National Association of Securities Dealers, Inc. ("NASD"), which opposed the proposal.⁹ The Exchange responded to this letter.¹⁰

In its letter, the NASD opposed the adoption of new listing criteria that would increase the number of large Nasdaq issuers eligible for listing on the NYSE, while the NYSE retains rules restricting companies from voluntarily delisting from the NYSE¹¹ and restricting off-board trading activity by NYSE members.¹² The NASD contends that the proposal, in conjunction with NYSE Rules 500 and 390, provides the NYSE with an unfair competitive advantage. Therefore, the NASD contends that the NYSE should not be allowed to adopt any rule change that increases the Exchange's ability to obtain or retain issuer listings while NYSE Rules 500 and 390 remain in effect.

In response, the Exchange argued that the NASD's argument is unrelated to the current proposal and further, that the proposed rule change is principally an additional listing standard to allow large companies to list on the Exchange. The Exchange noted that the decision whether to list on the Exchange is a decision made by the issuer.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in

⁵In Amendment No. 2, the Exchange made technical changes to conform its proposed rule language to reflect the Exchange's rule language, as amended by a previously submitted rule proposal. See Letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated July 14, 1999 ("Amendment No. 2).

⁶In Amendment No. 3, the Exchange made technical changes to conform its proposed rule language to reflect the Exchange's rule language, as amended by a previously submitted rule proposal. See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated August 26, 1999 ("Amendment No. 3).

⁷See Letter from Frank G. Zarb, Chairman and Chief Executive Officer, NASD, to Jonathan G. Katz, Secretary, Commission, dated July 19, 1999 ("NASD Letter").

⁸The Exchange applies the general financial listing standards in Paragraph 102.01 of its Manual both to domestic companies and to non-U.S. companies that have the required distribution and trading volume in the United States (or North America, for North American companies). However, the section and paragraph headings in the Manual suggest that those standards apply only to U.S. companies. The Exchange is proposing to change the non-U.S. heading to remove that implication by incorporating the word "alternative."

⁹See NASD Letter, *supra* note 7.

¹⁰See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary Commission, dated September 2, 1999.

¹¹NYSE Rule 500.

¹²NYSE Rule 390.

¹³In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴15 U.S.C. 78f(b)(5).

general, to protect investors and the public. The Commission believes that the Exchange's alternative financial listing standard for companies with \$1 billion in market capitalization and \$250 million in revenues in the most recent fiscal year is an acceptable standard for listing very large companies that the Exchange believes will prove to be financially successful, although they may not have been profitable in recent years. The Commission believes that the proposed rule change is consistent with the Exchange's obligation to remove impediments to and perfect the mechanism of a free and open market by providing issuers another alternative for trading in the U.S. marketplace without undermining the NYSE's listing standards, which play an important role in protecting investors.

The Commission also believes that it is reasonable for the Exchange to accept a written representation from an underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker or other financial advisor) for an IPO or spin-off, since by definition it could not satisfy the requisite market capitalization standard.

With respect to the "pre tax earnings" standard, the proposal amends its standard by requiring \$25 million in pre-tax income in each of the two most recent fiscal years. Thus, a non-U.S. issuer would need to demonstrate pre-tax income of \$100 million in the aggregate for the last three fiscal years together with a minimum of \$25 million of pre-tax income in each of the two most recent fiscal years. Reconciliation to U.S. GAAP of the third year back is required only if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate \$100 million threshold is satisfied. The Commission believes that the proposed change appropriately simplifies the non-U.S. company listing criteria because it parallels the benchmark applied in the "adjusted cash flow" standard for non-U.S. companies.¹⁵

The Commission carefully considered the concerns expressed by the NASD in its letter opposing the proposal. Without taking a position in this Order on the continued propriety of NYSE rules 390 and 500, the Commission was not persuaded by the NASD's contention that in light of those rules a proposal such as the current one that could reduce the burden for companies to list

on the NYSE is by its nature inappropriately anti-competitive.

The Commission finds that Amendment Nos. 2 and 3 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes Amendment Nos. 2 and 3 are consistent with the Section 6(b)(5)¹⁶ requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system by conforming the proposed rule language with the text of the NYSE rule language recently approved by the Commission.¹⁷

The Commission finds good cause for approving Amendments Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amendments merely conform the proposed rule language to the Exchange's actual rule language and do not make substantive changes to the text of the rule. In addition, accelerated approval will enable the Exchange to simultaneously make all relevant modifications to its *Listed Company Manual* and avoid any potential confusion due to recent rule revisions. Accordingly, the Commission finds that granting accelerated approval of Amendments No. 2 and 3 is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.¹⁸

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendments 2 and 3 are consistent with the Act. Persons making written statements 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 in

the Commission's Public Reference Room in Washington, DC. 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-NYSE-99-17 and should be submitted by October 6, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (File No. SR-NYSE-99-17), as amended, relating to the listing criteria for U.S. and non-U.S. companies, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99-23994 Filed 9-14-99; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 15, 1999. If you intend to comment but cannot prepare comments properly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

¹⁵ See Securities Exchange Act Release No. 41502 (June 9, 1999) 64 FR 32588 (June 17, 1999).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See Securities Exchange Release No. 41502 (June 9, 1999) 64 FR 32588 (June 17, 1999). In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

FOR FURTHER INFORMATION CONTACT:
Jacqueline White, Agency Clearance
Officer, (202) 205-6629.

SUPPLEMENTARY INFORMATION:

Title: "HUBZone Empowerment
Contracting Program Application".

Form No.: 2103.

Frequency: On Occasion.

Description of Respondents: SBA
Businesses Seeking Certification as
Qualified HUBZone Small Business
Concern.

Annual Responses: 20,000.

Annual Burden: 20,000.

Dated: September 8, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc 99-24032 Filed 9-14-99; 8:45 am]

BILLING CODE 8025-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota (Amendment #4)

In accordance with a notice from the Federal Emergency Management Agency dated September 2, 1999, the above-numbered Declaration is hereby amended to include Beltrami County, Minnesota as a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing through August 2, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clearwater, Lake of the Woods, Marshall, Pennington, and Roseau in the State of Minnesota may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 25, 1999 and for economic injury the deadline is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 3, 1999.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99-24031 Filed 9-14-99; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3209]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration on September 1,

1999, I find that McKean County, Pennsylvania constitutes a disaster area due to damages caused by severe storms and flooding that occurred on August 20-21, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 30, 1999, and for loans for economic injury until the close of business on June 1, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cameron, Elk, Forest, Potter, and Warren Counties in Pennsylvania, and Allegany and Cattaraugus Counties in New York.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ...	4.000

The number assigned to this disaster for physical damage is 320906. For economic injury the numbers are 9E4400 for Pennsylvania and 9E4500 for New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 3, 1999.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99-24030 Filed 9-14-99; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3208]

State of Texas

As a result of the President's major disaster declaration on August 22, 1999

for Public Assistance only, and an amendment thereto on August 30 adding Individual Assistance, I find that the following Counties in the State of Texas constitute a disaster area due to damages from severe storms and flooding caused by Hurricane Bret that occurred August 21-26, 1999: Aransas, Brooks, Cameron, Duval, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, Webb, and Willacy. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 20, 1999, and for loans for economic injury until the close of business on May 30, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Texas may be filed until the specified date at the above location: Dimmit, Jim Hogg, LaSalle, Live Oak, Maverick, McMullen, Refugio, San Patricio, Starr, and Zapata.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250%
Homeowners Without Credit Available Elsewhere	3.625%
Businesses With Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000%
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ...	4.000%

The number assigned to this disaster for physical damage is 320808 and for economic injury the number is 9E4300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 2, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99-24029 Filed 9-14-99; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****[FTA Docket No. FTA-99-6204]****Agency Information Collection Activity Under OMB Review****AGENCY:** Federal Transit Administration, DOT.**ACTION:** Notice of request for comments.

SUMMARY: In accordance 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 a currently approved collection. 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 4, 1999, [FR 64 pages 30096-30097].

DATES: Comments must be submitted on or before October 15, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Barney, Office of Administration, Office of Management Planning, (202) 366-6680.

SUPPLEMENTARY INFORMATION:

Title: Rail Fixed Guideway Systems; State Safety Oversight (OMB Number: 2132-0558).

Abstract: 49 U.S.C. Section 5330 requires each State to designate a State Safety Oversight agency to oversee the safety and security operations of "a rail fixed guideway system" within the State's jurisdiction. The information collected will enable the State oversight agency to monitor effectively the safety of the rail fixed guideway system.

Estimated Total Annual Burden: 37,158 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, N.W., Washington, D.C. 20503, Attention: FTA 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: September 10, 1999.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 99-24060 Filed 9-14-99; 8:45 am]

BILLING CODE 4910-57-U

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Docket No. MC-F-20951]; [STB Docket No. MC-F-20952]¹

Coach USA, Inc., and Coach USA South Central, Inc.—Control—Fun Time Tours, Inc.; Coach USA, Inc., and Coach USA North Central, Inc.—Control—G.W. Transportation, Inc., and Sam Van Galder, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transactions.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, and its wholly owned noncarrier management subsidiaries, Coach USA South Central, Inc. (South Central), and Coach USA North Central, Inc. (North Central) (collectively, applicants), filed an application under 49 U.S.C. 14303 for Coach and South Central to acquire control of Fun Time Tours, Inc. (Fun Time), and for Coach and North Central to acquire control of G.W. Transportation, Inc., d/b/a Greatway Transportation (Greatway) and Sam Van Galder, Inc. (Van Galder). In addition, Stagecoach Holdings plc (Stagecoach) and its subsidiaries, SUS 1 Limited, SUS 2 Limited, Stagecoach General Partnership and SCH US Holdings Corp., noncarriers that control Coach and Coach's various regional management subsidiaries and operating motor passenger carriers, seek authority to control Fun Time, Greatway and Van Galder.² The Board has tentatively

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² When applicants filed their application on August 16, 1999, Stagecoach and its subsidiaries were not yet in control of Coach, the regional management subsidiaries and the operating motor passenger carriers. The tentative control authority granted in *Stagecoach Holdings plc—Control—Coach USA, Inc., et al.*, STB Docket No. MC-F-20948 (STB served July 22, 1999) became final on September 7, 1999, when no comments were filed in response to the notice of the tentative grant. Thus, Stagecoach and its subsidiaries are now applicants seeking control of Fun Time, Greatway and Van Galder.

approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by November 1, 1999. Applicants may file a reply by November 15, 1999. If no comments are filed by November 1, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-20951 *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, send one copy of comments to applicants' representatives: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036 and William C. Sippel, Oppenheimer, Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710.

FOR FURTHER INFORMATION CONTACT:

Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Coach is a noncarrier that currently controls 79 motor carriers of passengers. In previous Board decisions, Coach management subsidiaries, including South Central and North Central, have obtained authority to control motor passenger carriers jointly with Coach, with the latter retaining indirect control through its ownership of those management subsidiaries.³ In STB Docket No. MC-F-20951, Coach and South Central seek control of Fun Time.⁴ In STB Docket No. MC-F-20952, Coach and North Central seek control of Greatway⁵ and Van

³ See *Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC-F-20931 *et al.* (STB served July 14, 1999).

⁴ Fun Time is a Texas corporation. It holds federally issued operating authority in Docket No. MC-176329, which authorizes it to provide charter and special operations beginning and ending at points in Texas, and extending to points in the United States (except Hawaii). It specializes in operations in the Corpus Christi, TX area, where it provides charter and tour services. Fun Time operates a fleet of 3 buses, employs 11 persons, and earned annual revenues for the 12-month period ending May 31, 1999, of approximately \$500,000.

⁵ Greatway is an Illinois corporation. It holds federally issued operating authority in Docket No. MC-243414, which authorizes it to engage in charter and special operations between points in the United States (except Alaska and Hawaii) and to operate as a motor contract carrier under continuing contracts with persons requiring passenger service. It also holds authority issued by the Illinois Commerce Commission to conduct intrastate operations. Greatway's federal operating authority was obtained in a transaction, recently approved by the Federal Highway Administration,

Continued

Galder.⁶ The acquisition of control of Fun Time, Greatway and Van Galder would be accomplished by a transfer of ownership of all of the outstanding stock of Fun Time to South Central and the outstanding stock of Greatway and Van Galder to North Central. According to applicants, the stock of these three carriers is presently being held in separate, independent voting trusts pending such transfer. Upon completion of the transfer, Coach, Stagecoach and its subsidiaries would obtain indirect control of the three carriers through their ownership of South Central and North Central.

Applicants submit that the three carriers to be acquired will continue to operate in the same general manner as they are operated presently. They will continue to provide bus services pursuant to the federal operating authorities held by each. No certificates or other operating permits will be transferred from one entity to another in consequence of the proposed control transaction.

Applicants also submit that the proposed acquisition of control will not materially reduce competitive transportation options available to the traveling public. Each of the carriers faces substantial competition from other bus companies and transportation modes.

According to applicants, the transactions will produce, or continue to produce, substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. As a specific example, the Coach companies benefit from the lower insurance premiums that Coach has been able to negotiate as well

as from Coach's ability to achieve volume discounts on the purchase of equipment and fuel. The advantages that have accrued to the motor passenger carriers as a consequence of their control by Coach are allegedly further enhanced by Stagecoach's acquisition of Coach, due to Stagecoach's greater financial resources and its significant management expertise. Applicants also indicate that the management subsidiaries will provide each of the carriers with services such as centralized legal and accounting functions and coordinated purchasing services. In addition, applicants state that vehicle sharing arrangements will be facilitated through Coach and its regional subsidiaries to ensure maximum utilization and operational efficiency of equipment. South Central and North Central each plan to maintain a database of the assets, including the motorcoach vehicles operated by the carriers. Access to the database will allow the carriers to deploy vehicles more effectively, resulting in more timely and efficient service to the traveling public. Coach's management subsidiaries will also coordinate the safety and compliance programs of the carriers, including driver training, to maintain and improve safety performance levels. Finally, Coach's management subsidiaries will develop financial plans and coordinate operational strategies.

Applicants assert that the proposed transactions will have no adverse impacts on the employees of Fun Time, Greatway and Van Galder and that their collective bargaining agreements will be honored.

Applicants certify that: (1) The jurisdictional threshold has been met with respect to the transactions that are the subject of the applications;⁷ (2) none of the subject carriers holds an unsatisfactory rating from the U.S. Department of Transportation; (3) each of the subject carriers has sufficient insurance coverage for the motor passenger service it provides and that evidence of such insurance has been, or by the time of any action on this application will be, filed with the Federal Highway Administration; (4) none of the subject carriers is domiciled in Mexico nor owned or controlled by persons of that country; and (5) approval of the transactions will not significantly affect either the quality of the human environment or the conservation of energy resources, and that environmental regulation pursuant to 49 CFR 1105.7 is unnecessary.

Additional information may be obtained from the applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the applications, we find that the proposed acquisitions of control are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the applications.⁸ If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on November 1, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20004; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: September 9, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,
Secretary.

[FR Doc. 99-24078 Filed 9-14-99; 8:45 am]

BILLING CODE 4915-00-P

with a carrier known as Contemporary Shuttle, Inc. Greatway operates a fleet of approximately 25 buses, employs approximately 50 persons, and earned annual revenues for the 12-month period ending February 28, 1999, of approximately \$3.9 million.

⁶ Van Galder, which operates the Gray Line trade name with respect to certain of its services, focuses its operations on providing service between points in Wisconsin and O'Hare International Airport as well as providing charter, tour and school bus services in Wisconsin and nearby states. It holds federally issued operating authority in Docket No. MC-112422, which authorizes it to provide regular route passenger service between specified points in Wisconsin and Illinois and to provide charter and special services passenger transportation between points in the United States (except Hawaii). Van Galder focuses its operations on providing service between points in Wisconsin and O'Hare International Airport as well as providing charter, tour and school bus services in Wisconsin and nearby states and operates under the Gray Line trade name with respect to certain of its services. It operates a fleet of approximately 110 vehicles, employs approximately 185 persons, and earned annual revenues for the 12-month period ending May 31, 1999, of approximately \$11.3 million.

⁷ See 49 CFR 1182.2(a)(5).

⁸ Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

DEPARTMENT OF THE TREASURY**Submission for OMB Review;
Comment Request**

September 8, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 15, 1999, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Treasury Retail Securities Marketing Strategy Study.

Description: This survey will focus on savings bond and Treasury Direct™ issues.

Respondents: Individuals or households.

Estimated Number of Respondents: 830.

Estimated Burden Hours Per Respondent: 23 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 319 hours.

Clearance Officer: Vicki S. Thorpe (304) 480-6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106-1328.

OMB Reviewer: Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 99-24072 Filed 9-14-99; 8:45 am]

BILLING CODE 4810-40-U

DEPARTMENT OF THE TREASURY**Submission for OMB Review;
Comment Request**

September 8, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 15, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1652.

Revenue Procedure Number: Revenue Procedure 99-27.

Type of Review: Extension.

Title: Uniform Closing Agreement—Modified Endowment Contracts.

Description: This revenue procedure allows issuers (life insurance companies) to remedy inadvertent non-egregious failures to comply with the modified endowment rules set forth in section 7702A of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 100 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 20,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 99-24073 Filed 9-14-99; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco, and
Firearms****Order ATF O 1130.6****Delegation Order—Delegation of the
Director's Authorities in 27 CFR Part 1,
Basic Permit Requirements,
Nonindustrial use of Distilled Spirits
and Wine, and Bulk Sales and Bottling
of Distilled Spirits Under the Federal
Alcohol Administration Act**

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms.

2. *Cancellation.* ATF O 1100.101A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 1, Basic Permit Requirements Under the FAA Act, dated 9/17/84, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to basic permit requirements, nonindustrial use of distilled spirits and wine, and bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Order No. 120-1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701-9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Part 1 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR Part 1, which are not ATF forms, are filed. The following table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

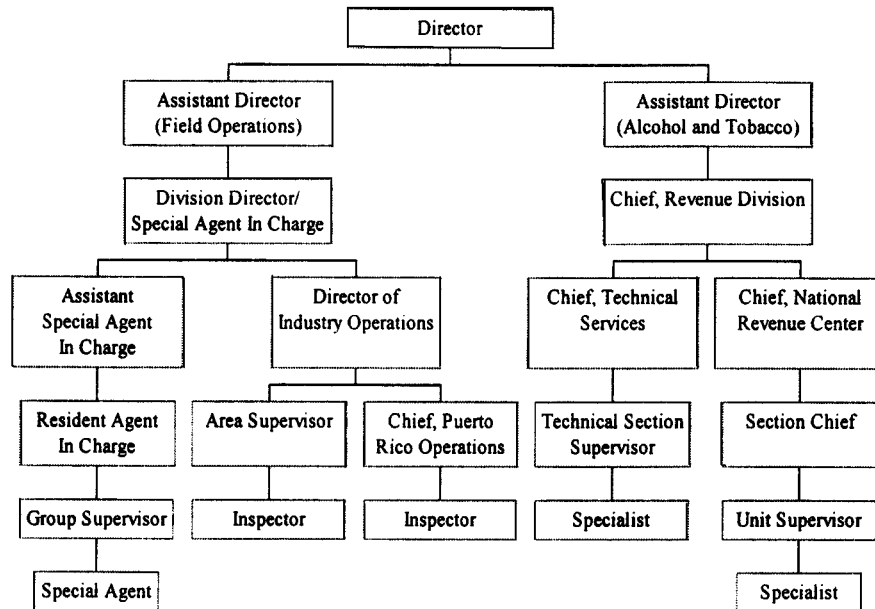
John W. Magaw,

Director.

TABLE OF AUTHORITIES AND OFFICERS AUTHORIZED TO ACT OR RECEIVE DOCUMENTS

Regulatory section	Officer(s) authorized to act or receive document
§ 1.3	Chief, Regulations Division.
§ 1.24	Unit Supervisor, National Revenue Center (NRC), or Technical Section Supervisor to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application for a permit or a permit to wholesale or import other than in Puerto Rico.
§ 1.24	Section Chief, NRC, or Chief, Technical Services to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application a permit or a permit other than to wholesale or import other than in Puerto Rico.
§ 1.24	Chief, Puerto Rico Operations to issue a permit or to amend a permit (by affixing the signature of the Director) for an application for a permit or a permit in Puerto Rico.
§ 1.25	Area Supervisor, Chief, Puerto Rico Operations, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 1.27	Unit Supervisor, NRC, or Technical Section Supervisor for a permit or a permit to wholesale or import other than in Puerto Rico.
§ 1.27	Chief, Puerto Rico Operations for a permit in Puerto Rico.
§ 1.31	Director of Industry Operations.
§ 1.35	Unit Supervisor, NRC, or Technical Section Supervisor to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application for a permit or a permit to wholesale or import other than in Puerto Rico.
§ 1.35	Section Chief, NRC, or Chief, Technical Services to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application a permit or a permit other than to wholesale or import and other than in Puerto Rico.
§ 1.35	Chief, Puerto Rico Operations to issue a permit or to amend a permit (by affixing the signature of the Director) for an application for a permit or a permit in Puerto Rico.
§ 1.35	Director of Industry Operations to deny an application for a permit or to suspend, revoke or annul a permit.
§ 1.42	Unit Supervisor, NRC, or Technical Section Supervisor for a permit other than in Puerto Rico for filing notice.
§ 1.42	Chief, Puerto Rico Operations, for a permit in Puerto Rico for filing notice.
§ 1.42	Area Supervisor, Chief, Puerto Rico Operations, Unit Supervisor, NRC, or Technical Section Supervisor to require supplemental data.
§ 1.50	Director of Industry Operations.
§ 1.51	Director of Industry Operations.
§ 1.52	Area Supervisor or Chief, Puerto Rico Operations.
§ 1.55	Area Supervisor, Chief, Puerto Rico Operations, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 1.56(b)	Director of Industry Operations.
§ 1.58	Inspector, Specialist or Special Agent.
§ 1.59	Section Chief, NRC, Chief, Technical Services, or Chief, Puerto Rico Operations.

ATF Organization



This is not a complete organization chart of ATF.

[FR Doc. 99-23897 Filed 9-14-99; 8:45 am]

BILLING CODE 4810-31-C

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Rechartering

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92-463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials has been rechartered for a 2-

year period beginning September 5, 1999, through September 5, 2001.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99-23983 Filed 9-14-99; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended

(Public Law 92-463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Former Prisoners of War has been renewed for a 2-year period beginning September 4, 1999, through September 4, 2001.

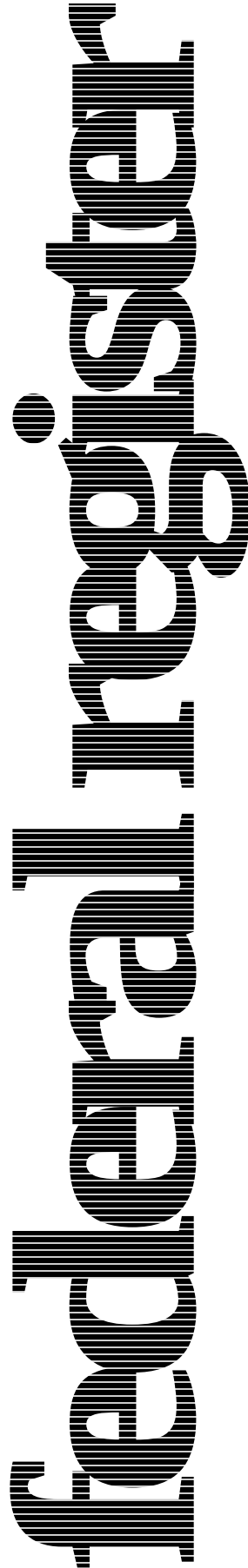
By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99-23984 Filed 9-14-99; 8:45 am]

BILLING CODE 8320-01-M



Wednesday
September 15, 1999

Part II

**Department of
Housing and Urban
Development**

24 CFR Part 35, et al.

**Requirements for Notification, Evaluation
and Reduction of Lead-Based Paint
Hazards in Federally Owned Residential
Property and Housing Receiving Federal
Assistance; Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 35, 91, 92, 200, 203, 206, 280, 291, 511, 570, 572, 573, 574, 576, 582, 583, 585, 761, 881, 882, 883, 886, 891, 901, 906, 941, 965, 968, 970, 982, 983, 1000, 1003, and 1005

[Docket No. FR-3482-F-06]

RIN 2501-AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance

AGENCY: Office of the Secretary-Office of Lead Hazard Control, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. It implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. The requirements of this rule are based on the practical experience of cities, states and others who have been controlling lead-based paint hazards in low-income privately-owned housing and public housing through HUD assistance. It also reflects the results of new scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling lead hazards. With today's action, HUD's lead-based paint requirements for all Federal programs are now consolidated in one part of title 24 of the Code of Federal Regulations.

DATES: *Effective Dates:* Section 35.140 is effective on November 15, 1999. All other provisions of the rule are effective on September 15, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call (202) 755-1785, ext. 104 (this is not a toll-free number) or e-mail your inquiry to lead_regulations@hud.gov. For lead-based paint program information, contact Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room B-133, Washington, DC 20410-0500. For legal questions, contact John B. Shumway, Office of General Counsel, Room 9262, Department of Housing and Urban Development. Hearing and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal

Information Relay Service at 1-800-877-8339.

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I. Background

A. Lead Poisoning

Childhood lead poisoning causes reduced intelligence, low attention span, reading and learning disabilities, and has been linked to juvenile delinquency, behavioral problems, and many other adverse health effects. Over the past 20 years, the removal of lead from gasoline, food canning and other sources has been successful in reducing population blood lead levels by over 80 percent. Nearly 1 million children, however, still have excessive levels of lead in their blood, making lead poisoning a major childhood environmental disease (See CDC 1997a). Lead-based paint in housing is the major remaining source of exposure and is responsible for most cases of childhood lead poisoning today.

HUD estimates that over 60 million occupied homes, or approximately 80 percent of all homes built before 1980, have some lead-based paint. Many of those 60 million homes have only small amounts of such paint, however; generally, the older the home, the greater the amount of lead-based paint. The use of lead in paint was highest in housing built before 1960. It was completely banned for residential use in 1978 by the Consumer Product Safety Commission.

Higher childhood blood lead levels are associated with lower household income, residence in large urban areas, non-Hispanic African American race, and living in older homes. Recent data from the period 1991–1994 indicate that over 16 percent of young children of less than 6 years of age from low income families had blood levels above the level of concern set by the Centers for Disease Control and Prevention (CDC), compared with only one percent for young children from high income families. Over 8 percent of all young children living in housing built before 1946 had blood lead levels over the CDC level of concern compared to only 1.6 percent for those living in housing built after 1973. Over 11 percent of non-Hispanic African American children were above the CDC level of concern compared to 2.3 percent for non-Hispanic white children. Twenty-two percent of non-Hispanic African American children living in pre-1946 housing were over the CDC level of concern.

Childhood lead poisoning is “the most common environmental disease of young children,” (CDC 1990) eclipsing all other environmental health hazards found in the residential environment (ATSDR 1988). Lead is highly toxic and affects virtually every system of the body. At high exposure levels, lead poisoning can cause coma, convulsions, and death. While adults can suffer from excessive lead exposures, the groups most at risk are fetuses, infants, and children under age 6. At low levels, the neurotoxic effects of lead have the greatest impact on children’s developing brains and nervous systems, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems. These effects have been identified in many carefully controlled research studies (National Academy of Sciences 1993; HUD 1997). The vast majority of childhood lead-poisoning cases, however, go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L.

101–550; 42 U.S.C. 4851 *et seq.*), which hereafter is referred to as “Title X” because it is Title X of the Housing and Community Development Act of 1992, redefines the concept of “lead-based paint hazards.” Under prior Federal legislation, a lead-based paint hazard was defined as any paint greater than or equal to one milligram of lead per square centimeter (mg/cm²), regardless of its condition or location. Title X states that a lead-based paint hazard is “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.” Thus, under this definition, intact lead-based paint on most surfaces is not considered a “hazard,” although the condition of the paint should be monitored and maintained to ensure that it does not become deteriorated.

Title X defines two methods of “evaluating” lead-based paint hazards or lead-based paint. One method, “risk assessment,” includes dust wipe sampling and other environmental sampling to identify lead-based paint hazards. The other, “inspection” (or “lead-based paint inspection”), determines the presence only of lead-based paint. Evaluation may also be accomplished by a combination of the two methods. The combination approach results in an identification of all lead-based paint and lead-based paint hazards. Title X provides for three types of lead-based paint “hazard reduction”: Interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are “measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards.” Abatement means “a set of measures designed to permanently eliminate lead-based paint hazards” or lead-based paint. To ensure that evaluation and hazard reduction are carried out safely and effectively, Title X authorizes new requirements for consistency and quality control.

B. Legislative and Regulatory History

The existing lead-based paint regulations pertaining to the Department’s programs, as well as to all federally owned residential property at the time of sale, were written pursuant to the passage of the Lead-Based Paint Poisoning Prevention Act of 1971, as amended prior to 1992 (42 U.S.C. 4821 *et seq.*). This legislation required the Secretary to “establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning

with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." HUD interpreted the phrase "housing assistance payments" broadly and therefore in 1976 drafted regulations to eliminate the hazards of lead-based paint for virtually all of its programs. Part 35 of the Department's regulations in title 24 of the Code of Federal Regulations was promulgated setting forth general procedures for the inspection and treatment of defective paint surfaces in HUD-associated housing. The regulation at 24 CFR 35.5(c), however, gave each Assistant Secretary the authority to develop regulations pertaining to their specific areas of responsibility, and varying program regulations concerning lead-based paint now exist throughout title 24.

The Department's lead-based paint regulations have been amended from time to time in response to changes in the law, court orders and increased knowledge about the hazards and treatment of lead-based paint. The most recent Department-wide regulatory revisions pertaining to lead-based paint were made in 1986, 1987 and 1988. Some additional revisions specific to the public and Indian housing programs were issued in 1991, and important changes were made in 1995 to the Housing Quality Standards (HQS) that apply to Section 8 tenant-based rental assistance and certain other HUD programs.

Title X represents a new and sweeping approach to the problem of lead-based paint poisoning of children, necessitating a comprehensive revision of HUD's lead-based paint regulations. Title X amends what had previously been general language contained in the Lead-Based Paint Poisoning Prevention Act and sets out specific requirements for federally owned residential property and housing receiving Federal assistance. Title X stresses identification of hazards, notification to occupants of the existence of these hazards, and control of those hazards. This final rule also reflects current knowledge of the causes of lead poisoning and current lead-based paint hazard evaluation and reduction technologies and practices. The presence of lead-based paint will be more accurately identified, with fewer false negatives or false positives. Likewise, the existence, nature, severity and location of lead-based paint hazards (in dust, soil and deteriorated paint) will be more accurately identified and reported. By improving lead-based paint

hazard evaluation, decisions about hazard reduction activities will be more fully informed, and available resources will be better targeted to reduce exposure to occupants and to the environment.

C. HUD Reinvention

The Department has launched a major restructuring to meet the changing housing and development needs of communities across the country. The restructuring includes program consolidation, organizational changes within the Department, and relocation of some cross-cutting functions outside of Washington, D.C. HUD's reinvention efforts are taking place in the context of a broader, government-wide reinvention process, the National Performance Review, initiated by President Clinton and Vice-President Gore. The goal of the reinvention is to give State, tribal and local decisionmakers maximum flexibility to tailor Federal resources in response to local circumstances, needs and priorities.

In order to keep pace with the changes HUD is undertaking, the Department's program regulations must also change. Although this lead-based paint rule was developed to implement the statutory requirements of Title X for federally owned residential property and housing receiving Federal assistance, the Department saw this as an opportunity to revise all of its lead-based paint regulations to keep pace with changes in the scientific understanding of how childhood lead poisoning occurs, lead-based paint technology and in HUD service delivery.

The rule consolidates numerous lead-based paint regulations found throughout HUD's program regulations into part 35 of title 24 of the Code of Federal Regulations. This eliminates redundant lead-based paint regulations and achieves consistency among the lead-based paint requirements for different HUD programs. Before this rule, many HUD clients received funding from several HUD programs with separate and sometimes inconsistent sets of program regulations.

This rule groups HUD programs by the type of assistance provided to make it easier to understand and implement. For instance, a client receiving HUD funds for rehabilitation will find only one rehabilitation subpart. In addition, grouping HUD programs by type of assistance allows greater flexibility for local governments and recipients of HUD funds.

Finally, the rule reflects HUD's efforts to balance the practical need for cost-effective, affordable lead-based paint hazard notification, evaluation and

reduction measures with the statutory requirements of Title X as well as with HUD's duty to protect children living in a residential property that is owned or assisted by the Federal government.

D. Public Input on Rulemaking

Consistent with Executive Order 12866, Regulatory Planning and Review, and with Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks, HUD has increased public participation in the regulatory development process, with attention to the special needs of children. Because of the magnitude of the changes required in HUD's lead-based paint regulations and the potential impact of these changes, public involvement was crucial to the rulemaking process. The three main avenues for public involvement in the development of the proposed rule were the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995) (HUD Guidelines), the recommendations from the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), and three major meetings of HUD clients to seek input on the implementation of Title X. In addition to these three methods of public involvement, there was, of course, the opportunity for public comment on the proposed rule.

1. *HUD Guidelines.* The HUD Guidelines were mandated by section 1017 of Title X. They were developed by housing, public health and environmental professionals with broad experience in lead-based paint hazard identification and control. The HUD Guidelines form the basis for many of the lead-based paint evaluation and reduction methods described in subpart R, and are intended to help property owners, government agencies and private contractors sharply reduce children's exposure to lead-based paint hazards, without adding unnecessarily to the cost of housing.

2. *Title X Task Force.* The Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force) was mandated by section 1015 of Title X. The Task Force submitted its report with recommendations, *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing*, to then-HUD Secretary Henry Cisneros and EPA Administrator Carol Browner in July 1995. Members of the Task Force included representatives from Federal agencies, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the building and construction industry, landlords, tenants, primary lending

institutions, private mortgage insurers, single family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, lead-poisoning prevention advocates and community-based organizations serving communities at high-risk for childhood lead poisoning. The mandate of the Task Force was to address sensitive issues related to lead-based paint hazards in private housing, including standards of evaluation and control, financing, and liability and insurance for rental property owners and hazard control contractors. Methods found in this rule for ongoing lead-based paint maintenance and the option for standard treatments are drawn from the Task Force recommendations. Further discussion of ways the Department used the Task Force recommendations in developing this rule is provided below under "Other General Issues."

3. *Meetings with HUD Clients.* Prior to the development of the proposed rule, the Department held three meetings with HUD clients on the potential implications of Title X on HUD programs. The meetings involved HUD constituents, grantees, and field staff of the Offices of Public and Indian Housing (PIH), Community Planning and Development (CPD), and Housing, as well as advocacy and tenant representatives. Participants shared their thoughts on several Title X issues including: Risk assessment and interim controls, hazard reduction activities during the course of rehabilitation, occupant notice of evaluation and hazard reduction activities, and responding to children with elevated blood-lead levels. Additional written comments were accepted from participants after the meetings.

4. *Comments on Proposed Rule.* Under the authority of Title X, HUD published a proposed rule in the **Federal Register** of June 7, 1996 (61 FR 29170). The proposed rule set forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. Comments on the proposed rule were requested on or before September 5, 1996.

Most of the 93 comments were from persons representing organizations that would be directly affected by the rule. More than a third of the comments (34) came from agencies of State or local government: Community development agencies, public housing authorities, planners, mayors, health departments and other organizations directly or indirectly involved with federally

assisted programs involving housing. Groups representing the housing and community development industry, or segments of it, accounted for an additional nine comments.

Fourteen Federal agencies submitted comments on the rule, including 11 agencies affected by it as potential regulated entities, and three others with their own regulatory role in some aspect of health and safety regulations associated with lead poisoning. Four comments were received from hospitals, physicians or health agencies other than those included in the count of State or local agencies, above. Four lead poisoning prevention advocacy groups submitted comments, along with three more broadly based environmental groups and five law firms or legal aid organizations.

Housing developers, or representatives of developers, accounted for five comments. Eight others were received from persons identifying themselves as consultants or experts on some aspect of the rule, or individuals who did not explain the basis of their interest in the rule. In addition, two comments were received from standards-setting entities, and one each from a bank, a secondary mortgage market organization, a coalition of tenant action groups, a child welfare group, and an advocacy group representing industries that manufacture or use lead.

Comments are summarized below in Section II of this preamble and described in more detail in Section III of this preamble.

E. Related Actions by EPA and HUD

Title X requires EPA and HUD to take other very important actions that are complementary to and in some cases binding on this final rule. Five such actions are: (1) The HUD-EPA regulation on notification and disclosure during real estate transactions; (2) the EPA standards for certification of firms and individuals performing lead-based paint activities, and associated work practices standards; (3) EPA standards for determining hazardous levels of lead in paint, dust and soil; (4) the EPA program for the accreditation of laboratories for analysis of lead in paint, dust and soil; and (5) EPA requirements applying to renovation and remodeling activities.

1. *Disclosure Rule.* Section 1018 of Title X (42 U.S.C. 4852d) directs EPA and HUD to issue joint regulations requiring disclosure of known lead-based paint or lead-based paint hazards by persons selling or leasing most housing built before 1978. Under that

authority, the two agencies published a final rule on March 6, 1996, which became effective on September 6, 1996 for owners of more than four dwelling units and on December 6, 1996 for owners of four or fewer dwelling units. The rule requires that, before completing the transaction, sellers and lessors of applicable housing must: (1) Provide purchasers and lessees (tenants) with the lead hazard information pamphlet approved by EPA; (2) disclose all known information about the presence of lead-based paint or lead-based paint hazards; (3) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint or lead-based paint hazards; (4) include, as an attachment to the contract or lease, certain disclosure and acknowledgement language and a warning statement about the dangers of lead-based paint; and (5) include certain disclosure and acknowledgment language in the contract or lease. In addition, sellers must allow purchasers a ten-day opportunity to inspect the dwelling for lead-based paint or lead-based paint hazards. Purchasers and sellers are free to negotiate another mutually-agreeable time period and all other aspects of the inspection or risk assessment. Agents must ensure compliance with these requirements. Section 1018 does not require either the buyer or the seller to conduct an inspection, nor does it require either the buyer or the seller to take action to reduce any lead-based paint or lead-based paint hazards. Also, with lease agreements, neither the landlord nor the tenant is required by section 1018 to conduct any type of inspection or hazard reduction.

Section 1012 of Title X (42 U.S.C. 4822) directs HUD to require that tenants and purchasers of "target housing" receiving Federal assistance be provided the same EPA-approved pamphlet that must be used in compliance with the section 1018 notification and disclosure regulation. ("Target housing" is a statutorily defined term in Title X that means housing constructed before 1978, except housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in the housing, and except any zero-bedroom dwelling.) As described below, HUD has avoided duplication of pamphlet dissemination requirements if the pamphlet has already been provided in compliance with the disclosure rule.

2. *EPA Certification Requirements and Work Practices Standards.* Title IV of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2681-2692), as

amended by Title X, section 402(a) (15 U.S.C. 2682(a)) requires EPA to establish a regulatory framework governing lead-based paint activities that will ensure that individuals engaged in risk assessments, inspections and abatement are properly trained, that contractors are certified (licensed), and that training programs are accredited. TSCA section 404 (15 U.S.C. 2684) mandates a process under which EPA will approve State programs for training and certification of individuals and firms under section 402. In States lacking their own programs, EPA must establish, administer and enforce Federal programs. EPA published a final rule on August 29, 1996 (40 CFR part 745, subparts L and Q, 61 FR 45777–45830) implementing sections 402 and 404 as they pertain to target housing and “child-occupied facilities” (generally, certain facilities regularly visited by children under 6 years). The regulations contain the following requirements: Training and certification to ensure the proficiency of individuals who offer to conduct lead-based paint inspections, risk assessments or abatement services; accreditation requirements to ensure that training programs provide quality instruction; work practice standards to ensure that lead-based paint activities are conducted safely, reliably and effectively; and procedures for States and Tribes to apply to EPA for authorization to administer these elements. It is expected that many States and Tribes will have EPA-authorized certification programs in place prior to the effective date for the 402/404 rule, which is August 29, 1999. Regardless of the status of EPA authorizations, however, after that time, all lead-based paint inspections, risk assessments and abatements must be conducted by individuals and contractors certified in accordance with the EPA rule and the work must be in accordance with the work practice standards contained in that rule.

HUD requires that lead-based paint inspections, risk assessments and abatements done in compliance with its final rule on lead-based paint activities in federally owned and assisted housing be conducted in accordance with the EPA rule implementing TSCA sections 402 and 404, i.e., that individuals and firms be certified and the work be done in accordance with the work practices standards. It should be noted that the EPA regulation is not applicable to interim controls. It has been necessary, therefore, for HUD to include basic standards for such procedures in this rule.

3. *EPA Standards for Hazardous Levels of Lead in Paint, Dust and Soil.*

TSCA section 403 (15 U.S.C. 2683) requires EPA to issue regulations identifying, for the purposes of Title X, levels of lead in paint, dust and soil that are considered hazardous. EPA published a proposed rule on June 3, 1998. When promulgated and effective, the final rule implementing section 403 will contain standards that affect the risk assessments required in this rule. In the meantime, the interim levels of lead in paint, dust and soil set forth in this rule issued by HUD shall be followed in housing covered by the rule. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

4. *EPA Laboratory Accreditation Program.* Under TSCA section 405(b) (15 U.S.C. 2685(b)), EPA has established the National Lead Laboratory Accreditation Program (NLLAP). NLLAP recognizes laboratories which have demonstrated the ability to accurately analyze lead in paint, dust, and soil samples. To be NLLAP recognized, laboratories must successfully participate in the Environmental Lead Proficiency Analytical Testing (ELPAT) program and undergo a systems audit. EPA has recognized the American Association for Laboratory Accreditation (A2LA) and the American Industrial Hygiene Association (AIHA) as NLLAP accrediting organizations. The National Lead Information Center Clearinghouse (1–800–424-LEAD) provides the public with a continually updated list of NLLAP recognized laboratories. In this rule on lead-based paint requirements in housing receiving Federal assistance and federally owned housing, HUD is requiring the use of NLLAP recognized laboratories for laboratory-based analysis of lead in paint, dust and soil samples.

5. *Possible EPA Regulations Pertaining to Renovation and Remodeling.* TSCA section 402(c) (15 U.S.C. 2682(c)) requires EPA to study the extent to which various types of renovation activities create a lead-based paint exposure hazard for workers or occupants where the work is being conducted. The same section directs EPA to revise the regulations implementing section 402(a) to apply to renovation and remodeling activities or to determine that such regulations are not required. EPA has not yet made the determination as to whether regulatory revision is necessary. If EPA does decide to issue such regulations, it is possible that they would apply to interim controls, which are a type of hazard reduction activity commonly required in this HUD rule but not currently regulated by EPA. Other types

of work may also be affected. Until EPA promulgates and makes effective a new regulation under TSCA section 402(c), the requirements in this rule issued by HUD shall be followed in housing covered by the rule.

II. **Summary of Public Comments on Proposed Rule**

A. *Diversity of Comments*

With only a few exceptions, commenters on the proposed rule agreed that lead-based paint hazards are a serious health problem deserving to be addressed. There was, however, an extraordinary diversity of views regarding how best to control lead-based paint and its associated risks. Additionally, commenters varied widely on the question of what relative priority lead-based paint control efforts should enjoy, given the shortage of resources for the provision of housing services generally, and the costs associated with lead hazard control measures.

Commenters also perceived the proposed rule in different ways. Some considered it biased in favor of lead-based paint abatement as opposed to less expensive interim control procedures. Several argued that in recent years interim controls have become accepted as a wiser response to lead hazards than more elaborate abatement processes. Other commenters, however, warned against what they saw as undue readiness in the proposed rule to undertake limited measures to control hazards in circumstances where, *these* commenters believed, such measures would be inadequate and would afford only temporary solutions of unknown duration.

Spokespersons for State and local funded agencies, despite providing many comments on ways to make the rule more effective, were concerned that the cost of compliance with the rule would severely affect their housing programs.

Most, although not all, of the commenters representing the health industry or environmental concerns pleaded for a stronger rule, for more rapid effectiveness, and for a more strenuous program of hazard control than the proposed rule required.

Regulated Federal agencies, like their State and local counterparts, worried about costs and often advocated wider discretion. Many State and Federal commenters advocated more deference on HUD's part to hazard control programs, present or future, that have been or will be developed elsewhere.

Commenters from varying backgrounds suggested that HUD's rule

was likely to become the nationwide "standard" for compliance, i.e., that courts (through tort litigation) and lending institutions (through underwriting standards) eventually would establish a standard of care applicable to *private* housing suppliers that was closely patterned after the standards set out in this rule. Most often, this observation was accompanied by expressions of concern that the proposed rule was not adequate to provide the appropriate standard of care for the nation's housing stock.

B. Commenters' Broad Concerns

Following is a brief description of the most common concerns expressed by the commenters. The Department's response to these concerns is described and explained in Section IV of this preamble below.

1. *"Missed Opportunities"*. Some argued that the proposed rule was misdirected, set the wrong priorities, spent limited resources less wisely than they could be spent, or failed to take important additional considerations into account. Most typical are comments suggesting that the rule:

- (1) Should stress abatement more (or less);
- (2) Is inadequately focused on controlling lead in units currently occupied by small children;
- (3) Pays insufficient attention to soil-related hazards;
- (4) Pays too little deference to EPA and/or private-sector standards-setters;
- (5) Stresses liability risk-management over health-based hazard control measures; or
- (6) Otherwise misses an opportunity to apply the most effective possible rule to an acknowledged problem.

2. *Cost of Compliance*. A very large number of commenters expressed concerns about costs. Cost-related comments took many forms, but the most frequently raised assertions were variations on the following:

- (1) The cost-benefit analysis in the Economic Analysis is inaccurate and grossly underestimates the impact the rule will have on the ability of federally funded entities to carry out their programs.
- (2) Because of high costs, the regulation will divert resources that could be better used to meet other critical housing needs.
- (3) Costs will be so extreme that many housing programs currently in existence will be forced to close down or drastically curtail their productivity.
- (4) The rule will cause existing housing to deteriorate as it becomes too expensive to rehabilitate, or will distort local selection processes by steering

them away from older dwellings most in need of rehabilitation.

(5) Landlords in HUD's tenant-based rental assistance program will not accept the additional financial burden of participating in the program.

3. *Legality of Portions of the Rule*.

Two of the issues presented raised challenges to the legitimacy of portions of the rule, asserting that:

(1) Lead hazard controls in the tenant-based subsidy programs and controls on properties receiving less than \$5,000 in project-based assistance are beyond the scope of the statute.

(2) The rule's soil-testing and soil-abatement/control provisions are outside the scope of HUD's authority, to the extent they fail to differentiate the sources of lead in dust.

4. *Perceived HUD Overreaching*.

Beyond the aforementioned legal challenges, some commenters thought that the rule exceeded proper bounds. They asserted that:

- (1) The rule is an "unfunded mandate," in that it would require expensive undertakings by those regulated, without the offer of a new source of financial assistance.
- (2) The rule, by imposing new risk assessment requirements and/or new obligations to control hazards, would endanger existing contracts.
- (3) The underlying statute makes no distinction between HUD-assisted and other housing receiving Federal assistance, while the rule provides for this dichotomy without providing any justification.
- (4) The rule fails to provide real support to local hazard control efforts, instead imposing requirements that fail to recognize important community concerns.

III. Response to Public Comments and Final Rule Provisions

A. *Scope and Applicability*

This rule implements the requirements of the Lead-Based Paint Poisoning Prevention Act (LPPPA), as amended by section 1012 and section 1013 of Title X.

Throughout this rule, lead-based paint hazard notification, evaluation, and reduction requirements represent the minimum activities required. Parties may voluntarily undertake more extensive lead-based paint activities if appropriate or permitted under the specific housing program with which the dwelling unit or residential property is associated.

If the requirements of this rule for a dwelling unit or residential property differ from those of the State, tribal or local government, the more protective requirement applies.

Section 302 of the LPPPA requires HUD "to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program." In addition, the LPPPA requires HUD to establish procedures for the inspection and reduction of lead-based paint hazards in Federally owned housing at disposition. Accordingly, this final rule covers all target housing that: (1) HUD is associated with; (2) receives more than \$5,000 in project-based assistance under a program of an agency other than HUD; and (3) is being disposed of by the Federal government.

Since 1975, when it first proposed regulations implementing section 302, HUD has taken a broad interpretation of the phrase "covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." The scope of HUD's lead-based paint regulations has always included all HUD-associated housing, and this final rule continues that policy. The phrase, "or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program," was added to section 302 by Title X in 1992. HUD's interpretation of that phrase is explained below.

1. *Housing Receiving Less Than \$5,000 in Project-Based Rental Assistance*. Section 1012(a) amends the first sentence of the Lead-Based Paint Poisoning Prevention Act to add the phrase "or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program" so that 42 U.S.C. 4822(a) now reads as follows: "The Secretary of Housing and Urban Development * * * shall establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program."

One commenter asserted that HUD is "clearly outside of its statutory authority" in imposing requirements on multifamily properties receiving less than \$5,000 in project-based assistance. Quoting the 1992 amendments, the

commenter declared that despite HUD's imposing only minimal procedures on these under-\$5,000 properties, the rule would result in additional costs and regulatory burdens on property owners that the Congress "never intended to regulate."

HUD disagrees. The statute does not prohibit the Department from establishing lead-based paint hazard reduction requirements for housing receiving less than \$5,000 in project-based assistance under a program administered by the Secretary of HUD. The legislative history makes this clear. The Senate committee report accompanying the bill states, "Title X would expand the coverage of the LPPPA to include pre-1978 housing suitable for occupancy by families * * * which is covered by an application for mortgage insurance or housing assistance payments *under a HUD program* or receives more than \$5,000 in housing assistance *through another federal program*" (emphasis added, Senate Report 102-332, page 117).

Although the statute gives HUD authority to impose the same requirements on HUD assisted housing receiving less than \$5,000 as on that receiving more than \$5,000, the Department recognizes that the Congress intended that the stringency of the requirements would be related generally to the amount of financial assistance from the Government. HUD is not requiring, therefore, housing receiving multifamily project-based rental assistance of \$5,000 or less per unit per year to comply with the statutorily specified requirements for multifamily housing receiving project-based rental assistance of more than \$5,000 per unit per year. Instead, the rule requires such housing to comply with the less stringent procedures established for tenant-based rental assistance.

2. Tenant-Based Rental Assistance. Some commenters thought that the Congress never intended for the rule to impose duties on landlords in the tenant-based rental assistance programs. This group argued that there exists a "statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance."

The statute is silent on whether the new minimum procedures for lead-based paint hazard notification, evaluation and reduction apply to tenant-based rental assistance. Congress did not amend the first sentence of the Lead-Based Paint Poisoning Prevention Act, set out above, to delete or amend the phrase "housing assistance payments." HUD has historically interpreted this general phrase to cover

virtually all types of housing assistance, including tenant-based rental assistance—the type of assistance that it seems to cover most obviously. The legislative history for Title X states, however, that housing receiving tenant-based rental assistance would be exempt from the Lead-Based Paint Poisoning Prevention Act, as amended by Title X. Congress was concerned that, due to the tendency of residential properties to pass in and out of tenant-based Federal assistance programs, it would be unworkable and inequitable to impose greater burdens on owners of such properties than on other private landlords (Senate Report 102-332, page 117).

Clearly, Congress did not intend for HUD to apply the new minimum procedures set out in section 1012(a) of Title X to tenant-based rental assistance. HUD does not believe, however, that Congress intended to abolish HUD's current procedures, which serve to protect, in a minimal way, the children in families receiving this type of housing assistance. Rather, HUD infers that Congress intended for the Department to effectively retain its present lead-based paint requirements for tenant-based rental assistance. In its current regulations, HUD requires units with tenant-based rental assistance occupied by families with children under 6 to meet the minimal standard for lead-based paint found in its Housing Quality Standards (HQS) (see 24 CFR 982.401). In this rule, then, HUD continues to require tenant-based rental property to meet HQS. To streamline requirements, HUD has modified the lead-based paint requirements in the current HQS slightly, in order to be consistent with recent scientific information on how to protect children who are exposed to lead-based paint hazards. The requirements in this rule for tenant-based rental assistance continue to apply only to units in which children of less than 6 years of age reside. HUD does not believe Congress intended that Federal funds be used to subsidize housing that can poison children.

3. Federally Owned Housing and the Availability of Appropriations. Section 1013 of Title X amends the Lead-Based Paint Poisoning Prevention Act at section 302 to modify existing requirements for the sale (disposition) of all residential property constructed before 1978 and owned by a Federal agency. Section 302(a)(3)(C) (42 U.S.C. 4822(a)(3)(C)) states that:

"To the extent that subparagraphs (A) and (B) (which contain evaluation and abatement requirements for pre-1960 housing, and evaluation and notification requirements for

housing constructed between 1960 and 1978) increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments, such activities shall be treated as modifications under section 504(e) of the Federal Credit Reform Act of 1990 and shall be subject to the availability of appropriations. To the extent that paragraphs (A) and (B) impose additional costs to the Resolution Trust Corporation and the Federal Deposit Insurance Corporation, its requirements shall be carried out only if appropriations are provided in advance in an appropriations Act. In the absence of appropriations sufficient to cover the costs of subparagraphs (A) and (B), these requirements shall not apply to the affected agency or agencies."

In the proposed rule, the Department interpreted this language to mean that HUD (and other Federal agencies that own residential property) need not comply with the requirements set out in section 302(a)(3) if sufficient funds are not appropriated to the agency for this purpose. The Department then proposed in the absence of sufficient appropriations to include requirements to identify and treat deteriorated paint in HUD-owned properties (similar to current procedures), even if funding is not made available to the Department to carry out more extensive lead-based paint evaluation and reduction.

Commenters expressed strong objections to basing the rule's requirements on the adequacy of appropriations. Several commenters questioned whether a determination that appropriations were "inadequate" would or could ever be made. There was also sentiment against using such a two-pronged system for determining regulatory responsibility at all: "Letting our standards be set by appropriation levels is dreadful public policy when the health of children [is] at stake."

A commenter urged HUD to retain high standards in the regulations and "let the legislative process deal with the fiscal responsibility [for] this community health issue." If more costly requirements are optional, money will not be appropriated, predicted another commenter. Others agreed, saying that since adequate (separate) appropriations are not at all likely to be forthcoming for each program, contemplating them confuses "an already complex regulation."

State and local funded agencies and others expressed their resentment concerning the "adequate appropriations" approach taken in the subparts affecting HUD and other Federal agency responsibilities in the proposed rule: "HUD has two standards, depending on whether there is a Federal appropriation. We find this interesting as HUD has *refused* to seek an

appropriation since the legislation was passed in 1992. Instead, subpart G (HUD without appropriations) will be used.”

Two commenters posed the question, “may CDBG and HOME recipients ignore *their* regulations if there is not additional or sufficient funding to properly do the work?”

Another commenter roundly condemned the appropriations-based dichotomy as “seriously misguided”:

“* * * There will never be explicit ‘sufficient’ appropriations, and the Secretary is unlikely ever to make an explicit pronouncement that appropriations are ‘insufficient.’ HUD should be adopting a single set of requirements that stipulate minimum levels of hazard controls as part of the price of doing business, not as a matter of fiscal convenience.”

An environmental health advocacy group discussed the statutory exception that is provided for the disposition of certain federally owned housing—where inspection and risk assessment is called for (under section 302(a)(3)) *except* when compliance would increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments (or would impose additional costs on RTC or FDIC)—*and* there are no appropriations to fund those increased costs.

The described exception, the commenter maintained, was the *only* such exception/exemption in the statute:

“* * * Absolutely no evidence exists to support the contention that Congress implied or otherwise intended that HUD should be able to grant federal agencies broad discretion to opt out of lead hazard evaluation and control requirements. Such an interpretation would allow federal agencies such as the General Services Administration and the Department of Defense to simply dispose of their properties without paying heed to their condition or habitability
* * *.”

The group urged that, in its final property disposition regulations, HUD clearly limit waiver availability only to those agencies that qualify, based on the cited statutory exemptions. The commenter also urged that HUD revise the regulation to describe “minimum steps” that even agencies entitled to the waiver must undertake. A “sweeping exemption” is clearly unacceptable, the group declared, and HUD “must not condone such an irresponsible policy and must instead set some floor of minimum requirements with which all federal agencies must comply, regardless of appropriations.”

HUD acknowledges the validity of many of these comments. In the final rule, the Department includes single subparts for HUD-owned single family

property and HUD-owned multifamily property, rather than providing separate subparts for when HUD has sufficient appropriations and when HUD does not have sufficient appropriations. An additional subpart is included for residential property owned by Federal agencies other than HUD; the requirements in this subpart are identical to those in Title X. Each affected agency must decide whether the requirements of Title X apply to it; HUD feels that it is inappropriate for the Department to decide this issue for other agencies.

HUD maintains, however, that the language of section 302(a)(3)(C) makes the lead-based paint requirements for HUD-owned residential property conditional on the sufficiency of appropriated funds to be used to conduct inspections and abate lead-based paint hazards in HUD-owned residential property. HUD has never received such an appropriation for these purposes and it did not receive such a line item in the most recent appropriations act. Therefore, in the Department’s view, “appropriations” are not presently sufficient to conduct the lead-based paint activities required under section 302(a)(3)(A) and (B) and HUD is not required to implement these procedures. If sufficient appropriations become available at a later time, this final rule may have to be amended.

It should be noted that HUD interprets the first sentence of section 302(a)(3)(C) to apply only to HUD programs where the cost of conducting lead-based paint evaluation or abatement activities under section 302(a)(3)(A) and (B) increase HUD’s outstanding direct loan obligations or loan guarantee commitments. Since appropriations are not sufficient for the Department to conduct inspections and abatement of lead-based paint hazards in accordance with section 302(a)(3)(A) and (B), a determination of the effect of such activities on HUD’s direct loan obligations or loan guarantee commitments is unnecessary.

Although HUD has made the determination for purposes of section 302(a)(3) that it does not have “sufficient appropriations” and therefore, the Department is not required to implement the procedures set out in section 302(a)(3) for its HUD-owned properties, the Department nevertheless has included lead-based paint procedures in this final rule which the Department can afford to implement and which, in HUD’s view, are fully protective. While Congress under Title X did not require the Department to carry out the requirements in section 302(a)(3)(A) and (B) in the absence of

sufficient appropriations, Congress was silent concerning what activities the Department should carry out to reduce lead-based paint hazards in HUD-held properties in the absence of appropriations. This created a “gap” for HUD’s interpretation. Under *Chevron U.S.A., Inc. v. National Resources Defense Council*, 467 U.S. 837 (1984), where a statute is silent or ambiguous on a specific issue, the Department’s interpretation of the statute will be upheld if it is based on a permissible or reasonable construction of the statute. The Department believes that Congress did not intend for HUD to ignore lead-based paint in its properties, even in the absence of sufficient appropriations. As a consequence, HUD has developed procedures for HUD-owned properties, as set forth in subparts F and I, which it believes are reasonable.

4. *Soil and Dust Standards.* a. *Legal Issues.* A legal question raised by commenters had to do with the Department’s authority to regulate in the area of dust and soil. Two basic questions were raised: authority to regulate in the asserted absence of a nexus with lead-based paint, and authority to regulate in the absence of EPA regulations defining hazardous levels of lead in dust and soil under section 403 of the Toxic Substances Control Act.

One commenter claimed that HUD is exceeding its authority and has moved “arbitrarily and capriciously” by setting interim controls and abatement levels for lead in soil and dust without reference to the risk posed by the *type* of lead contained in soil or dust, or to the bioavailability of the lead. Because HUD’s action is in advance of EPA’s statutorily mandated determinations of soil cleanup levels, HUD is overreaching, in the commenter’s opinion, because the Congress intended that EPA’s regulatory action—identifying what are hazardous levels of lead in dust and soil—was to be the “first step” in rulemaking on that subject matter. According to the commenter, the Congress gave HUD and EPA authority to implement interim controls and abatement with respect to hazards from lead-based *paint*, including the dust *from lead-based paint and soil contaminated by lead-based paint*. Thus, HUD set *ad hoc* standards for lead dust and soil in the absence of any EPA study results *and* without any nexus to lead-based paint.

Further, the commenter stated that HUD was attempting to “decouple” dust and soil testing and abatement from any necessary relation to lead-based paint itself. The “unstated premise” of HUD’s rule would be that all lead in dust is

assumed to come from paint, although this is not the case. HUD's approach would unfairly burden property owners with the costs of cleaning up soil and dust which may have become contaminated from "sources not under the property owner's control." This regulatory requirement, the commenter asserted, would raise the constitutional questions of a "taking without just compensation and deprivation of property without due process of law under the Fifth Amendment * * *"

The commenter concluded that HUD should not "decouple" lead found in dust and soil from the *source* of that lead, and should reconsider its imposition of a single dust-lead standard unrelated to the source of the lead or its bioavailability. Where there is a source of dust related to lead paint, HUD's standards may be workable, the commenter acknowledged, although waiting for EPA's upcoming standards under section 403 of the 1992 Act "would have been more consistent with Congress' intent." HUD's proposed standards, however, would be "unfair" to the extent there are other sources of lead involved, because the Department assertedly lacks authority to regulate lead that is from non-paint sources, and because the regulations would bear "no relationship to cause or risk."

HUD and EPA, after careful consideration, do not agree with the commenter's argument. EPA, which has the relevant regulatory authority under TSCA section 403, has concluded that the language of Title X supports an interpretation that dust and soil lead are covered regardless of the source of the lead. Definitions in Title X do not limit the source of lead in soil or dust to lead from lead-based paint. The definitions of "lead-contaminated dust" and "lead-contaminated soil" do not specify that the source of lead in the dust or soil must be lead-based paint. In fact, the definition of "lead-based paint hazard" specifies lead-contaminated dust and soil as sources of lead contamination separate from and not explicitly linked to lead-contaminated paint.

Furthermore, as a practical matter, it is not possible to determine through routine chemical analysis the source of the lead in the dust and soil at any given site, not to mention every site of pre-1978 housing in the nation. Also, it is well known that the scientific literature has determined that lead in dust is an important source of childhood lead exposure and that dust lead is well correlated with paint lead (Lanphear, 1996). It is unlikely, therefore, that the Congress meant to curtail the reduction of lead in dust at each individual property covered by this regulation until

it is established that paint is the source of the lead in dust at the site.

HUD acknowledges, however, that owners cannot be expected to have protected their properties from dust-lead deriving from such sources as gasoline combustion, nearby bridge repainting, or nearby industrial activity. It is reasonable that this final rule should give the highest priority to the reduction of lead in old residential paint that may cause lead exposure in children. As explained below in Section III.A.5.b of this preamble, HUD has exempted from the requirements of this final rule residential properties that are found not to contain lead-based paint or that have had all lead-based paint removed. (This exemption is consistent with a similar exemption in the real estate notification and disclosure rule that was issued jointly by HUD and EPA on March 6, 1996.) Thus, in this final rule, dust-lead hazards and soil-lead hazards are regulated only in properties in which lead-based paint is known or presumed to be present.

b. *Coordination With EPA Rulemaking.* With regard to coordination with EPA rulemaking on hazardous levels of lead in dust and soil, HUD agrees that the standards set forth in final regulations promulgated and made effective by EPA pursuant to TSCA section 403 will be relevant to this rule. The final rule states that the section 403 standards shall be referenced when such standards are promulgated and effective. There may be a period of time, however, between the effective date of this final rule and the 403 regulations. Therefore, the Department is including in this final rule interim standards for levels of lead in dust and soil that are based on a recently-completed, peer-reviewed, pooled analysis of virtually all available epidemiological studies that directly measure the relationship between lead in children's blood and lead in dust and soil (Lanphear et al. 1998). This ensures that HUD's interim standards are scientifically valid. The interim standards promulgated in this rule are reasonably consistent with the standards recently proposed by EPA. For further discussion of the interim standards, see Sections III.E.15.a and b of this preamble, below.

The Department does not agree with the comment (cited above in Section III.A.4.a of this preamble) that it should delay all regulatory action pertaining to lead in dust and soil until final 403 regulations are promulgated. HUD has previously established standards for dust lead and soil lead to ensure that hazard controls are properly targeted and are effective in the housing it assists

or owns. Such standards were published in Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, September 1990 (Interim Guidelines); and again in Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, June 1995 (HUD Guidelines). These standards have already been widely used in HUD programs. The scientific literature has confirmed that lead in dust and soil are important pathways to childhood lead exposure, as discussed below in Section III.E.15.b of this preamble.

When EPA regulations implementing TSCA section 403 are final and effective, they will apply to this HUD rule and will supersede most of the HUD interim standards for dust and soil. If the final section 403 rule does not establish a standard for an activity or situation that is covered by the HUD interim standards, there may be a question as to whether that aspect of the interim standards is retained. HUD expects that, after the section 403 rule is published, the Department will publish a technical amendment to this rule or engage in additional rulemaking to make clear what the applicable standards are.

5. *Exemptions.* a. *Housing for the Elderly.* This rule applies most broadly to "target housing," which is defined in Title X as housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the unit) or any 0-bedroom dwelling unit. As in the proposed rule, HUD interprets the exemptions for elderly and disabled housing to apply only to residential property which is designated exclusively for elderly or disabled use.

Some commenters complained about this restrictive interpretation and urged that it should be enough that elderly or disabled persons reside in a dwelling unit and that no young children are expected to reside there. After careful consideration, HUD has decided to retain the interpretation of the exemption that was adopted in the proposed rule. This is consistent with the definition of target housing used in all regulations issued pursuant to Title X. The statute has never been interpreted as providing an exemption for each dwelling that happens to be occupied by elderly or disabled persons. Such a policy, in the judgment of the Department, would be contrary to the intent of the statute, which is to eliminate as far as practicable lead-based paint hazards in all housing receiving Federal assistance and in federally owned housing at disposition.

Most dwellings currently occupied by elderly persons or persons with disabilities will probably be occupied by a child in the future.

The Department defines the phrase "expected to reside" in the statutory definition of target housing as meaning that there is actual knowledge that a child is expected to reside, rather than a general presumption that a child will probably reside in the dwelling unit sometime in the future. If a woman residing in the dwelling unit is known to be pregnant, there is actual knowledge that a child is expected to reside in that unit. However, in the context of most residential real estate transactions it is not advisable to inquire as to whether a woman is pregnant. The term "expected to reside" is used in the statutory definition of "target housing" in Title X, but it is not defined there. It would not be unreasonable for people seeking to comply with the law to think that the term might refer to the distant future, that is "expected to reside at some time, however far in the future." That uncertain potentiality is not part of HUD's interpretation of statutory intent. Therefore HUD is providing this tightened definition to minimize confusion.

b. *Absence of Lead-Based Paint, or Prior Hazard Reduction.* The proposed rule provided exemptions from certain requirements if a residential property was found to contain no lead-based paint, but such exemptions did not apply to all programs. To streamline the final rule, exemptions are provided for properties found not to have lead-based paint by a certified lead-based paint inspector and for properties in which all lead-based paint has been identified and removed in accordance with procedures established by an EPA-authorized State or tribal program or by EPA in accordance with 40 CFR part 745, subparts L and Q. If the method of abatement is enclosure or encapsulation, this exemption does not apply because lead-based paint is still present.

An owner or recipient of Federal assistance hoping to qualify for this exemption may question whether correcting for possibly incorrect (or outdated) positive findings during lead-based paint inspections is permissible. In the rule, the owner or recipient always retains the option of having additional tests performed by a certified lead-based paint inspector. Nothing in the regulation is intended to revoke or restrict that option. An additional test can sometimes clarify whether lead-based paint is or is not present. Actions may be taken based on the results of the

most recent inspection by a certified lead-based paint inspector, provided appropriate technology is used. Laboratory analysis of a properly taken paint sample is a more reliable method of measurement than the use of a portable X-ray fluorescence (XRF) analyzer on site. Therefore a new laboratory analysis of a paint sample can overturn either an old portable XRF reading or an old laboratory test, but a new portable XRF reading can overturn only an old portable XRF reading.

These general exemptions are intended to apply only if the entire residential property is free of lead-based paint or has had all lead-based paint removed. The term "residential property" is defined in the rule as including such things as outbuildings, fences, and play equipment affixed to the property as well as dwelling units and common areas.

HUD is providing this exemption to assure that the highest priority in the use of scarce lead-based paint hazard control resources is given to residential properties with lead-based paint. The Department recognizes that some properties have dust-lead hazards and/or soil-lead hazards but do not have any lead-based paint. These properties are expected to be a small proportion of the total affected stock, however.

c. *Housing To Be Demolished.* In response to questions from various sources, the rule provides that housing to be demolished is exempt, provided the housing remains unoccupied until demolition. Owners should be aware, of course, that other local, State and Federal regulations pertaining to environmental protection and occupational safety and health may apply to demolitions.

d. *Nonresidential Property.* The final rule also states explicitly that property that is not and will not be used for human habitation is exempt. In the case of a mixed use property, HUD intends that only those parts of the property normally associated with residential use shall be covered by this rule. For example, retail and office establishments in an apartment building would not be covered, but hallways leading to such uses would be covered if the hallways also service dwelling units that are covered by the rule.

e. *Rehabilitation Disturbing Little or No Painted Surface.* Commenters also complained that existing exemptions in HUD rules for weatherization, emergency repairs, water/sewer hookups, installation of security devices, and other special work were no longer included in the rule, even though, the commenters said, these were "realistic and necessary"

exemptions. The commenters were concerned primarily with rehabilitation activities funded under the Community Development Block Grant or HOME programs.

With regard to weatherization, the Department believes this is too broad a category on which to base an exemption from this rule. Weatherization often includes window replacement, which can generate lead dust and therefore should be performed with safe work practices. With regard to such activities as water and sewer hookups and installation of security devices, HUD has provided in subpart B of the final rule an exemption for rehabilitation that does not disturb a painted surface. Also, activities that disturb painted surfaces of no more than a "de minimis" amount of 2 square feet in any one interior room, 20 square feet on exterior surfaces, or 10 percent of the total surface area on an interior or exterior component with a small surface area are not required to use "safe work practices," and worksite clearances are not required for such work. (This de minimis is stated in the section on safe work practices in subpart R of the rule.) Therefore, installation of security devices under rehabilitation assistance will generally not require special precautions usually associated with lead-based paint hazard reduction. Furthermore, in situations in which security devices are being installed as a part of the operation and maintenance of a residential property that is required under this rule to incorporate ongoing lead-based paint maintenance as a part of the everyday maintenance of the property, the same "de minimis" exemption applies.

f. *Emergency Actions and Natural Disasters.* The proposed rule provided a general exemption for properties undergoing emergency repairs in response to natural disaster. The Department believes that there are circumstances in which the time required for compliance could adversely affect life or property and, consequently, an appropriately tailored exemption is needed.

Two commenters requested additional exemptions beyond the "natural disaster" exemption set out in the proposed rule. They believed it was too narrow in scope, arguing that any form of disaster should be the basis for an exemption from the rule's requirements. On the other hand, others claimed that no justification existed for exempting damaged properties. At a minimum, these properties need risk assessment and full disclosure before any sale, one commenter said.

In the final rule, HUD has provided in subpart B a more carefully worded provision that provides an exception for "emergency actions immediately necessary to safeguard against an imminent danger to human life, health or safety, or protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse) * * *". The exemption states, however, that in such cases "occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable." It is HUD's intent that such protection would include a thorough cleanup. The exemption extends only to the completion of repairs necessary to respond to the emergency; after that, the requirements of the rule apply.

g. *Law Enforcement Seized Property.* A spokesperson for the Treasury Department's Asset Forfeiture Program urged that law enforcement agencies seizing real properties should be able to dispose of those properties without the financial burden of compliance with the rule, with only a duty to warn potential transferees or purchasers of the possible presence of a lead-based paint hazard. The Justice Department's U.S. Marshals Service made similar comments, adding that the regulations will create "an economic disincentive to seizing and forfeiting pre-1978 residential property."

In view of the special nature of law enforcement, HUD has added a provision in subpart B of the final rule that exempts seized properties owned for 270 days or less from the evaluation and hazard reduction requirements of subpart C of this rule, which sets requirements for the disposition of residential properties owned by Federal agencies other than HUD. For seized properties owned longer than 270 days, the requirements of subpart C will apply. Ownership begins upon receipt of a judicial order of forfeiture. Approximately 400 seized, pre-1978 dwelling units are disposed of annually by the Department of the Treasury and the Federal Marshals Service of the Department of Justice combined. HUD expects that the Federal law enforcement agencies, in exercising their managerial responsibilities over seized residential property, will make every reasonable effort to maintain the property in a lead-safe condition.

h. *Emergency Rental and Foreclosure Prevention Assistance.* Some State and local agencies urged that programs providing emergency rental assistance or foreclosure prevention assistance be exempted. The final rule provides a limited exemption for such programs

subject to subpart K, Acquisition, Leasing, Support Services, or Operation. The exemption for any specific dwelling unit expires after 100 days. HUD does not intend that multiple households receiving emergency assistance can be recycled through a unit without subjecting the unit to the requirements of subpart K.

i. *Adverse Weather.* In the proposed rule, the subparts covering disposition of HUD-owned single family property included an exception allowing delay of repainting if weather conditions make such work infeasible. In the final rule, the concept behind this exception has been broadened to apply to evaluation and reduction activities under all subparts, allowing delay "for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities." HUD intends that this exception will allow reasonable delay only and will not be an excuse for noncompliance.

j. *Historic Properties.* The National Park Service commented that HUD should provide greater flexibility to allow a balance to be achieved in specific cases between the objectives of the National Historic Preservation Act and those of the Lead-Based Paint Poisoning Prevention Act. Conflicts between the two goals, the protection of historically significant buildings and the creation of lead-safe housing, may occur where abatement is required. For example, the use of artificial siding and the replacement of historic trim and doors is generally not appropriate for historic buildings. In response, HUD has added a general exception in subpart B that allows designated parties to use interim controls instead of abatement methods, if requested by the State Historic Preservation Office, on properties listed or determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District. If interim controls are conducted, ongoing maintenance and reevaluation shall be conducted as required by the applicable subpart. For comprehensive guidance on eliminating lead-based paint hazards from historic housing without removing historically significant features, see Chapter 18 of the HUD Guidelines or the National Parks Service publication, "Preservation Brief 37: Appropriate Methods for Reducing Lead Paint Hazards in Historic Housing," by S.C. Park and D.C. Hicks, National Parks Service, Washington, DC 20013-7127 (1995).

k. *Insufficient Appropriations.* In the proposed rule, the Department included in the subpart covering disposition of residential property by a Federal agency

other than HUD an exemption from that subpart if a Federal agency determines that sufficient funds are not appropriated to carry out the requirements of the subpart. In the final rule, this exemption, which implements a provision of section 1013 Title X, has been moved to the Exemptions section of subpart B (See Section III.A.3 of this preamble).

6. *Deference to Other Agencies.* Commenters sought, in varying forms, "exemptions" providing for deference to State or local agencies or other Federal agencies based on State lead-control laws or an agency's demonstrated performance.

In the final rule, the Department has provided such deference in specific situations. First, HUD is requiring that inspections, risk assessments and abatements be conducted in accordance with the work practices standards of a State or Indian Tribe with a program authorized by EPA under subpart Q of 40 CFR part 745 or, in the absence of such a program, with EPA's standards at 40 CFR part 745, subpart L. Therefore HUD is in effect incorporating the opportunity that is built into the EPA regulations for States to determine, within the EPA framework, procedures for evaluation and reduction. With regard to the policies of Federal agencies other than HUD, the final rule gives such agencies the authority to determine whether appropriations are sufficient to implement the requirements of section 1013 of Title X. (See further discussion of this matter in Section III.A.3 of this preamble, above.)

One agency suggested that high-performing public housing agencies with good property maintenance records should be exempt from the additional evaluations provided in the rule. Because the current performance rating instrument used by HUD and public housing agencies does not include a specific grade for lead-based paint activities, HUD does not believe it has a valid way to identify "high-performing public housing agencies" for the purposes of this rule. It is not possible, therefore, to provide such a broad exemption at this time.

7. *Changes and Deletions to Current HUD Regulations.* In the proposed rule, HUD did not include specific provisions for the deletion of existing part 35 provisions being replaced by this rule or the numerous lead-based paint requirements set out in various program regulations in Title 24. It was stated, however, in the preamble to the proposed rule that such deletions would be made, and this final rule provides such changes and deletions.

8. *Indian Housing Programs.* In the proposed rule, two subparts were applicable to Indian housing programs: the one pertaining to rehabilitation (which was to apply to the Indian Community Development Block Grant Program), and the one pertaining to public and Indian housing programs (which was to apply to housing owned and operated by Indian housing authorities under public and Indian housing programs). With the enactment of the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA, Pub. L. 104-330, 25 U.S.C. 4101 *et seq.*), it has been necessary to revise the way this rule applies to Indian housing programs. NAHASDA separated Indian housing from public housing and made funding for Indian housing under the United States Housing Act of 1937 unavailable. The primary program created by NAHASDA is the Indian Housing Block Grant Program, which can be used for many different forms of housing assistance. Therefore the following subparts have been made applicable to the Indian Housing Block Grant program: Subpart H, Project-Based Rental Assistance; subpart J, Rehabilitation (also applicable to the Indian Community Development Block Grant program); subpart K, Acquisition, Leasing, Support Services, or Operation (also applicable to the Indian Community Development Block Grant Program); and subpart M, Tenant-Based Rental Assistance. Tribes and tribally designated housing entities receiving funds from the Indian Housing Block Grant and Indian Community Development Block Grant programs must determine which subpart of this final rule applies based on the type of activity being conducted or assistance being provided to a particular dwelling unit or residential property. If more than one type of assistance is being provided, the most protective requirements apply.

9. *Applicability of Subparts to Programs and Dwelling Units.* Subparts C, D, and F through M of the final rule each set forth requirements for a specific type of Federal housing activity or assistance, such as mortgage insurance, rehabilitation assistance, project-based rental assistance, tenant-based rental assistance, or public housing. Each of these subparts applies to more than one program. For example, there are at least five HUD programs that provide tenant-based rental assistance, so all five are therefore subject to subpart M, which states the lead-based paint requirements for housing receiving tenant-based rental assistance.

In the proposed rule, HUD listed in the applicability section of each subpart

the programs to which the subpart was to be applicable. This led to concern within the Department that such lists may be incomplete or go out of date. Therefore, in the final rule these lists have been removed from the applicability sections. In the applicability sections, care has been taken to try to describe clearly what types of housing assistance is and is not covered by each subpart. A current list of programs covered by each subpart is available on the internet at www.hud.gov, or by mail from the National Lead Information Center at 1-800-424-LEAD.

Several HUD housing assistance programs have more than one type of eligible activity, so some programs are subject to more than one subpart of this rule, as was mentioned above in regard to the Indian Housing Block Grant program. In fact, there are at least nine such programs at the time of this writing. These programs, with the subpart designations in parentheses, are as follows: Indian Housing Block Grant program (H, J, K, and M), Indian Community Development Block Grant program (J and K), Home Investment Partnerships program (HOME) (J, K, and M), Community Development Block Grant program (J and K), Supportive Housing Program (H, J, and K), Shelter Plus Care (H and M), Housing Opportunities for Persons With AIDS (HOPWA) (J and M), Homeownership of Multifamily Units (HOPE 2) (J and K), and HOPE for Homeownership of Single Family Homes (HOPE 3) (J and K). Grantees, participating jurisdictions, Indian tribes and other entities administering these flexible programs must decide which subpart or section of this rule applies to the type of assistance being provided to a particular dwelling unit or residential property. If more than one subpart or section applies, the one with the most protective requirements applies. To assist in making this judgment, HUD is providing in subpart B of the rule a table listing subparts and sections in order from the most to least protective initial hazard reduction requirements. In some cases, more than one program as well as more than one subpart or section may apply to a property or dwelling unit. In this case also the most protective requirements apply.

A multifamily residential property may have some dwelling units subject to one set of requirements and other units subject to other requirements. In this case, the owner has the choice of either operating the property with different sets of requirements or operating the entire property at the most protective

level. An example of this situation is provided in subpart B of the rule.

B. Structure of the Rule

1. *Organization.* In the interests of simplicity and streamlining, all of the Department's lead-based paint requirements, including the disclosure rule, are now located in part 35. The proposed rule set forth lead-based paint requirements in three parts, including new parts 36 and 37 that, together with part 35, subpart H, were to comprise all of HUD's regulatory requirements for lead-based paint in a single place. Part 36 was to describe the lead-based paint requirements for each program covered under the Lead-Based Paint Poisoning Prevention Act, grouped in subparts according to the agency or office responsible and the type of assistance. Part 37 was to describe the standards and procedures for conducting the lead-based paint evaluation and hazard reduction activities required in part 36, with different activities described in different subparts.

In the preamble to the proposed rule, however, HUD indicated that it was considering consolidating parts 36 and 37 in the final rule. This has been done. The entire rule consists of 12 subparts (B, C, D, F through M, and R, with E and N through Q reserved), all in part 35. Subpart A of part 35 is the rule requiring disclosure of known lead-based paint hazards upon sale or lease of residential property (disclosure rule), which was promulgated on March 6, 1996. EPA published the same rule at 40 CFR part 745, subpart F. In this current rulemaking, HUD is moving the location of the disclosure rule from subpart H to subpart A of 24 CFR part 35. No text or section number changes are being made to the disclosure rule. The general requirements found in subpart A of the proposed rule are located under subpart B of today's final rule.

Subpart B of the final rule provides all the general requirements, definitions, exemptions, and options that apply to subparts B, C, D, F through M, and R. Subpart B does not apply to the Disclosure Rule in subpart A. All residential properties and dwelling units subject to this final rule are also subject to the Disclosure Rule. Subparts C, D, and F through M set forth the requirements for each program or type of assistance. Subpart R of the final rule contains the required standards and methods for conducting evaluation and hazard reduction activities formerly found in part 37 of the proposed rule. The provisions of subpart R are referenced in subparts B, C, D, and F through M. As explained below, the standards and methods requirements of

this rule have been streamlined considerably.

One commenter suggested that the requirements for notice to residents of the results of evaluation and hazard reduction be located at the beginning of the rule so that they need not be repeated for each program or type of housing. This has been done. The notice requirements are found in subpart B at § 35.125 and are referenced in the program-specific subparts.

2. *Simplicity and Overall Strategy.* Several commenters complained that, despite the effort to consolidate lead-paint regulations in a single rule, the format of the proposed rule remained "program specific". Others called it "cumbersome". Because community development and housing administrators must work with a variety of programs, they will be required to operate under different subparts. Calling the rule lengthy and technical, one commenter said it would be helpful if it could be organized "in a more user-friendly fashion," using cross-references. Several commenters regarded the rule as "confusing" or in need of further consolidation.

One commenter complained that there remained "at least 14 different requirements," based on the program authority or on the amount of assistance provided.

In the final rule there are seven evaluation and hazard reduction strategies for HUD housing programs. These strategies vary in stringency, costliness, and lasting effectiveness in preventing childhood lead poisoning. They are applied to the various forms of housing assistance, based generally on: (1) The amount, nature and duration of financial assistance provided under the program; (2) the risk of childhood lead poisoning in the housing (based on year of construction); and (3) whether the housing is generally rental or owner-occupied.

There are two primary differences between the strategies of the final rule and those of the proposed rule: (1) Paint repair has been replaced by paint stabilization; and (2) clearance is required in the final rule after paint stabilization, and the clearance requirement has replaced the dust-testing requirement for pre-1950 housing with tenant-based rental assistance.

In order from least to most stringent, the seven strategies are:

(1) Safe work practices during rehabilitation;
(2) Ongoing lead-based paint maintenance practices to assure that paint is maintained so that it remains intact, and that safe work practices are

used (similar to the "essential maintenance practices" recommended by the Task Force);

(3) Visual assessment and paint stabilization;

(4) Risk assessment and interim controls (with the option of performing specified standard treatments);

(5) Lead-based paint inspection and risk assessment, and interim controls;

(6) Risk assessment and abatement of lead-based paint hazards; and

(7) Lead-based paint inspection, and abatement of all lead-based paint.

These strategies include the following fundamental principles. Whenever hazard reduction methods are employed (except for disturbances of only a small area of paint surface) clearance is required to ensure that the job is done properly. Second, ongoing lead-based paint maintenance practices are required in rental housing whenever HUD has a continuing relationship with the property. Third, to ensure that the controls are still intact and effective over time, reevaluation is required whenever a risk assessment and interim controls are required and there is a continuing HUD subsidy or ownership of rental housing. Fourth, special procedures are required in programs with a continuing subsidy or HUD ownership of rental housing whenever a child is identified with a blood lead level that calls for environmental assessment and intervention (called an "environmental intervention blood lead level" in the rule).

The first strategy, safe work practices during rehabilitation, is applied only to rehabilitation assistance of no more than \$5,000 per unit. This is a "do no harm" policy that is intended to assure that low-cost rehabilitation does not generate lead-based paint hazards. It allows low-cost rehabilitation to go forward without costly lead-based paint requirements; but it does not necessarily determine whether or not the entire dwelling unit or property is "lead safe," because, for this strategy, clearance must be conducted only for the worksite, which may not include the entire unit.

The goal of the second strategy, ongoing lead-based paint maintenance only, is to ensure that paint is kept stabilized and that the work is done in a safe manner. Clearance is required only of the worksite. This strategy does not provide full assurance that a property is free of lead-based paint hazards, but it will minimize such hazards over time. It is applied to properties that are subject to an application for multifamily mortgage insurance and were built between 1960 and 1977. These are rental properties with no subsidy, only mortgage

insurance, but there is a continuing relationship between the Department, the borrower and the lender through the insurance agreement. These properties were built toward the end of the period when lead-based paint was used in housing and are less likely to have lead-based paint hazards than older housing. This strategy is also applied as a transitional requirement for multifamily properties receiving project-based assistance during the phase-in period before a risk assessment is conducted.

The third strategy, visual assessment, paint stabilization and clearance, provides assurance that the housing to which it is applied is "lead safe." To provide such assurance, HUD intends that clearance be unit-wide, not just for the worksite. It should be noted that clearance is required only if paint stabilization is performed, so a unit that passes the initial visual assessment (i.e. no deteriorated paint is identified) undergoes no dust testing. Also, if the housing is in poor physical condition, or if there are high levels of lead in the soil, lead-based paint hazards may reappear. Therefore, ongoing maintenance is required whenever HUD has a continuing relationship with rental property. The final rule applies this strategy to HUD-owned single family housing that is sold with a mortgage insured by HUD; properties with acquisition, leasing, support services, or operation assistance; tenant-based rental assistance programs where a child of less than 6 years of age resides; multifamily housing receiving up to and including \$5,000 per unit per year in project-based rental assistance; and single family properties assisted under the project-based certificate or voucher program, the moderate rehabilitation program, or another HUD-funded project-based rental assistance program.

The fourth strategy, risk assessment and interim controls, with the option to conduct standard treatments, provides assurance that all lead-based paint hazards have been eliminated. Unit-wide clearance is always required. Ongoing maintenance of painted surfaces is required whenever HUD has a continuing relationship with the property; and reevaluation is required if HUD is the owner, if there is project-based rental assistance in a multifamily property exceeding \$5,000 per unit per year, and in public housing. This strategy is applied to properties that are subject to an application for multifamily mortgage insurance and were built before 1960, housing receiving multifamily project-based assistance of more than \$5,000 per unit annually, and housing receiving rehabilitation

assistance of \$5,000—\$25,000 per unit. A risk assessment and interim controls are also required in public housing developments that have lead-based paint that has not yet been abated.

The fifth strategy, lead-based paint inspection, risk assessment, and interim controls, is applied only to HUD-owned multifamily housing. It differs from the fourth strategy in that it requires a lead-based paint inspection as well as a risk assessment. Most of these properties are being sold, frequently without HUD mortgage insurance, so HUD will not have a continuing relationship with them and thus will not be able to ensure that ongoing lead-based paint maintenance practices and reevaluation are practiced. With a lead-based paint inspection, HUD will provide the buyer with information on the location of any remaining lead-based paint on the property that the buyer and later owners can use to avoid generating dust-lead hazards in the future.

The sixth strategy involves risk assessment and abatement of lead-based paint hazards. This strategy is used when Federal rehabilitation assistance is greater than \$25,000 per unit. When Federal funds are used to make such a substantial investment in a property, it is logical that long-term hazard control measures be implemented at a time when substantial concurrent rehabilitation is being done. Paint testing of surfaces to be disturbed during rehabilitation is called for to ensure that new lead-based paint hazards are not inadvertently created, but the designated party has the option to presume the presence of lead-based paint on such surfaces.

The objective of the seventh strategy, lead-based paint inspection and abatement of lead-based paint, is abatement of all lead-based paint. This strategy applies to public housing and to properties that are being converted from nonresidential to residential use or are subject to major rehabilitation and are being financed with HUD/FHA multifamily mortgage insurance. This is not a new requirement for public housing. Current public housing regulations require a lead-based paint inspection and, at the time of modernization, abatement of all lead-based paint. However, because complete modernization (and therefore complete abatement) may not occur for many years in some housing developments, and because modernization (and therefore abatement of lead-based paint) can occur on a piecemeal basis (e.g., kitchens one year, bathrooms another), the final rule, like the proposed rule, adds the requirements of strategy four, risk assessment and interim controls,

during the period prior to completion of abatement to assure that all public housing occupied by families will be free of lead-based paint hazards. The requirement for conversions and major rehabilitations financed with multifamily mortgage insurance is new, however. HUD believes that such properties, after undergoing such substantial renovation, should be as free as reasonably possible of any future lead-based paint hazards.

3. *Prescriptiveness.* There were several comments to the effect that the rule was too prescriptive. These commenters generally recommended a movement toward “performance-based” requirements, arguing that a performance-based rule would stand up better to future technical innovations.

One commenter recognized that adopting performance-based standards was not always a simple matter. Decisions to do so must be made “requirement-by-requirement,” but the commenter urged looking for means to use such standards wherever feasible, and cautioned against “locking in” requirements which new technology or research may well show to be inappropriate in the future. For example, the commenter recommended against specifying HEPA vacuuming in the rule, indicating that research underway may suggest that in some cases less specialized equipment or less extensive procedures can be just as effective. Another commenter suggested basing requirements on performance, but including a more prescriptive “safe harbor” optional alternative. Sometimes, the commenter observed, performance-based standards are simply unhelpful to those regulated due to lack of clarity or information about the method of obtaining the desired performance.

Several commenters recommended against “too rigid” regulatory requirements that would require “full-blown” future rule making proceedings to overturn. Some suggested incorporation of guidelines into the rule by reference.

Although the proposed rule included prescriptive requirements, § 37.1(b) of the proposed rule stated that those requirements did *not* apply to lead-based paint inspections, risk assessments and abatements performed by inspectors, risk assessors, abatement supervisors and workers certified in accordance with EPA regulations under the Toxic Substances Control Act (TSCA). Rather, the prescriptive standards in proposed part 37 were to apply only when such activities were performed by individuals who were not certified in accordance with EPA

requirements, should certification mechanisms not be in place.

The effective date of the EPA certification requirements and the EPA work practices standards is August 31, 1999. By that date, individuals conducting inspections, risk assessments and abatement must be certified and all such activities must be performed pursuant to the work practices standards in that regulation or in requirements of EPA-authorized State or Tribal programs. There is no need for HUD to issue detailed requirements for risk assessment, inspection and abatement. They have been omitted, therefore, from the final rule, except for interim dust and soil standards.

This leaves the question of whether the proposed requirements for interim controls and related procedures that are not covered by the EPA regulations are too prescriptive. Related procedures include standard treatments, occupant protection and worksite preparation, clearance, ongoing lead-based paint maintenance, reevaluation, and safe work practices. In the final rule, HUD has tried to strike a balance between the need to assure that the procedures will be effective in preventing childhood lead poisoning and the goal of providing flexibility and avoiding rigidity.

C. Effective Date

The proposed rule included an effective date of 12 months after publication of the final rule, and the Department explained in the preamble that this time period was chosen to allow all affected parties time to prepare for implementation of the new requirements.

Some commenters urged that the effective dates in the rule be moved up in whole or in part, while others asked for a further delay to allow affected parties to secure expert assistance or training opportunities. One commenter urged waiting to make the rule effective until EPA's upcoming rule on health-based standards for lead in dust and soil was promulgated and made effective.

Advocates of rapid effectiveness pointed out that the rule already was “overdue,” and claimed that important health benefits could be realized by the regulation's becoming operational sooner rather than later. Several commenters advocated immediate effectiveness for portions of the rule dealing with occupant protection, worksite preparation and the prohibitions against unsafe practices.

HUD considered imposing an immediate effective date because the statutory effective date of January 1, 1995 had already passed and because of the risk to the health of children from

a further delay in implementing these requirements. On the other hand, HUD noted that program administrators at all levels of government, as well as property owners and contractors performing lead-based paint activities, would not have adequate time for education, training, planning and budgeting to implement fully the new technical standards, requirements and procedures with an effective date earlier than proposed.

After thorough consideration of these varying points of view HUD has decided to retain the proposed 12-month time period following publication for a phasing in of the effective date of the final rule, with one exception: the prohibition of certain methods of paint removal or surface preparation set forth in § 35.140 shall be effective 60 days after publication of this final rule. In addition, designated parties may choose to comply with the requirements of this final rule before the effective date, instead of complying with existing requirements, if they desire and provided there is not a programmatic limitation that would preclude such an action.

The exception to the 12-month phase-in policy is appropriate for prohibited practices. These are already well known; many are in HUD's current regulations and guidance and are prohibited by the EPA final rule on training and certification, which was published on August 29, 1996. Many States already prohibit these practices, and other safer paint removal methods are well known. (See Section III.E.2.g. of this preamble.)

One commenter requested clarification of the effective date's impact on pre-rule lead-based paint control activities already undertaken and partially completed, and urged that it be made clear that this ongoing work could be carried forward after the effective date "without revision." The Department's policy on this matter varies somewhat from program to program, because of differences in regulations and administrative procedures. Therefore the applicability sections of subparts F through M include statements specific to each program. In subpart F, pertaining to HUD-owned single family housing, any property to be sold with a HUD-insured mortgage and which is offered for sale on or after the effective date of this final rule must comply with the requirements of the rule. In the case of subpart G, pertaining to multifamily mortgage insurance, any property for which a HUD or FHA commitment is made on or after the effective date must comply with the rule. With regard to subpart H,

project-based rental assistance, properties that are receiving Section 8 assistance on or after the effective date of this rule must comply. In the case of competitively awarded grants under the HOPWA, Supportive Housing, and Shelter Plus Care programs, the requirements apply to grants awarded pursuant to NOFAs issued on or after October 1, 1999. For formula grants under HOPWA, the requirements apply to activities for which program funds are first obligated on or after September 15, 2000. Subpart I states that HUD-owned multifamily properties and properties for which HUD is mortgagee-in-possession must comply with the rule if they are offered for sale or held or managed by HUD on or after the effective date of this rule. Subpart J, pertaining to rehabilitation assistance, includes program-specific information on the effective date for projects funded under the HOME program, the Community Development Block Grant (CDBG) programs, the Indian Housing Block Grant (IHBG) program, HUD-administered homelessness assistance programs, and the Indian Community Development Block Grant program. Project-specific effective date policies for housing subject to subpart K, Acquisition, Leasing, Support Services, or Operation, are the same as for subpart J. With regard to public housing, subpart L states that all housing to which the subpart applies is covered by the rule as of the effective date of this final rule. Finally, subpart M, which pertains to tenant-based rental assistance, states that housing receiving such assistance becomes subject to the requirements of this rule at the time of an initial or periodic inspection that occurs on or after the effective date of this final rule. (The initial or periodic inspection referred to in the previous sentence is the inspection conducted by the public housing agency (PHA) or other administering agency to determine whether the housing unit meets the requirements of the program. It is not a lead-based paint inspection.)

D. Other General Issues

1. *Policy on Abatement.* Some commenters saw in the proposed rule an undue emphasis on abatement, as opposed to more limited lead hazard control measures. "As such," one organization declared, "the rule appears inadequately protective of children's health, and unlikely to realize the full benefits predicted by the Economic Analysis as justification for the costs of compliance." Abatement should not be a defined term in the rule, nor used at all, this commenter stated. The recommended term was "hazard

abatement," used to mean "any set of measures to permanently eliminate lead-based paint hazards." This should be the "maximum requirement" of the rule. While abatement of intact lead-based paint would always remain an option, it need not and should not be required, the commenter urged.

The same commenter urged that the definition of abatement should *not* include reference to lead-based paint (i.e., intact paint). By doing so, there is a deviation from the definition of abatement in Title X itself. Failing to make the distinction between intact LBP and lead hazards is likely to "recreate * * * the scenarios that Title X was supposed to end: Paralyzed non-compliance because of the costs and burdens of performing abatement of non-hazardous intact LBP."

A commenter who felt the rule didn't stress abatement enough was "troubled by the rule's implicit acceptance that it is infeasible to abate lead paint from housing." Arguing that the societal returns more than justified the cost, the commenter declared that the obstacles to abatement as a predominant policy were "not economic, but political."

HUD agrees that abatement should be targeted toward hazards, not the mere presence of lead-based paint, except in public housing, where lead-based paint abatement is required by statute, and for conversions and major rehabilitation projects seeking HUD/FHA multifamily mortgage insurance. The final rule defines abatement accordingly but retains the existing lead-based paint abatement requirements for public housing. The legislative history of Title X shows that Congress did not intend for the existing public housing program requirements to be changed.

2. *Cost of Compliance.* Many commenters—particularly State and local funded agencies, housing developers, and their national and regional spokespersons—expressed serious concerns about the rule's cost.

While many suggestions for change in details of the rule were provided by these commenters, the tenor of their comments was not so much against the rule as against the idea of carrying out its mandate without separate funds earmarked solely for that purpose.

Some commenters felt that HUD had grossly underestimated the costs of compliance and that these costs, in many circumstances, would divert already-limited funding from its principal purpose of providing shelter. Rural housing suppliers, especially, lamented the anticipated problems the rule would bring. One commenter expressed the fear that the rule would "severely hamper rehabilitation in rural,

small communities and would potentially drive the cost of doing business so high that many communities may decide that it is simply not worth it to try and repair existing, older substandard housing."

Some commenters suggested that the dangers of lead paint were exaggerated or that local health department controls were adequate to locate children with high blood lead levels and cope with the problem on a case-by-case basis.

Other public agency commenters were more positively disposed toward the goal of preventing childhood lead poisoning *before* a child is poisoned, instead of waiting until the damage has already been done, but still worried about funding. Typical of these comments was that of a middle sized city with an active lead-hazard control program. Calling the rule (and Title X) an "unfunded mandate," the commenter cited the staff costs associated with the rule's monitoring expectations, calling them unrealistic: "If additional funds were provided for hard and soft rehabilitation as well as staff costs, this [rule] would be a good policy initiative that we could fully support and implement. However, without additional funds, * * * it presents a major problem for cities trying to address an overall need for affordable housing."

A frequent suggestion was that the rule would cause "redundant and unnecessary" lead-based paint work to be performed. The focus, these commenters argued, should be on reducing and controlling lead hazards in units occupied by small children or children who had already been lead poisoned.

A major housing industry organization asserted that the proposal contains unnecessary impediments to the performance of paint repair work and interim control tasks by employees of owners and managers, or by the owners themselves, and urged the Department to eliminate these wherever feasible.

One commenter, a municipal health department lead poisoning prevention program, predicted that the proposed rule's changes would "seem daunting" to community-based agencies at first. The commenter generally agreed with the rule's approach and predicted that compliance costs would be "minimal." The commenter said, however, that "government support and leadership to ensure that training, inspection/risk assessment services, and dust wipe resources are available and sometimes subsidized could prove to be instrumental in effective implementation."

In response to these comments, HUD does not believe that the childhood lead poisoning problem has been "overblown," in light of the results of the National Health and Nutrition Evaluation Survey (described in Section II.A of this preamble, above) showing that approximately 900,000 children still have blood lead levels equal to or greater than 10 µg/dL, the CDC level of concern. HUD also disagrees that the rule should impose requirements only on units housing young children. HUD believes that it is not practical in most housing programs to expect managers to know when children are or are not residing in particular units, especially in light of the significant resident turnover rates and inconsistencies in program administration among comparable units receiving comparable Federal assistance. Title X holds that it is far better to identify and correct lead-based paint hazards before a child is poisoned. Such prevention is especially important, because some effects of lead poisoning appear to be irreversible. The one exception to this policy is in the tenant-based rental assistance programs, in which income certification requirements facilitate the determination of childhood occupancy and for which there is legislative history indicating Congressional concern that lead-based paint requirements could deter landlords from program participation.

With regard to the cost of the rehabilitation requirements, it is important to note that the requirements of the rule are limited for housing receiving up to and including \$5,000 per unit in rehabilitation assistance. Also, the option to perform standard treatments instead of a risk assessment and interim controls may reduce costs in certain situations. (See further discussion below in Section III.E.10 of this preamble.) HUD intends to work closely with local housing and community development agencies to further develop ways to efficiently meld lead-based paint hazard reduction with rehabilitation.

With regard to the public housing program, HUD does not believe that long-term annual cost increases will be significant, although there will be one-time risk assessment and interim control costs in the short term for some housing agencies. HUD encourages public housing agencies to schedule completion of abatement of lead-based paint in order to put this issue behind them.

3. Use of Task Force Recommendations. Numerous commenters called upon HUD to assure that the rule maintain consistency with

the 1995 report of the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), which was a Federal advisory committee appointed by the Secretary of HUD pursuant to section 1015 of Title X.

Two recommendations of particular interest are the standards or procedures referred to as "essential maintenance practices" and "standard treatments." These procedures were directed toward rental housing. Essential maintenance practices are the steps the recommended steps that a landlord should take to reduce the risk of childhood lead poisoning in pre-1978 dwelling units and associated common areas. Standard treatments are more aggressive measures to assure that possible lead-based paint hazards are controlled in older housing. These procedures were not incorporated by name in the proposed rule, although many of their elements or concepts were included.

In the final rule, HUD is requiring that all rental housing which has a continuing financial or regulatory involvement with HUD must be maintained in a manner similar to that recommended in the Task Force's essential maintenance practices. Also, the Department has adopted the concept of standard treatments, as set forth in the Task Force report, as an option to the basic requirement of a risk assessment and interim controls. This option is set forth in § 35.120(a). Clearance testing is required after standard treatments as well as interim controls.

Another Task Force recommendation mentioned favorably by some commenters is the "lead hazard control plan," which is a plan to be developed by a property owner that lays out when and where certain hazard control measures will be conducted within a residential property. The plan allows an owner to prioritize the work and undertake the most important tasks or dwelling units first, followed by lower priority work later, as for example at apartment turnover. The proposed rule did provide for a hazard reduction plan for multifamily properties receiving more than \$5,000 per unit in HUD project-based assistance.

Although the lead hazard control plan was intended to provide property owners with flexibility in scheduling lead-hazard control work, many commenters perceived the plan requirement as "red tape" of limited value and questioned whether HUD would have the staff resources and expertise to review and approve such plans on a timely basis. HUD shares these concerns and, in the interests of regulatory streamlining, has decided to

delete the plan requirement. The Department continues to believe that it would be a useful document for property managers, especially those with responsibility for large multifamily developments, and encourages owners to develop such plans. The American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428-2959) has developed a Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities, and is developing an accompanying user guidebook. These materials can provide the basis for developing a lead hazard control plan. They are particularly appropriate for owners of multifamily dwellings.

4. *De Minimis Exceptions.* The proposed rule included de minimis levels of paint deterioration, consistent with the HUD Guidelines, below which no action would be required. These de minimis levels were defined as not more than 10 square feet of deteriorated paint on an exterior wall; not more than 2 square feet on an interior component with a large surface area including, but not limited to, interior walls, ceilings, floors and doors; or not more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to, window sills, baseboards and trim.

Commenters objected to the de minimis levels on four grounds: (1) That the de minimis exception is arbitrary and not supported by science; (2) that the levels are too large, potentially allowing a total of over ten square feet of defective paint per room (counting four walls plus a ceiling plus small components); (3) that some owners or inspectors may use the de minimis exception as an excuse for overlooking hazardous conditions; and (4) that it is likely to shift the attention of workers from the importance of practicing lead hazard control and maintaining painted surfaces in a lead-safe manner to measuring the size of defective paint surfaces in order to document that surfaces fall above or below the de minimis level.

HUD acknowledges the merit of these comments, and after careful consideration has decided to eliminate the de minimis exception for deteriorated paint from the final rule. All deteriorated lead-based paint (either known or presumed to be lead-based paint) must be addressed. This will simplify the rule's implementation considerably. HUD *did* retain, however, a de minimis exemption for safe work practices and clearance, which is consistent with the EPA provision at 40 CFR 745.227(e) that allows dry scraping

during abatement on surfaces totaling no more than 2 square feet per room or 20 square feet on exterior surfaces. This de minimis exemption is separate from the safety-related exception allowing dry scraping in conjunction with the use of heat guns or within 1 foot of electrical outlets; that is, the area covered by the safety-based exception is not part of the area covered by the safe work practices de minimis exemption).

5. *Distinction Between HUD Programs and Those of Other Federal Agencies.* Several commenters asserted that the rule distinguishes between HUD-assisted housing and that assisted by other Federal agencies without any statutory basis and without providing any justification. The Department's response is that, although the Secretary is given authority to develop regulations for other agencies (with respect to project-based assistance and Federally-owned property), HUD cannot and should not make lead-based paint policy decisions for other agencies beyond what is set forth in Title X. HUD does not have the knowledge of other agencies' housing programs that is necessary to draft detailed lead-based paint regulations for all other Federal agencies, and achieving consensus among all agencies on such regulations is unlikely. The sections concerning HUD project-based assistance and HUD-owned property, therefore, should remain separate from the sections provided for other agencies. Other Federal agencies can be expected to develop their own regulations or guidance, using HUD's regulations as a starting point.

6. *Response to Children with Lead Poisoning.* The Department's primary focus in this rule is on prevention of childhood lead poisoning, not on case management of children who have already been poisoned. Title X specifically calls for the identification and correction of hazards in all housing. Nevertheless, HUD feels special requirements are needed for lead-poisoned children who have already been poisoned by lead-based paint hazards. HUD cannot ignore the possible connection between a child's blood lead level and the condition of the dwelling unit where the child lives, particularly in view of research on the relation of dust-lead to blood-lead levels (see Section III.E.15.b of the preamble, below). Therefore, in housing where the Federal Government maintains a continuing financial or ownership relationship, requirements were included in the proposed rule to evaluate and reduce lead-based paint hazards when a child with an elevated blood lead level (EBL) is identified.

Such requirements have existed in current HUD regulations for many years. In the final rule, as in the proposed rule, they are included in the subparts pertaining to project-based rental assistance, disposition of HUD-owned and mortgagee-in-possession multifamily housing, public housing, and tenant-based rental assistance.

Commenters addressing EBL-related requirements raised several different concerns: The measurement standards that trigger environmental intervention, the terminology used to refer to such a level, information exchange requirements between housing authorities and health departments, hazard control requirements for units occupied by young children with an EBL condition, reoccupancy requirements for dwelling units that were previously occupied by an EBL child but have not undergone evaluation or hazard reduction, relocation requirements, and the potential for discrimination by landlords against families with young children generally and EBL children in particular.

In the proposed rule, HUD defined "elevated blood lead level (EBL) (requiring the evaluation of lead hazards)" as meaning "an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dL (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 µg/dL in two consecutive venous tests taken 3 to 4 months apart." One commenter argued that HUD should not use a standard other than 10 µg/dL, which is the basic CDC level of concern, because it is "illogical to take no action when we know a child is poisoned * * * but instead to wait until the child is more poisoned," and because defining an EBL at a level higher than that known to cause adverse effects will create potential liability for public housing authorities and assisted owners.

HUD has consulted again with CDC and has concluded, as it did prior to issuance of the proposed rule, that CDC did not and does not intend to recommend a full home inspection or assessment in response to blood lead levels below 15 µg/dL. CDC advises that a blood lead level of 10–14 µg/dL should trigger monitoring, certain parental actions, and perhaps community-wide education, but not hazard control in an individual child's home. CDC recommends follow-up blood lead testing of such children in about 3 months, the provision of information to parents on lead hazards, nutrition and housekeeping if appropriate, and the taking of an environmental history to try to identify

an obvious source of lead exposure (CDC 1997).

EPA noted that it is confusing to define the term "elevated blood lead level" or "EBL" differently than normal usage. The agency pointed out that CDC, in their 1997 screening guidelines, uses the term to refer to 10 µg/dL or greater and that most public health agencies and others in the field of lead poisoning prevention do the same. HUD agrees that this is potentially confusing and has therefore substituted in the final rule the term "environmental intervention blood lead level" to replace "elevated blood lead level" or "EBL" when the latter terms refer to the blood lead level requiring evaluation and hazard reduction of the child's home.

One State public health department urged HUD to modify the rule's standards for determining when environmental intervention is needed. Requiring tests showing two blood lead levels of 15–19 micrograms per deciliter in consecutive tests three to four months apart is "problematic," the commenter said, because many children do not get follow-up tests at the required three-four month interval, but rather more frequently—or less. Two tests showing levels of 15 or higher, *whether or not consecutive, and whether or not at a fixed time interval*, should be adequate to identify the child, and it is important that the rule not define the test intervals too strictly. It is not in the best interests of the child to recognize test results that come in only at precise intervals, the commenter said. A child may have two tests of 15–19 µg/dL, but because of seasonal variations in lead exposure, the high-level results may not be consecutive. At least two commenters recommended that this standard should be consistent with CDC guidance.

HUD agrees. In the final rule, the Department has defined environmental intervention blood lead level to conform to the new guidelines by CDC issued in 1997 (CDC 1997b). The revised definition is "a confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or of 15–19 µg/dL in two tests taken at least 3 months apart." This revision removes the word, "consecutive," and allows for nonconsecutive readings that are more than 3 months apart. The final rule has also removed the requirement that blood lead levels be determined only by venous blood specimens. This decision is best left to the child's health care provider, and may be affected by technological advances. HUD expects housing agencies, grantees, property owners, and other parties to which this rule applies to rely on medical health

care providers where judgment is required in interpreting this definition.

Another issue is how best to make housing agencies aware of when there is a child with an environmental intervention blood lead level living in a dwelling unit under tenant-based rental assistance or under another program to which the requirements of subpart M of this rule apply. The proposed rule required that, to the extent practicable, the housing agency or other administering agency would attempt to obtain annually from the State or local health department the names and addresses of children less than age 6 identified with environmental intervention blood lead levels. The housing agency was then required to match this information with the names and addresses of families receiving Federal assistance. If a match occurred, the agency was to require a risk assessment and interim controls in the child's home. These requirements are similar to those currently in HUD regulations pertaining to tenant-based rental assistance. They were issued in response to the United States General Accounting Office report entitled "Children in Section 8 Tenant-Based Housing are not Adequately Protected" (GAO/RCED-94-137, May 13, 1994). The intent of this requirement is to ensure that families with young children that receive tenant-based rental assistance are obtaining housing free of lead-based paint hazards. At the same time, the CDC is urging local public health departments to provide environmental intervention blood lead level-related information to housing agencies.

A few commenters indicated that they had encountered difficulty in securing the cooperation of health authorities in making these records available because of the authorities' concerns about the privacy of medical information. While these access problems can be overcome, one commenter said, by securing a release signed by the child's parent or guardian, there are other concerns besides the question of invasion of privacy. If the agency administering the tenant-based assistance program has information concerning the environmental intervention blood lead level status of a family's children and the information is disclosed to potential landlords, the information "becomes a barrier for the family in its housing search," because some landlords may illegally refuse to rent to the family.

Several other commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with identified environmental

intervention blood lead levels in particular. These comments ranged from suggestions to penalize the landlords involved to indications that, in the absence of funding assistance, it was unfair to "penalize (owners) for participating in the Section 8 (Voucher and Certificate) Program in a way *not required of owners in the private market*." (Emphasis in original.) In response, HUD believes that the environmental intervention blood lead level requirements in this rule are *not* in fact fundamentally different than those covering private-sector owners who do not receive subsidies. Local ordinances often permit health or housing departments to order lead hazard control work in any home where an environmental intervention blood lead level child is identified. For an explanation of the antidiscrimination provisions of the Fair Housing Act, see Section IV.D.7 of this preamble.

The Department has concluded that it is very important that local housing agencies know when there is a child with an environmental intervention blood lead level residing in an assisted unit and that owners comply with requirements designed to make the units free of lead-based paint hazards. It is well known that, while local health departments are able to identify poisoned children, they often do not have the resources to correct the cause.

HUD is making, therefore, the following changes to the requirements pertaining to exchange of information on environmental intervention blood lead level conditions:

(1) The housing agency or other local agency administering tenant-based rental assistance must attempt at least quarterly (instead of annually as in the proposed rule) to obtain from the State or local public health department, or the Indian Health Service as applicable, the names and/or addresses of children of less than 6 years of age with environmental intervention blood lead levels. This change is being made to assure that poisoned children will receive help on a more timely basis. The Department encourages health departments and housing agencies to voluntarily enter into agreements to exchange information more frequently, e.g., monthly, especially in jurisdictions in which childhood lead poisoning is a frequent occurrence in housing occupied by families receiving tenant-based rental assistance.

(2) Also on a quarterly basis, the housing agency or other local agency administering the tenant-based rental assistance must provide health departments with addresses of assisted units (as well as attempt to obtain

addresses of environmental intervention blood lead level children from the health department), except that such a report to the health department is not required if the health department states that it does not wish to receive it.

(3) The address match may be done by either the housing or the health agency. HUD's intent is to encourage workable cooperative arrangements between the two types of agencies for the purpose of matching environmental intervention blood lead level and housing assistance information on a timely basis.

With regard to the evaluation and hazard reduction that must be done if a child with an environmental intervention blood lead level is found to be residing in a HUD-assisted or HUD-owned unit, the final rule sets one uniform requirement for all programs: risk assessment and interim controls, followed by ongoing lead-based paint maintenance. One commenter complained that the proposed rule failed to require anything beyond interim controls—a standard, the commenter said, that is “too low and ineffective in the face of a poisoned child.” Current information shows that interim controls are as effective as abatement methods in the short term and will continue to provide adequate protection if continuing maintenance standards are met (National Center 1998). In the final rule, ongoing lead-based paint maintenance is required in all HUD housing programs for which there is also a requirement that interim controls be conducted in response to a case of a child with an environmental intervention blood lead level. To ensure that these requirements are not avoided, the rule states that the requirements apply regardless of whether the child with the environmental intervention blood lead level is or is not still living in the assisted unit. Furthermore, it is HUD's intent that the requirements apply to the unit even if no child of less than six years of age resides in the unit, because the requirements were triggered when a child was in residence. Also, if a public health department performs the evaluation of the dwelling unit or, after the hazard reduction work is performed, certifies the unit to be lead safe, it is not necessary for the housing agency or other designated party to perform those functions. Finally, in the case of housing to which subpart M (tenant-based rental assistance) applies, if the hazard reduction is not performed, the unit does not meet Housing Quality Standards.

Some local housing agencies have asked for guidance on what their response should be to information on a child's blood lead level if the

information is brought to the agency by a party other than a medical health care provider. In response, the Department is including a provision requiring verification of such data with the public health department or other medical health care provider. If it is verified that a child has an environmental intervention blood lead level, the agency, owner, or HUD (as the case may be) must complete a risk assessment and conduct interim controls of identified hazards.

7. Fair Housing Requirements. Several commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with environmental intervention blood lead levels in particular. Therefore HUD is providing the following discussion of the application of the Fair Housing Act and other laws pertaining to persons with disabilities to lead-based paint issues.

The Fair Housing Act prohibits discrimination in housing based on race, color, national origin, religion, sex, disability, and familial status. Familial status, for purposes of the Fair Housing Act, includes children under 18 (regardless of age or number), pregnant women, and people seeking custody of children under 18. Only providers of housing that meets the specific definition of housing for older persons may refuse to rent to families with children. Children with elevated blood lead levels and persons with Multiple Chemical Sensitivity (MCS) may fall under the definition of persons with disabilities. Among the actions prohibited under the Fair Housing Act are any action which differentiates on a prohibited basis for any of the following: Refusal to rent or sell housing; refusal to negotiate for housing; making a dwelling unavailable; denying a dwelling; providing different housing services or facilities; falsely stating that housing is not available for inspection, sale, or rental; refusing to make a mortgage loan; imposing different terms or conditions on a loan; setting different terms, conditions, or privileges for sale or rental of a dwelling; segregating a portion of the population into special buildings or areas; maintaining different lease conditions; and advertising or making any statement that indicates a limitation or preference based on any prohibited basis of the Fair Housing Act.

Based on this law, it is illegal for owners of housing to discriminate against families with children, or EBL children, even if the unit is known to have lead-based paint hazards. The prohibitions of the Fair Housing Act

would further make it inadvisable to ask questions about EBL status, pregnancy, or intentions to become pregnant. Restrictive covenants against children, including EBL children, are also illegal. Therefore, no renter or buyer may be asked to sign a statement that a child, or EBL child, is not expected to reside in the dwelling. Owners of rental housing may eliminate lead-based paint hazards in a percentage of units and hold those units available for families with children and affirmatively market them to appropriate families. An owner may also tell families of the danger of moving into a unit which has not been treated and recommend an alternative comparable unit. In no case may an owner refuse to allow a family to occupy the unit, however, because of the presence of a child or require that a family move because lead is found. Laws against discrimination will be enforced by HUD.

Title II of the Americans With Disabilities Act (ADA) establishes a clear and comprehensive prohibition against discrimination on the basis of disability in State and local government services. Section 504 of the Rehabilitation Act of 1973 provides for nondiscrimination against persons with disabilities in Federally-assisted housing. Both laws define a person with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded by others as having such an impairment. Under both laws, EBL children and persons with MCS may fall under the definition of persons with disabilities. Among the actions prohibited under Title II of the ADA and Section 504 are those which discriminate, on the basis of disabilities, in Federally-assisted programs, services, and activities. Such actions include a refusal to (1) allow participation in a program, service, or activity; (2) provide programs, services and activities in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity; (3) eliminate unnecessary eligibility standards or rules that deny an equal opportunity to enjoy a program, service or activity unless “necessary” for the provisions of the program, service or activity; (4) make reasonable modifications in policies, practices, and procedures that deny equal access, unless a fundamental alteration in the program would result; (5) make reasonable accommodations, unless an undue burden or fundamental alteration would result, e.g., furnish auxiliary aids and services when necessary to ensure effective

communication (e.g., interpreters, or accessible formats, such as braille, large print, or audio cassette) and/or provide notice to and relocate residents with MCS prior to removing lead-based paint hazards with harmful toxic chemicals; and (6) operate programs so that, when viewed in their entirety, they are readily accessible to, and usable by, individuals with disabilities. A covered housing provider must not impose special charges to pay for measures necessary to ensure nondiscriminatory treatments, such as relocation expenses when necessary to remove lead-based paint hazards, or making modifications to provide accessibility. Finally, it is unlawful under these laws for a covered housing provider to make inquiries into the nature and severity of a person's disability, although that information may be volunteered when a reasonable accommodation is requested.

8. *Qualification Requirements.* The proposed rule required that most lead-based paint inspections, risk assessments and abatements be conducted by individuals or firms that are certified in accordance with national EPA requirements for lead-based paint activities developed pursuant to sections 402 and 404 of the Toxic Substances Control Act (TSCA). EPA published a final rule on August 29, 1996 that takes full effect on August 29, 1999. After that time, all lead-based paint inspections, risk assessments, and abatements nationwide will have to be conducted in accordance with the EPA work practices standards at 40 CFR 745.227 or State or tribal standards that have been authorized by EPA under procedures set forth at 40 CFR part 745, subpart Q. Recognizing that there might be temporary limitations on the supply of certified personnel, HUD proposed to provide for the possibility of temporary qualifications.

The proposed rule included two apparent exceptions to this general certification requirement. Public and Indian housing agencies ("HAS") conducting dust and soil testing for public and Indian housing were not required to be certified in accordance with the EPA requirements. The Department pointed out that HASs were required to complete lead-based paint inspections by December 6, 1994, and that many HASs have already taken the initiative to conduct risk assessments in housing projects. Further, HUD did not extend the certification requirement to dust testing conducted by HASs for the Section 8 tenant-based rental assistance program. The Department, however, did require that a risk assessment conducted in response to an identified environmental intervention blood lead

level child be conducted by a certified risk assessor.

Certification requirements in the proposed rule were somewhat different for interim controls than for abatement. Recognizing that the EPA regulations do not cover interim controls, HUD proposed that all workers performing interim controls be trained in accordance with the basic Occupational Safety and Health Administration (OSHA) hazard communication standard at 29 CFR 1926.59 and supervised by a certified abatement supervisor.

Comments on the qualifications requirements dealt with five issues: (1) Whether housing agency personnel had to be certified to perform dust and soil testing; (2) the availability of qualified personnel and firms, and temporary qualifications in case of an inadequate supply of certified personnel; (3) qualification requirements for interim controls; (4) the independence of the clearance examiner; and (5) the authority of a trained technician to perform clearance examinations.

EPA objected to the exemption of public and Indian housing authorities from certification requirements related to dust and soil testing. EPA did not accept HUD's rationale for suggesting that noncertified personnel could perform lead-based-paint-related functions for public and Indian housing agencies, other than under emergency circumstances. On the other hand, another commenter said he was "pleased" that dust testing would be permitted in that program by non-licensed Housing Quality Standards (HQS) inspectors trained in lead-hazard evaluation. The commenter recommended that "non-licensed, but trained" rehabilitation inspectors similarly be allowed to accomplish clearance testing in the funded rehabilitation programs. A public interest commenter remarked that "HUD should begin the process of educating these workers at once, so that a qualified work force is available when the requirements go into effect."

A local funded agency indicated that its State law would not allow Section 8 housing inspectors to perform inspections requiring dust wipes, and the agency went on to say that licensure for inspectors costs \$250, renewable every two years, and that risk assessment training ran to \$300 per person. Costs to housing authorities, and to landlords, for importing licensed personnel to perform inspections and assessments were regarded as prohibitive by the commenter.

The Department has decided to require in the final rule that dust and

soil testing in public housing be conducted by personnel certified in accordance with an EPA-authorized State or tribal program or EPA regulations, a provision that is also in accordance with many State laws. Also, dust testing in housing assisted through tenant-based rental assistance will not be required at the evaluation stage, so the qualification issue for that function is no longer relevant; but clearance of the dwelling unit (or, in some cases, only the worksite) will be required if paint stabilization, interim controls or abatement is required. See the discussion below of the authority of trained technicians to perform clearance examinations.

There was much concern among commenters about the availability of a qualified (and affordable) work force of persons certified (or otherwise adequately trained) to perform the necessary work called for in the rule. Rural housing suppliers claimed such trained people would have to be imported from far away—and at premium rates. There were also calls for reciprocity for State-approved training programs until the EPA-approved programs are implemented.

HUD expects that most States will have EPA authorized certification programs by the effective date of this rule. Those that do not will be covered by the EPA certification program directly. After August 29, 1999, inspections, risk assessments and abatements must be done in accordance with the standards of EPA or an authorized State or tribal program. While this fact does not in itself eliminate the possibility that there will be shortages in the supply of certified personnel for inspections, risk assessments and abatements in some parts of the country, it increases the likelihood that the certification mechanisms will be in place in most of the nation when this rule becomes effective. At the time of this writing, 37 States have already enacted lead-based paint hazard control laws. In the final rule, the Department has made one change to the qualifications requirements that may result in increased availability of persons qualified to perform clearances. See the discussion below of the authority of technicians to perform clearance examinations.

The Department intends to monitor the availability of qualified personnel. One source of information is likely to be the "Lead Listing," a nationwide listing of inspectors and risk assessors developed by the National Lead Assessment and Abatement Council (NLAC) with HUD assistance. The

"Lead Listing" can be accessed by calling 1-888-LEADLIST (this is a toll-free number) or can be found on the Internet at www.leadlisting.org. HUD notes the constructive suggestion by one commenter that such monitoring should be done in cooperation with the States, as is being done with the development and maintenance of the Lead Listing. HUD would also expect to coordinate with EPA in the development of such information and in determining whether any further Federal response is needed.

One national organization questioned the requirement that workers performing "interim control treatments" be supervised by a certified abatement supervisor. Arguing that the definition of "interim controls" was too broad, the commenter recommended breaking the definition down so that "painting, maintenance and similar routine tasks" could be performed without a certified supervisor. Such a change, the commenter said, would be in accord with Congress' intent that certification requirements not be imposed on interim control workers, and the change would decrease routine property maintenance costs. A similar complaint was directed at the requirement that the appropriate worksite preparation be determined by a certified risk assessor, abatement supervisor or planner/designer. The commenter feared that the rule could be construed as requiring professional worksite design for "mere paint repair work and for such basic interim control tasks as rehanging of doors. . ." and asked that the rule be clarified to eliminate the worksite preparation requirement for interim control work.

Noting that the Task Force had recommended a one-day training course for maintenance supervisors, one commenter advocated HUD/EPA cooperation in developing a short course geared for maintenance workers that is inexpensive, requires one day or less to complete, and is frequently offered. Other commenters endorsed the short training course idea. The idea was a popular one, not only among cost-conscious funded agencies, but with public interest organizations as well.

A national environmental group disagreed with the emphasis on limiting the occasions for use of expert personnel. All hazard control activities, *including* paint repairs, should be conducted by trained personnel, the organization declared. A landlord who has permitted paint to become deteriorated to the point that it presents a lead hazard is "unlikely to have the skills or inclination to perform a paint repair in a manner that does not increase exposure," the group said.

HUD agrees that persons performing interim controls should be prepared to protect themselves and the occupants from exposure to lead, should know how to protect interior and exterior environments from contamination and how to clean up the worksite, and should understand the importance of an independent clearance examination. In the final rule, HUD is requiring that persons performing interim controls, including paint stabilization, be trained in lead hazards in accordance with OSHA regulations at 29 CFR 1926.59 and either be supervised by a certified abatement supervisor (the requirement of the proposed rule) or successfully complete one of the following training courses: (1) An accredited abatement supervisor course; (2) an accredited lead-based paint worker course; (3) the Lead-Based Paint Maintenance Training Program, developed by the National Environmental Training Association for EPA and HUD; (4) the Remodeler's and Renovator's Lead-Based Paint Training Program, prepared by HUD and the National Association of the Remodeling Industry (NARI); or (5) another course approved for this purpose by HUD after consultation with EPA. HUD intends that any person performing hands-on, interim controls work on the worksite in compliance with the final rule must have satisfied one of the optional requirements. With regard to the OSHA training requirements, OSHA regulations at 29 CFR 1926.62 require that workers exposed to airborne lead below the OSHA action level of 30 µg/cu.m. be trained under the hazard communication construction standard, which is at 29 CFR 1926.59. If airborne lead is at or above the action level, OSHA requires a more complete training program. Workers performing interim controls of lead-based paint hazards are not expected to be exposed to airborne lead above 30 µg/cu.m. Therefore the final rule states that the required training must be in accordance with 29 CFR 1926.59.

A national housing organization questioned the language barring a clearance examiner from being "affiliated with, paid, employed or otherwise compensated by the entity performing the hazard reduction and cleanup." The provision assumes, the commenter said, that the hazard reduction work has been performed by an independent contractor. In the case of paint stabilization and interim controls, this assumption will often be incorrect. Where only paint stabilization and simple interim controls are required, it was argued, the rule should permit owners and their employees to

perform the work themselves. The "independence" provision would make this impossible. The commenter recommended, first, eliminating the clearance testing requirement for hazard reduction work involving only "basic interim controls." A second solution would be to remove from the quoted provision the words "paid" and "or otherwise compensated", so that clearance testing by employees and affiliates of a contractor would be prohibited, but the owner could retain an independent, certified risk assessor to perform the clearance testing work.

HUD agrees that a property owner or manager should be able to employ both hazard reduction and clearance personnel. The final rule requires that clearance examinations and hazard reduction activities be conducted by entities that are independent of each other unless the owner or designated party uses qualified in-house employees to conduct clearance. The final rule, however, does not permit the same individual employee to conduct both hazard reduction and clearance, due to the clear conflict of interest this would pose.

As mentioned, HUD has made a change in the final rule that may increase the availability of persons qualified to perform clearance examinations, and thus may reduce the cost. The proposed rule required that clearances be performed by either a certified risk assessor or a certified lead-based paint inspector. One group of commenters urged that a technician with less training than a risk assessor or inspector be authorized to perform clearances in situations where interim controls of lead-based paint hazards or ongoing lead-based paint maintenance has been conducted. These commenters argued that the skills needed for the clearance function are modest compared to those required for lead-based paint inspections or risk assessments and, further, that the speed and affordability of clearance is of critical importance to the practical workability of the system of requirements to be set forth in the rule.

In the conference report on the VA-HUD-Independent Agencies Appropriations Act for FY 1999, the Congress urged EPA "to develop a relevant one-day sampling technician training course and to encourage the recognition of this discipline." As of this writing, it is HUD's understanding that EPA plans to develop such a course and that an important purpose of the course will be to train people to perform clearance examinations. Therefore, anticipating that trained clearance technicians may be available, HUD is

providing in the final rule two ways they could perform clearances following interim controls or maintenance: first, as a technician who is uncertified or unlicensed and whose work must be approved in writing by a certified risk assessor or lead-based paint inspector; or, second, as a technician who is certified or licensed to perform clearance examinations without the approval of a risk assessor or inspector. Uncertified or unlicensed clearance technicians must have successfully completed a training course on clearance examinations (or similar title) that is developed or accepted by EPA or by a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q (the EPA regulations implementing TSCA section 404). The course must be given by a training provider accredited by a State, Indian tribe or the EPA for training in lead-based paint inspection or risk assessment. HUD assumes that certified or licensed clearance technicians would also be required to complete such training. Certification or licensing of clearance technicians must be by a State or Indian tribe or EPA.

With regard to the training course taken by an unlicensed or uncertified clearance technician, there are several possible arrangements that are acceptable to HUD under this rule. The course can be developed by EPA, or it can be developed by a State or Indian tribe with a program authorized by EPA pursuant to TSCA section 404. A State or Indian tribe may adopt or accept a course prepared by another EPA authorized State or tribe. While the training provider from whom the course is taken must be accredited by EPA or an EPA-authorized State or tribal program, it is not necessary from HUD's point of view that the technician be trained within the State or Indian nation where the clearance is being performed or by a training provider accredited by that State or tribe. The ultimate responsibility for quality control rests with the certified lead-based paint inspector or risk assessor who approves the work of the technician and signs the clearance report.

Under this policy, an unlicensed or uncertified but properly trained clearance technician could perform a clearance examination on site, prepare the report, and send the report (by e-mail, fax, or other method) to a certified risk assessor or certified lead-based paint inspector, who may be located in another area. The risk assessor or inspector could review and sign the report and forward it to the client, taking responsibility for the quality of the clearance examination and report.

The Department assumes that the risk assessor or lead-based paint inspector would require the technician to work as an apprentice until the inspector or assessor is satisfied that the technician's work is of satisfactory quality, but HUD leaves that process and decision to the risk assessor or inspector. In the rule, HUD places no restrictions on the scope or scale of clearance examinations that could be performed in this manner.

HUD is setting a limitation, however, on the authority of a certified or licensed technician who is taking full responsibility for the clearance examination without written approval of a risk assessor or lead-based paint inspector. In this case, the authority extends, under the HUD rule, only to clearances of single family units or individual units and associated common areas in a multi-unit property. The authority does not extend to clearance examinations of multifamily properties, or parts thereof, in which the clearance examiner engages in random sampling of dwelling units and common areas. In the opinion of the Department, it is unlikely that a one-day course will be adequate to teach all the techniques, procedures and judgments required to conduct random sampling of dwelling units and common areas in large multifamily clearance examinations. Under the HUD final rule, however, clearance technicians may perform multifamily clearances involving random sampling with the written approval of a certified risk assessor or lead-based paint inspector. Furthermore, certified clearance technicians may, without written approval of an inspector or risk assessor, conduct clearance examinations of any number of individual dwelling units and associated common areas in multifamily properties, provided results from the units and areas in which clearance examinations are conducted are not used to represent units and areas for which no examination or testing has been conducted.

Under this policy on technicians, people can prepare themselves to perform clearances with less investment in training and equipment than is required to become a risk assessor or lead-based paint inspector. HUD is hopeful, therefore, that the policy will contribute to an increased availability of persons authorized to perform clearances and a reduction in the cost of clearances. The policy retains the reliance on a certification or licensing process. Certification by a State or other entity provides a way to take action against fraudulent or otherwise unprofessional clearance examiners.

HUD recognizes that performance of clearance examinations by a certified or uncertified technician may not be permissible under some State or tribal regulations, even with the written approval of a risk assessor or lead-based paint inspector. Where that is the case, the State or tribal regulation would apply. HUD also recognizes that EPA may, in the future, establish certification procedures for clearance technicians (or a similar discipline) and, at that time, may make it illegal nationwide for uncertified technicians to perform the on-site work of a clearance examination. However, HUD thinks it will be efficient to have trained technicians, certified or not, working with higher level certified personnel and encourages other regulatory entities to permit it.

9. Paint Stabilization vs. Paint Repair. The proposed rule established a procedure called "paint repair," which was a repainting of a deteriorated paint surface using safe work practices to minimize the generation of dust, protect occupants and the environment, and leave the site clean. The procedure was widely used in the rule; it was required in the subparts or sections applicable to single family mortgage insurance, disposition of HUD-owned single family property (without sufficient appropriations), multifamily insured property, disposition of HUD-owned and mortgagee-in-possession property (without sufficient appropriations), residential property receiving an average of less than \$5,000 per unit in Federal rehabilitation assistance, CPD non-rehabilitation, and tenant-based rental assistance.

Many commenters questioned this procedure. The most common position was a caution against leaving anything in the rule that implied that "mere overpainting" of surfaces, without addressing the substrate, could ever be considered an appropriate course of action. A typical comment was the following: "HUD's final regulations should require that whenever deteriorated paint is repaired, the cause of the deterioration must be corrected and the substrate stabilized." Another commenter argued that paint repair, by itself, was "inconsistent with the HUD Guidelines."

HUD agrees that it can be ineffective to try to put paint on a damaged substrate, such as crumbling plaster. Old lead-based paint on such a surface could shortly become deteriorated again after repainting. On the other hand, HUD is aware that substrate stabilization requires case-by-case judgment in the field as to when substrate repair is necessary and what extent and method of repair is

appropriate. There is reason to be concerned that cautious administrators may sometimes insist on repairs that are overly expensive or that others will not correct the underlying problem.

After careful consideration, the Department has eliminated "paint repair" throughout the final rule and instead is requiring "paint stabilization," which calls for the repair of any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component. It should be noted that the purpose of this requirement is not complete renovation but merely to try to assure that the integrity of the repainting will survive for a reasonable period of time. Also, if a substrate is being damaged because of a water leak, repair of the leak would be necessary in any case to meet housing or building codes. In situations in which a costly repair may be necessary to stabilize a damaged substrate, designated parties should always determine through paint testing whether or not the surface has lead-based paint. Frequently the paint will not be leaded at the Federal standard of 1.0 mg/sq.cm., so paint stabilization will not be required under this rule. If the deteriorated paint is lead-based paint, the designated party may consider alternative methods for controlling the hazard, such as enclosure of the surface.

E. Subparts

1. *Subpart A—Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property.* This subpart contains the requirements for disclosure of known lead-based paint and/or lead-based paint hazards in the sale or lease of target housing. This joint HUD/EPA regulation was promulgated as required by section 1018 of Title X (42 U.S.C. 4852d), and was originally published at 24 CFR part 35, subpart H. Subpart H has been transferred unchanged to this subpart A, so the regulations implementing sections 1012 and 1013 of Title X can be published in consecutive subparts B, C, D, F through M, and R.

2. *Subpart B—General Lead-Based Paint Requirements and Definitions For All Programs.* This subpart sets out general requirements for federally owned residential property and housing receiving Federal assistance.

a. *Definitions.* In the proposed rule, HUD used the definitions, where possible, that were included in section 1004 of Title X (42 U.S.C. 4851b). In cases where the statute either failed to define terms, or where the definition was inadequate for the purpose of a regulation, the Department drew

definitions from the HUD Guidelines, existing HUD or EPA regulations, and from definitions compiled and set forth by the American Society for Testing and Materials (ASTM), West Conshohocken, PA 19428–2959, in a document entitled "Standard Terminology Relating to Abatement of Hazards from Lead-Based Paint in Buildings and Related Structures" (ASTM Standard E 1605–94).

In most cases public comments on definitions concerned the scope of the definition rather than the meaning, and the commenters wanted the scope to be either expanded or limited. In response to comments, the definition of *residential property* was revised in the final rule to more precisely define its scope to "a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land belonging to an owner and available for use by residents but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways" rather than the proposed rule language of "a dwelling unit, common areas and any surrounding land belonging to an owner and accessible to occupants." Paint striping on parking lots, garages, and roadways will not be covered by this rule. *Common area* was expanded in scope to mean "a portion of a residential property that is available for use by occupants of more than one dwelling unit" rather than "generally accessible to occupants of all dwelling units". Throughout the final rule, HUD has avoided using the term "accessible" if its meaning might be confused with that in regulations implementing the Americans With Disabilities Act. *Hazard reduction* was expanded to include standard treatments. *Paint testing* was added, replacing the proposed rule's *limited paint inspection* for reasons explained below in the discussion of options in Section III.E.2.c.(4) of this preamble.

The publication of the EPA regulation at 40 CFR part 745, subparts L and Q, significantly affected the definitions section as it did the remainder of this regulation. The definitions of several technical terms have been deleted from the final rule, since they were associated with the evaluation and hazard reduction activities now covered by the EPA regulation.

In the definition of *abatement*, the statement that "permanent means at least 20 years effective life" was relocated to a separate definition of "permanent." This was done to conform

the definition of abatement more closely to that in Title X. Also the terms "lead-contaminated dust" and "lead-contaminated soil" were changed to "dust-lead hazard" and "soil-lead hazard" respectively to conform with terminology being used by EPA in their proposed regulation implementing TSCA section 403, which was published on June 3, 1998 (63 FR 30301–55). The latter change of terminology has been made throughout this final rule; the definitions of *lead-contaminated dust* and *lead-contaminated soil* have been replaced with definitions of *dust-lead hazard* and *soil-lead hazard* respectively, and the same substitution of terms has been made in the definition of *lead-based paint hazard*. In the proposed section 403 rule, EPA has adopted the position that "lead-contaminated dust" and "lead-contaminated soil" are general terms referring to dust and soil with varying levels of lead concentration but not necessarily to levels that are considered hazardous. In the definition of "soil-lead hazard" in this final rule, HUD is including a de minimis area of bare soil outside of play areas that is not considered a hazard. To be considered a soil-lead hazard according to this definition, spots or areas of bare soil outside of play areas must total more than 9 square feet per residential property and have a lead concentration of an average of equal to or exceeding 2000 micrograms per gram.

The term *accessible (chewable) surface* has been replaced with *chewable surface*. This was done for two reasons: (1) It avoids confusion with the use of the word "accessible" in regulations and guidance implementing the Americans With Disabilities Act (ADA), which is an important law affecting residential real estate; and (2) it substitutes an easily understood term, "chewable," for a somewhat ambiguous term, "accessible," that might imply "reachable" as well as "chewable." The substitution of "chewable" for "accessible" was also made in the definition of "lead-based paint hazard." In response to many requests for further clarity as to what constitutes a chewable surface, HUD has added to the definition of "chewable surface" a statement that, "Hard metal substrates and other materials that cannot be dentured by the bite of a young child are not considered chewable." In most homes, the only chewable surfaces are likely to be protruding, interior wooden window sills.

A new term, *designated party*, has been added to simplify and reduce the length of the rule. It means "a Federal agency, grantee, subrecipient,

participating jurisdiction, housing agency, CILP recipient, tribe, tribally designated housing entity (TDHE), sponsor, or property owner responsible for complying with applicable requirements.” The definition of the term *dwelling unit* has been changed to conform to the Title X definition of “residential dwelling.” The substantive meaning does not change. As in the proposed rule, HUD prefers to use “dwelling unit” instead of “residential dwelling” because the former term is more commonly used and understood and is more distinct from a related term used in the rule, “residential property.” As explained in Section III.D.6 of this preamble above, in the discussion of policy on responding to children with elevated blood lead levels, the defined term *elevated blood lead level (EBL)* has been changed to *environmental intervention blood lead level*, and the definition has been changed slightly to conform to CDC guidance. The term *emergency repair* has been removed from the definitions section, because it is only used once in the rule, in the section later in subpart B setting forth the exception for emergency actions; and its meaning there is clear.

The definition of *evaluation* has been changed. Title X defines this important term as meaning a risk assessment, inspection, or combination of the two. The proposed rule added “visual evaluation” and made the determination of the presence of deteriorated paint one of the purposes of evaluation as well as the determination of the presence of lead-based paint hazards and lead-based paint. In the final rule, HUD has removed “visual evaluation” from the definition of “evaluation,” has removed the related purpose of identifying deteriorated paint, and has added “lead hazard screen” and “paint testing” as evaluation methods. “Visual evaluation” was removed because it is quite different from the activities mentioned in the statutory definition of “evaluation.” It does not involve any testing of paint, dust or soil for lead concentration, nor does it determine the presence or absence of lead-based paint hazards or lead-based paint. Therefore it does not produce “evaluation” results that, in the opinion of the Department, have to be reported to occupants. For additional clarity, HUD has changed the term *visual evaluation* to *visual assessment*. A “lead hazard screen” and “paint testing,” however, do involve testing and produce reportable results. *Lead hazard screen* means a limited risk assessment that involves paint testing, dust testing and soil testing. If a property passes a screen using the

criteria in subpart R, it is not necessary to conduct a full risk assessment. This term was not defined or used in the proposed rule, but HUD now believes that the option to conduct such a screen should be available, because it is potentially less costly than and often as effective as a full risk assessment, especially in housing built after 1959 that is in good condition. The term *paint testing* replaces the proposed-rule term *limited paint inspection* in response to a comment from EPA that it would be helpful to differentiate more clearly between a full “inspection,” as specified in the EPA rule implementing TSCA section 402, and a more limited procedure to determine the presence of lead-based paint only on deteriorated paint surfaces or surfaces to be disturbed by rehabilitation.

Title X exempts housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in such housing. Believing that *expected to reside* requires interpretation, the Department is introducing in this final rule a definition stating that “expected to reside” means there is actual knowledge that a child will reside and that if a resident woman is known to be pregnant there is actual knowledge that a child will reside in the dwelling unit. (As mentioned, it is not advisable to inquire as to pregnancy status in most real estate transactions. See Section III.D.7 of this preamble, above, on fair housing requirements.)

Firm commitment, a term used only in subpart G, Multifamily Mortgage Insurance, is defined for purposes of clarity to mean a valid commitment issued by HUD or the Federal Housing Commissioner setting forth the terms and conditions upon which a mortgage will be insured or guaranteed. In this rule, *grantee* is a term used only in subparts J, Rehabilitation, and K, Acquisition, Leasing, Support Services or Operation. It is defined to mean any State or local government, Indian tribe, IHBG recipient, or insular area that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP). The defined term *participating jurisdiction* is used in the HOME program, and *CILP recipient* is the defined term used to mean an owner of a multifamily property which is undergoing rehabilitation funded by the CILP program. The definition of *hard costs of rehabilitation* has been changed, in response to comments requesting greater clarity, to add the following statement: “Hard costs do not include

administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).”

The definition of *HEPA vacuum* has been made more precise. The proposed rule definition was “a vacuum with an attached high-efficiency particulate air (HEPA) filter capable of removing particles of 0.3 microns or larger from air at 99.97 percent efficiency.” The final definition requires that a HEPA filter be integral to the vacuum cleaner and gives an actual-performance, rather than potential-performance, definition of HEPA filter. Both definitions use performance measures of filter collection efficiency, with values common in the hazardous dust standard setting, e.g., EPA in asbestos rules (40 CFR 763.83, 763.121), OSHA in a lead rule (29 CFR 1926.62(f)(3)), and DOE in a HEPA filter specification (DOE-STD-3020-97). Current technology for assessing personal respirator filter performance is used by NIOSH in its respirator rule (42 CFR 84.181), by OSHA in citing the NIOSH rule (63 FR 1297, January 8, 1998), and by DOE in the specification cited above.

The technological precision reflected in the regulations just cited is not seen in the HEPA vacuum industry, however, so the rule can not specify the procedure for testing conformance. Performance and operational criteria of the manufacturer(s) of the filter and the vacuum unit as a whole are to be used for filter efficiency and particle size criteria. HUD is promoting research and development of standards on collection efficiency measurement applicable to HEPA vacuums. For example, it supports research at the University of Cincinnati (Cincinnati, OH 45267-0056) on vacuum cleaner dust penetration. HUD staff participates on the American Society for Testing and Materials’ (West Conshohocken, PA 19428-2959) Task Force F11.23.01 on vacuum cleaner system filtration efficiency working on a vacuum dust penetration measurement standard. HUD is aware of the American Society of Mechanical Engineers’ (New York, NY 10017-2392) Air and Gas Cleaning Group work on protocols to assess HEPA filter application performance. DOE cites the testing procedures of ASME Code AG-1, Section FC, HEPA Filters. Because the standards above are not yet directly applicable to fully assessing HEPA vacuums, HUD will monitor and support research and standards development, and revise its definition as needed. HUD welcomes data on research and measurement criteria for HEPA vacuums and HEPA filters.

The proposed-rule definition of *HUD-owned property* has been changed to

conform to the definition of *federally owned property* that is in Title X. The definition in the final rule is “residential property owned or managed by HUD, or for which HUD is a trustee or conservator.” The Department acknowledges, however, that although this definition conforms word for word to the Title X definition, it does not represent common usage. For practical and programmatic purposes, HUD considers property it owns to be only that to which it has title; it distinguishes between owned and managed property. However, this distinction does not affect the application of the rule. The rule covers both HUD-owned and HUD-managed property. Subpart I of the rule applies to multifamily property that is HUD-owned or for which HUD is “mortgagee-in-possession.” A property for which HUD is mortgagee-in-possession is one for which title has not passed to HUD but which is being managed by HUD prior to foreclosure.

The definition of *Indian tribe (tribe)* has been changed to conform to the Native American Housing Assistance and Self Determination Act of 1996 (Pub. L. 104–330). The proposed rule term “paint inspection” has been changed to *lead-based paint inspection* in the final rule to avoid confusion with inspections of paint that are conducted for purposes other than determining the presence of lead-based paint. The definition of *project-based assistance* is changed for purposes of clarity to indicate that the term applies to *rental* assistance and that it does not include Federal rehabilitation assistance or assistance to public housing developments. In the proposed rule, the definition of *risk assessment* was identical to that in Title X. In the final rule, the specificity of this definition has been reduced to minimize regulatory rigidity and to avoid potential conflict with EPA regulatory definitions and work practices standards.

Finally, the definition of *lead-based paint* has been edited somewhat. Although no substantive change has been made, one modification is worthy of note. The definition in the proposed rule, after the phrase “equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million,” included the phrase “or another level that may be established by the Secretary.” The latter phrase has been removed from the definition in the final rule to avoid possible confusion that might result from the absence of such a phrase in other recent regulations promulgated pursuant to Title X. Its inclusion in the proposed rule was based on the

statutory provision found in section 302(c) of the Lead-Based Paint Poisoning Prevention Act, which states that “the Secretary (of HUD) shall periodically review and reduce the level below 1.0 milligram per centimeter squared or 0.5 percent by weight to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level.” While HUD has no plans to propose a lower level, the statutory responsibility remains whether it is mentioned in the rule or not.

b. *Exemptions.* A detailed discussion of the exemptions provided in subpart B is found in Section III.A.5 of this preamble, above.

c. *Options.* In addition to exemptions, the final rule provides several options that HUD believes will provide owners and other parties with flexibility and thus greater efficiency in carrying out evaluation and hazard reduction activities.

(1) *Standard treatments.* Where interim controls are required, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the risk assessment or lead-based paint inspection or both, and conduct standard treatments in accordance with requirements set forth in subpart R of part 35 in lieu of interim controls. Standard treatments are: (a) Stabilization of all deteriorated paint, interior and exterior; (b) the provision of smooth and cleanable horizontal hard surfaces; (c) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (d) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls. This option, which was not provided in the proposed rule, derives from a recommendation by the Task Force on Lead-Based Paint Hazard Reduction and Financing. The Task Force recommended standard treatments as an option to the risk assessment/interim control approach because standard treatments “offer the advantage of devoting resources directly to hazard control—and their cost may be minimal for units in good condition.” Also, the Task Force noted that standard treatments can be carried out by “in-house maintenance staff who have sufficient knowledge of lead-based paint

hazards.” On the other hand, because no risk assessment is done, standard treatments may be implemented in some units that have no lead-based paint hazards, and resources may be expended unnecessarily. HUD is including the standard treatments option in the final rule in response to public comments that certified risk assessors may be in short supply in some parts of the nation, that the cost of risk assessments may be excessive, and because the decision to test is best left to the discretion of the designated party.

(2) *Presumption in the case of abatement.* Where abatement is required, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the evaluation, and conduct abatement on *all* painted surfaces. This option, however, is not available in public housing, because a lead-based paint inspection has been a statutory requirement for all target housing that is public housing since 1994.

(3) *Lead hazard screen.* Where a risk assessment is required by this rule, the designated party may choose to first conduct a lead hazard screen to determine whether a full risk assessment is necessary. The lead hazard screen is a limited risk assessment activity that involves dust sampling and soil sampling, and may include paint testing on deteriorated paint surfaces (if present). The screen must be conducted in accordance with State or tribal work practices standards under an EPA-authorized program or in accordance with EPA standards at 40 CFR part 745, subpart L. Because EPA regulations do not include specific standards for dust lead in lead hazard screens, HUD, in this final rule, is setting such standards at approximately one-half those of a full risk assessment (see Section III.E.15.a and b of this preamble, below). The standards for soil are the same for a lead hazard screen as for a risk assessment. If State or tribal standards for a lead hazard screen are more stringent than those in this rule, the State or tribal standards prevail. If they are less stringent, the standards of this rule apply. The standard for lead-based paint is the same for the screen as for a risk assessment or lead-based paint inspection. If a dust sample is found to be positive, i.e. have a level of lead equal to or greater than the dust-lead standards for the lead hazard screen, or there is lead-based paint on a deteriorated paint surface, a full risk assessment must be performed. If the lead hazard screen is negative, the risk assessment is not required. The lead

hazard screen option was not provided in the proposed rule because the cost differential between a full risk assessment and a screen was perceived to be small (essentially the cost of soil testing and a somewhat more elaborate report) and because HUD felt that a certified risk assessor would be empowered by EPA and/or State or tribal regulations to use a screen anyway. HUD is including explicit mention of the screen in the final rule to assure that all parties will be aware that the option is available to try to achieve cost savings, which are most likely in post-1959 properties in good condition.

(4) *Paint testing.* Under the proposed rule the requirements of certain subparts of the rule would not apply for a specific deteriorated paint surface to be disturbed if a "limited paint inspection" indicated the absence of lead-based paint on that surface. EPA objected to the proposed rule's definition of "limited paint inspection," noting that EPA work practices standards for inspections (40 CFR 745.227) do not include or envision a "limited" paint inspection or any other inspection activity not including a "comprehensive inventory of all of the lead-painted surfaces in a residential dwelling." Accordingly, a "limited" paint inspection would be a violation of EPA work practice standards. If a similar procedure is retained, EPA said, the use of the word "inspection" in the definition should be dropped, and HUD should identify the circumstances under which this "limited" activity would be conducted, set out procedures and requirements for conducting it, and state the qualifications required for individuals who would conduct the activity. Another comment from a legal services organization recommended elimination from the regulation of the "limited paint inspection" option.

In the final rule, the term "limited paint inspection" has been replaced with the term "paint testing." Where paint stabilization or interim controls of a deteriorated paint surface is required by this rule, paint testing of non-intact paint surfaces may be conducted to determine the presence of lead-based paint instead of conducting a complete lead-based paint inspection or presuming the presence of lead-based paint. Paint testing may also be employed to determine if intact paint on a surface to be disturbed during rehabilitation contains lead-based paint. If the paint testing indicates the absence of lead-based paint, paint stabilization, interim controls or abatement of that surface is not required. Paint testing

must be performed by a certified lead-based paint inspector or risk assessor.

d. *Notice of Evaluation and Hazard Reduction Activities.* Title X requires the provision of notice to occupants describing the nature and scope of any risk assessment, lead-based paint inspection, or hazard reduction activities undertaken. In general, the Department believes that detailed matters of notice, format and distribution are best determined by the property owner or other recipient of Federal housing assistance, under the general framework provided in this rule. In the final rule as well as the proposed rule, the Department has interpreted this provision to require the following: (1) Within 15 calendar days of receiving a risk assessment, lead-based paint inspection, or paint testing report, a written notice must be provided to occupants containing a summary of the nature, scope and results of the evaluation and a contact for more information or access to the actual reports; and (2) within 15 calendar days of completing hazard reduction activities, a notice must be provided to occupants of actual hazard reduction activities conducted. The notice must contain a summary of the nature, scope and results of the hazard reduction activities, a contact for more information, and information on any identified remaining lead-based paint on a surface-by-surface basis. This notice shall be updated, based on any reevaluation of the dwelling unit or if additional lead-based paint hazard reduction work is conducted. The notices must be posted in centrally located common areas or distributed to each occupied dwelling unit, must be of a size and type that are easily read by occupants, and must be made available in a format accessible to persons with disabilities, to the extent practicable. The proposed rule required that, if possible, the notice must be provided in the occupant's primary language. The final rule, in response to comments that some apartment projects may have more than a dozen primary languages represented, deleted the "if possible" phrase and added the option to provide the notice in the language of the occupant's contract or lease.

The statute does not specifically require that separate notices be provided to occupants after an evaluation has been conducted and again after hazard reduction activities have been undertaken. In the Department's view, however, withholding information of the results of an evaluation until after hazard reduction activities have been performed poses a potential risk to

occupants. The sooner occupants are provided with this information, the better they can protect their children and themselves.

The Department requested comment on the content, format and distribution of the notices. One commenter suggested that the notice be provided both when evaluation has taken place, and then again before hazard reduction activities are undertaken. HUD has not adopted this suggestion, because it believes it should not regulate tenant-landlord relations this closely. This comment was made to insure that occupants can prepare their units for hazard reduction activities. Actually, all hazard reduction activities require occupant protection by the owner (or contractor), who would coordinate these actions with the occupant even if no separate notice is provided.

Some commenters recommended that the notice be given to each occupant. HUD continues to believe that it is reasonable to expect that occupants can read the notice if it is posted in central locations. In the final rule, this decision is left to the discretion of the owner or other designated party, except that the notice must be distributed to the dwelling unit of a head of a tenant household if the owner knows that the head of household is a person with a disability that would make a posted notice inaccessible to that person.

One commenter asked for more time to provide occupants with the notice of evaluation results. The commenter felt that 15 days is not enough time for management to digest the evaluation and prepare the documentation needed to explain the results to residents. In response, HUD has added to the final rule a strong recommendation, but not a requirement, that paint inspectors and risk assessors provide summary statements of inspections and risk assessments suitable for posting or distribution. This provision is located in § 35.1320, in subpart R. For further discussion and sample formats, see Section III.E.15.c, of this preamble below, and appendices B through E of the rule.

One commenter noted that the proposed rule did not include notice requirements for HUD-owned properties. In the final rule, HUD has included notice requirements for HUD-owned properties that are similar to those for other housing programs, even though such a requirement is not called for by statute.

e. *Lead Hazard Information Pamphlet.* Title X requires that the lead hazard information pamphlet developed by EPA, CPSC and HUD pursuant to TSCA section 406(a) be provided to purchasers

and tenants of housing affected by section 1012 of the statute. Provision of the pamphlet is not required for housing affected only by section 1013 of Title X. In response to comments, the Department has made three types of changes to the pamphlet-provision requirement that was in the proposed rule. The first change is largely editorial and is intended to increase policy consistency across programs and to reduce the length of the rule. HUD has provided a statement of the general requirement in subpart B, § 35.130, and referenced that section in each of the program-specific subparts where pamphlet provision is required. Section 35.130 states that the designated party shall provide the pamphlet to each occupied dwelling unit.

Acknowledgment of receipt is not required, but it is recommended. The program-specific subparts of the rule state more explicitly who shall provide the pamphlet—e.g., the public housing agency, the owner, the sponsor, the grantee, or the participating jurisdiction.

Second, HUD has made substantive changes to further minimize duplicative requirements for the provision of the pamphlet. Section 1012 is one of three different sections of Title X that call for provision of the pamphlet. The other two are section 1018 (which requires provision of the pamphlet and disclosure of known lead-based paint hazards prior to sale or lease), and TSCA section 406(b) (which requires persons performing renovation for compensation to provide the pamphlet before beginning the renovation). The proposed rule recognized potential overlap with the HUD-EPA rule implementing section 1018 (the disclosure rule) but did not discuss EPA's then-proposed rule implementing section 406(b) (the renovation rule).

For most rental housing, HUD's proposed rule required that the pamphlet be provided only if the tenant had taken residence before the effective date of the disclosure rule (which was either September or December 1996, depending on the number of housing units owned by the landlord). This policy did not address the case of a tenant who took residence before the effective date of the disclosure rule but received the pamphlet at the time of renewal or revision of the lease. The proposed-rule policy also did not address the case of a landlord who, acting as a renovator's designated representative, provided the pamphlet to a tenant before renovation in compliance with the renovation rule. Therefore, to allow landlords the flexibility to minimize duplication of pamphlet provision, the final rule, in

§ 35.130, states simply that it is not necessary to provide the pamphlet if it can be demonstrated that it has already been provided in accordance with the disclosure rule or the section 406(b) renovation rule. Prior provision of the pamphlet is best demonstrated by retaining an acknowledgement by the occupant of receipt of the pamphlet. Such acknowledgment is required by the disclosure rule and, with some exceptions, by the renovation rule.

In the proposed rule, the two subparts pertaining, respectively, to rehabilitation assistance and to CPD non-rehabilitation programs required provision of the pamphlet to the tenant, owner occupant or purchaser regardless of whether the pamphlet had been provided under the disclosure rule. In the final rule, this has been changed to conform with the general policy in § 35.130. HUD expects that most local and State rehabilitation programs will be administered so that provision of the pamphlet by the renovator in compliance with the renovation rule will also meet the requirements of this final rule.

Third, some commenters requested that EPA-approved State equivalents to the pamphlet be specifically permitted. In the interest of streamlining and simplicity, the final rule includes such a provision.

f. *Use of Paint Containing Lead.* The final rule continues the prohibition against use of new paint containing more than 0.06 percent by weight of lead in federally owned or assisted housing. This provision has been in HUD regulations since the late 1970's and is based on the 1977 regulation promulgated by the Consumer Product Safety Commission (16 CFR Part 1303). If a State or local jurisdiction banned the residential use of paint containing lead before 1978, the rule allows the Secretary to apply a date earlier than 1978 to activities covered by this rule in that jurisdiction.

g. *Prohibited Methods of Paint Removal.* The final rule includes the same prohibited practices as in the proposed rule (open flame burning, machine sanding without HEPA exhaust control, abrasive blasting without HEPA local exhaust control, heat guns operating above 1100 degrees Fahrenheit, dry scraping or sanding except in certain situations), plus one addition: paint stripping using a hazardous volatile substance in a poorly ventilated space. OSHA says that adults exposed to methylene chloride "are at increased risk of developing cancer, adverse effects on the heart, central nervous system and liver, and skin or eye irritation. Exposure may occur

through inhalation, by absorption through the skin, or through contact with the skin." (62 FR 1493, January 10, 1997).

The Consumer Product Safety Commission/EPA consumer notice, *What You Should Know About Using Paint Strippers* (CPSC Document 4423, EPA document EPA 747-F-95-002), recommends to persons who "use paint strippers frequently, (that) it is particularly important that you...Never use any paint stripper in a poorly ventilated area. If work must be done indoors under low ventilation conditions, consider having the work done professionally instead of attempting it yourself." This is of particular importance in lead-based paint removal work larger than the de minimis level (such as 2 sq. ft. per room). CPSC and EPA recommend that persons who strip paint "cross-ventilate (the worksite) by opening all doors and windows (and make sure there is fresh air movement throughout the room)." This practice deviates from the worksite protection for larger lead-based paint stripping projects, which typically involves protecting the work area and occupants from dispersal of lead debris and dust by sealing off ventilation systems and/or erecting barriers between the work area and the rest of the residence to reduce ventilation (see the HUD Guidelines, chapter 8). The CPSC/EPA notice also recommends precautions for firesafety, eye protection, skin protection, and waste disposal for paint strippers.

Some paint strippers are hazardous, and are addressed as such by regulatory agencies. HUD has considered the type of work in identifying the applicable definition to consider. The definition of "hazardous substance" used by the CPSC (see 16 CFR 1500.3), based on the Federal Hazardous Substances Act (15 U.S.C. 1261-74), applies to paint stripping work that does not involve employment, such as paint stripping by the owner of HUD-assisted housing who performs the work personally. The definition of "hazardous chemical" used by the Occupational Safety and Health Administration, and based on the Occupational Safety and Health Act (29 U.S.C. 655(a)), applies to paint stripping that does involve employment. OSHA's definition for the general industry at 29 CFR 1910.1200 currently applies to building maintenance, custodial, or construction work, because OSHA's hazard communication standard for the construction industry, at 29 CFR 1926.59, is identical to that for general industry.

Employers of paint removal workers are expected to know that OSHA

recently reduced its permissible exposure limit for methylene chloride in air from 500 to 25 parts per million (29 CFR 1910.1052 for general industry, and the identical 29 CFR 1926.1152 for construction, 62 FR 1492–1619, January 10, 1997). Methylene chloride can not be detected by odor at the permissible exposure limit, and organic vapor cartridge negative pressure respirators are generally ineffective for personal protection against it. Alternative paint strippers may be safer but have their own safety and/or health concerns, as indicated in the CPSC/EPA notice, so caution in the selection and use of any paint stripper is prudent. Paint stripping in a poorly ventilated space using a volatile substance that is hazardous should be done in accordance with CPSC regulations (16 CFR 1500.3), and/or OSHA's hazard communications standards (29 CFR 1010.1200 or 29 CFR 1926.59, which are currently identical), and with any substance-specific standards applicable to the work.

h. Compliance With Other State, Tribal, and Local Laws. In response to comments urging deference to State, tribal and local laws and regulations, HUD has added a provision to the final rule that makes it clear that HUD may modify or waive requirements of subparts B, C, D, F through M, and R, if the Department determines that a State, tribal, or local law provides a comparable level of protection and that such a modification or waiver will promote efficiency.

The final rule also indicates that this regulation is not intended to relieve program participants from compliance with State, tribal or local law.

i. Minimum Requirements. The final rule retains the policy included in the proposed rule that the requirements of subparts B, C, D, F through M, and R, are intended to be minimum requirements. Nothing in this rulemaking is intended to preclude designated parties from conducting a more protective method than the one required. Thus, for example, if the requirement is interim controls, a designated party may choose to use an abatement method instead.

Similarly, where more than one requirement covers a condition or activity, the most protective shall apply.

j. Waivers. Also retained from the proposed rule is the authority of the Secretary of HUD to waive any provision of this rulemaking, subject to statutory limitations. This conforms to, and cites, § 5.110, the general waiver section for HUD programs under title 24.

k. Prior Evaluation or Hazard Reduction. Some commenters requested

clarification as to the validity under HUD's rule of lead-based paint activities conducted prior to the effective date of the rule. In the final rule, conditions under which a prior evaluation or hazard reduction meets the requirements of the rule have been specified.

Section 1013 of Title X gives the Secretary authority to waive the lead-based paint inspection and risk assessment requirement for federally owned housing built between 1960 and 1978 if a federally funded risk assessment by a certified contractor shows an absence of lead-based paint hazards. The Department believes case-by-case waivers to be inefficient and inappropriate and therefore has developed a broader policy on prior activities that covers all properties for which an acceptable risk assessment, lead-based paint inspection, abatement, or clearance has been performed. The Department believes that the conditions set forth in this section provide the necessary quality control measures for prior lead-based paint activities while avoiding unnecessary duplication.

A lead-based paint inspection or a risk assessment conducted at a residential property or dwelling unit prior to the property or unit becoming subject to the requirements of subparts C, D, F through M, and R, need not be repeated if it was conducted in the following manner or under the following circumstances:

(1) If the lead-based paint inspection or risk assessment was conducted prior to August 30, 1999 (the effective date of the EPA regulations at 40 CFR 745.227), results of the evaluation may be used if it was conducted in accordance with 40 CFR 745.227 or by an individual or firm otherwise certified under a State or Indian tribal lead-based paint inspector or risk assessor certification program, except that the risk assessment must be no more than 12 months old to be considered current; and furthermore a lead-based paint inspection of public or Indian housing meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program prior to the effective date of this rule.

(2) If the inspection or risk assessment was conducted after August 29, 1999, the results of the evaluation may be used if it was conducted in accordance with 40 CFR part 745, subparts L and/or Q, except that the risk assessment must have been completed no more than 12 months prior to the date of reference.

The provisions in subpart B regarding prior risk assessments do not apply in

cases where a risk assessment is required in response to the identification of a child under 6 years of age with an environmental intervention blood lead level. In such cases the risk assessment must be conducted in the child's dwelling unit shortly after the child's blood was last sampled.

Interim controls conducted prior to a property or unit becoming subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if such controls were conducted in accordance with a risk assessment that meets the requirements of this rule; however, ongoing lead-based paint maintenance and reevaluation must be conducted as required by this final rule.

Abatements conducted before August 30, 1999 and before the property or unit becomes subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if conducted by an abatement supervisor approved by a State or Indian tribe to perform abatement of lead-based paint or lead-based paint hazards. It is not necessary that the State or tribal approval program had EPA authorization. Abatements conducted after August 29, 1999, must have been conducted by a lead-based paint abatement supervisor certified by a State or Indian tribe with an EPA-authorized lead-based paint certification program or by EPA in accordance with 40 CFR 745.226. State law may impose different requirements. A lead-based paint abatement project meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the abatement requirement of the public or Indian Housing program prior to the effective date of this rule.

With regard to the policy on prior lead-based paint inspections in public and Indian housing, it should be explained that in the late 1980's, pursuant to a statutory requirement, HUD began requiring public and Indian housing agencies to conduct lead-based paint inspections in all pre-1978 family developments. All inspections had to be completed by December 1994.

Abatement of any lead-based paint was required at the time of modernization. HUD estimates that by 1998, virtually all of the pre-1978 family developments have been inspected, representing approximately 900,000 dwelling units. Also, HUD estimates that housing agencies have completely abated lead-based paint in over 200,000 units. The Department does not think it would be acceptable now to require that all lead-based paint inspections be redone. However, the rule does recommend that housing agencies conduct quality

assurance testing for all inspections that might be questionable.

l. *Enforcement.* Every commenter who addressed the question of enforcement of the rule remarked that penalties for noncompliance needed to be spelled out in the rule. The Lead-Based Paint Poisoning Prevention Act does not provide any independent enforcement provisions. Remedies will vary based on which program's requirements have been violated. For example, a designated party that is not in compliance with this rule may be considered in default of the regulatory agreement or housing assistance payments contract with the Department, may be debarred from receiving assistance from the Department or denied future participation in HUD programs, may be forced to surrender grant funds or may be otherwise subject to civil money penalties or other sanctions. Recipients of assistance under the Community Development Block Grant program will find enforcement provisions at 24 CFR 570.910, 570.911 and 570.913; those for other programs are found in other parts and sections of the CFR. HUD does not think it necessary to restate each program's sanctions in this lead-based paint rule but has included a general provision under § 35.160 that states the consequences of noncompliance with this regulation. HUD intends to vigorously enforce all requirements of this regulation.

m. *Records.* HUD has retained a record keeping requirement in this final rule for designated parties conducting lead-based paint activities. The Department strongly recommends that designated parties keep for the life of the property a copy of each notice to occupants of the results of evaluation and hazard reduction (including clearance) and each report from a certified individual or firm performing lead-based paint inspections, risk assessments, abatement, or clearance. Such notices and reports document compliance in case of a legal or administrative question; and evaluation and hazard reduction reports provide information on where lead-based paint may remain on the property so it can be managed safely, or, if such reports document that there is no lead-based paint remaining on the property, they can be used to support exemption from the requirements of this rule and the disclosure rule. At a minimum, the Department requires that such documentation be retained for three years. Records applicable to a portion of a residential property for which ongoing maintenance and/or reevaluation activities are required shall be kept until

at least three years after such activities are no longer required. This policy is designed to provide a basis for helping ensure that Federal funds have been expended properly.

3. *Subpart C—Disposition of Residential Property Owned by a Federal Agency Other than HUD.* This subpart establishes minimum lead-based paint requirements for residential property built before 1978 that is owned and to be sold by a Federal agency other than HUD and is consequently subject to the requirements of section 1013 of Title X. The subpart basically restates the requirements set out in section 1013 of Title X, with minimal elaboration. The Department believes that the details of how another Federal agency should carry out the requirements of section 1013 are best determined by the affected agency.

The proposed rule required that for residential property built before 1960, the Federal agency shall conduct a lead-based paint inspection and a risk assessment, and shall abate all lead-based paint hazards. In the case of a purchaser who is not to be an owner occupant, the agency could make abatement a condition of sale with sufficient funds escrowed. For properties built after 1959 and before 1978, the proposed rule required that the agency conduct a risk assessment and a lead-based paint inspection. Under the disclosure rule implementing section 1018 of Title X, the agency would be required to provide the results of the risk assessment and inspection to the purchaser.

The Department of the Navy commented that the requirement that both a risk assessment and a lead-based paint inspection be conducted appeared to exceed the statutory requirement. Section 1013 calls for "the inspection and abatement of lead-based paint hazards" in pre-1960 housing and "an inspection for lead-based paint and lead-based paint hazards" in housing built between 1960 and 1978. HUD is calling for both an inspection and a risk assessment because the statutorily defined term "inspection" refers to a procedure that identifies the location of lead-based paint, if any, on a property but does not identify the location of "lead-based paint hazards," as that term is defined in the statute. Identification of lead-based paint hazards is the function of a risk assessment. Thus, because lead-based paint hazards must be identified to comply with section 1013, a risk assessment must be conducted as well as an inspection. HUD expects that the two evaluation procedures will be performed concurrently.

The Air Force, Army and the General Services Administration (GSA) all asked for greater flexibility to permit negotiation with transferees regarding hazard control requirements "built into the contract of sale." These agencies argued that, while the proposed rule allowed abatement to be made a condition of sale, it required the escrow of sufficient funds, and it may not be feasible for a bidder on large blocks of units to escrow large sums for long periods of time. It was pointed out that purchasers do not always know at the time of transfer what the reuse of a property, or a part thereof, will be. It was recommended that other conditions be permitted to be attached to the sale—for example, certification and indemnification requirements not requiring escrow deposits, and deed restrictions. GSA also complained that limiting an agency's authority to make abatement a condition of sale to when the purchaser is not an owner occupant could cause unnecessary complications in the bidding process. Bidders intending not to be owner occupants might discount their bids to account for the cost of the evaluation, while those intending to be owner occupants would not.

HUD believes that allowing the Federal agency a choice of conducting the abatement itself or making it a condition of sale facilitates efficiency and timeliness in the disposition process. The Department finds the agencies' comments about making abatement a condition of sale in pre-1960 properties to be reasonable and has changed the relevant provision to allow that "where abatement of lead-based paint hazards is not completed before the closing of the sale, the Federal agency *shall be responsible for assuring that the abatement is carried out by the purchaser before occupancy* of the property as target housing" (emphasis added) and in accordance with the requirements of either a State or tribal program authorized by EPA under subpart Q of 40 CFR part 745 or EPA's requirements at subpart L of 40 CFR part 745. This revised wording is intended to provide agencies more choice, while retaining their responsibility to assure compliance with the statute; and it eliminates the potential for confusion and complications in the bidding process by removing the provision that confined the authority to make abatement a condition of sale only to those sales in which the purchasers will not be owner occupants of the property. Further, it should be noted that it is HUD's interpretation that abatement

will not be required if the reuse is not to be target housing.

With regard to disposal of military property, HUD recognizes that there are several statutory, regulatory and policy requirements pertaining to the cleanup, disposal and reuse of BRAC (base realignment and closure) properties and that agencies of the Department of Defense are using provisions in contracts for sale and deeds to assure that lead-based paint hazards in target housing built before 1960 will be abated prior to occupancy. Typical of such contract or deed provisions is the following: "Purchaser agrees that purchaser will be responsible for the abatement of any lead-based paint hazards (as defined in Title X and implementing regulations) by a certified contractor in accordance with Title X and implementing regulations before the use and occupancy of such improvements as a residential dwelling (as defined in Title X)." To document compliance with such a provision, HUD recommends that Federal agencies include as a contractual condition the requirement that the purchaser send a copy of the certified abatement report, including clearance, to the agency.

The Department of the Army recommended that the rule be changed to allow the lead-based paint inspection and risk assessment, as well as the abatement, to be conducted following the sale of the property. HUD is of the opinion that evaluation must be conducted by the Government before the sale for two reasons: (1) Unless the evaluation is done prior to bidding, bidders will be unable to estimate the cost of abatement in pre-1960 properties and to consider that amount in calculating their bids; and (2) for properties built after 1959 and before 1978, the statute explicitly states that "the results of such inspections shall be made available to prospective purchasers."

One advocacy organization argued that the regulations should do away with the artificial distinction they create between HUD-owned property and housing owned by some other Federal agency stating that "the Federal government must provide consistent leadership in ensuring that all housing it sells or * * * disposes of is free of lead hazards." HUD's rationale for distinguishing between HUD Programs and those of other Federal agencies is discussed under Section III.D.5 of this preamble, above.

As mentioned above, in Section III.A.3 of this preamble, the statute states that the requirements of section 1013 do not apply "in the absence of appropriations sufficient to cover the

costs." Therefore this final rule provides in subpart B, at § 35.115, that each Federal agency other than HUD must determine whether appropriations are sufficient.

With regard to a sale of housing owned by Federal agencies other than HUD and in which more than one Federal agency is party to the sale, HUD leaves to the agencies involved the responsibility to determine which Federal agency is responsible for compliance with this subpart.

4. Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD. This subpart sets out minimum requirements, consistent with section 1012, for Federal agencies other than HUD that have housing programs and provide more than \$5,000 of project-based assistance. The subpart basically restates the minimum requirements set out in section 1012. Few comments were received on this subpart of the proposed rule and therefore, the requirements remain largely unchanged.

HUD has modified the proposed-rule requirements for notification of occupants about the results of evaluation and hazard reduction. In the final rule, the notification requirements that apply to this subpart are basically the same as those that apply to HUD-assisted housing instead of the more general proposed version. The Department believes that this change will result in more uniform and complete notification practices among all federally owned and assisted housing, consistent with government-wide regulatory streamlining.

In response to a question from the Department of Agriculture regarding how the "more than \$5,000" figure is to be applied, HUD is indicating in the final rule that the requirements apply to housing that receives annually more than \$5,000 *per project*.

5. Subpart E reserved. This subpart is reserved for possible future rulemaking on lead-based paint poisoning prevention requirements in single family housing covered by an application for HUD mortgage insurance or guarantee. Existing requirements at 24 CFR part 200, subpart O, as revised by this final rule, shall continue to apply to housing covered by an application for single family mortgage insurance.

6. Subpart F—HUD-Owned Single Family Property. This subpart sets out the requirements for HUD-owned single family property. In the proposed rule, two subparts addressed HUD-owned single family property; one subpart set out the requirements when sufficient appropriations were available, and

another set out the requirements for such property in the absence of sufficient appropriations. In the case of sufficient appropriations, the requirements were identical to those of section 1013 of Title X: for housing built before 1960, a risk assessment and lead-based paint inspection followed by abatement of lead-based paint hazards; for housing built between 1960 and 1978, a risk assessment and lead-based paint inspection, followed by disclosure as required under the disclosure law. In the case of insufficient appropriations, the requirements were a visual-assessment for deteriorated paint followed by paint repair and cleanup. The Department has removed the appropriations distinction, and set forth a single policy under subpart F, as explained in Section III.A.3 of this preamble, above.

A childhood lead poisoning prevention advocacy group argued for stronger protection in both the single-family and multifamily subparts, asserting that HUD and other Federal agencies selling residential properties have a "particular responsibility" to ensure that sold properties contain no lead-based paint hazards. The commenter declared, "HUD has complete discretion and ample existing authority to require the evaluation and control of lead hazards before the sale of federally owned housing." An environmental organization joined in all these points, and remarked that "one of the most obvious opportunities for lead hazard control is during turnover, such as that accompanying change of ownership. HUD can, and should, be a leader in assuring that hazards are corrected at the time of sale * * *" The groups called for revisions to include the requirement of a risk assessment and hazard identification and control for any older structure.

In the final rule, the requirements for HUD-owned single family properties being purchased with a mortgage insured by HUD are: a visual assessment to identify deteriorated paint, paint stabilization, and unit-wide clearance. HUD has added the clearance requirement to provide assurance that the work is done properly and that no hazards remain after paint stabilization. Clearance is required only if paint stabilization is conducted. The Department has the option to test deteriorated paint and to confine paint stabilization only to those surfaces with deteriorated lead-based paint. No requirements are established for properties being purchased without a HUD-insured mortgage, except for the requirements of the disclosure rule. Many of the properties purchased

without HUD-insured mortgages are in need of major rehabilitation. The cost of paint stabilization and cleanup would be substantial relative to the value of the property, and there is a high likelihood that subsequent rehabilitation would negate the effectiveness of the cleanup in removing dust-lead hazards. HUD will acquaint purchasers of the risks of generating lead-based paint hazards during rehabilitation; this will occur during the notification and disclosure required by subpart A of 24 CFR part 35. Approximately one-half of all HUD-owned single family properties are purchased with HUD-insured mortgages.

This subpart does not require specific action regarding an environmental intervention blood lead level child. Less than 1 percent of single family properties are occupied when HUD acquires ownership, and, in most cases, HUD-owned single family property is vacant within three months of the transfer of ownership to HUD. Further, HUD-owned single family properties are generally sold within six months after acquisition. Because of the limited occupancy and relatively short HUD involvement with these properties, the Department finds it impracticable to impose environmental intervention blood lead level requirements.

7. Subpart G-Multifamily Mortgage Insurance. This subpart sets out the requirements for the Department's multifamily mortgage insurance programs. As in the proposed rule, applications for mortgage insurance in connection with a refinancing transaction are excluded from coverage if an appraisal is not required under the applicable procedures established by HUD. This exemption, which affects applications under section 223(a)(7) of the National Housing Act, is sensible because the properties are already under mortgage insurance, the mortgage amount is not being changed, there is no equity-take out, and the processing is very streamlined, often involving no on-site inspection by HUD.

The proposed rule required visual assessment for deteriorated paint, paint repair and cleanup for these programs. One commenter said that the HUD regulation will serve as "a model standard of care for the private mortgage insurance industry" and asked that HUD require the implementation of essential maintenance practices, risk assessments and lead hazard controls in all pre-1960 multifamily insured properties, and essential maintenance practices and risk assessments in all other federally insured properties. HUD agrees that rental housing must receive greater protection from lead-based paint

hazards than owner-occupied housing because tenants have less ability than owners to make the repairs necessary to reduce hazards. The Department has revised, therefore, the procedures of the proposed rule to ensure, to the extent HUD considers practicable, that pre-1960 units are free of lead-based paint hazards and that the risk of lead exposure is minimized in housing built after 1959.

A major housing industry organization pointed out that it would not be practicable to implement the proposed-rule requirement that deteriorated paint in a multifamily property be repaired "before the issuance of a firm commitment," because it would compel a mortgagor to expend sums on paint repair "based on chance and speculation." Other factors could prevent issuance of the commitment, or market conditions might prevent closing on the commitment's terms. It was suggested that HUD escrow 125–150% of the estimated cost of the repair work, and permit the paint to be repaired within 90 days after closing, using a repair escrow. The Department has addressed this comment by providing for a repair escrow in the final rule.

In the final rule, a multifamily insured property constructed before 1960 must have a risk assessment before the issuance of a firm commitment, and interim controls of identified lead-based paint hazards must be completed before firm commitment or made a condition of the sale and insurance agreement with sufficient funds escrowed. Also, there must be notices to occupants regarding the results of the evaluation and hazard reduction. The sponsor must also agree to incorporate ongoing lead-based paint maintenance into regular building operations. Ongoing maintenance activities in this final rule are comprised of many of the same elements as the essential maintenance practices recommended by the Task Force. The Department is not requiring reevaluation in housing covered by this subpart, because there is no continuing Federal subsidy. For a multifamily insured property constructed after 1959 and before 1978, no evaluation or hazard reduction is required in the final rule; but for these properties, the sponsor must agree to incorporate ongoing lead-based paint maintenance practices into regular building operations. Due to the limited relationship between the purchaser and the Federal government, HUD deemed it impracticable to include in this subpart requirements for responding to a child with an environmental intervention blood lead level. In cases where

multifamily mortgage insurance is combined with another HUD program (e.g., project-based assistance), the environmental intervention blood lead level requirements for that program would apply.

A new section has been added to this subpart of the final rule to clarify Departmental mortgage insurance policy on lead-based paint in buildings being converted from nonresidential use to multifamily residential use (conversions) and in multifamily residential properties undergoing major rehabilitation. Major rehabilitation is defined as rehabilitation that is estimated to cost more than 50 percent of the estimated replacement cost after rehabilitation. The requirement for both types of property is that all lead-based paint be abated and that the abatement methods be, to the extent practicable, paint removal or component replacement. Enclosure or encapsulation may be used if paint removal or component replacement are not practicable, as for example if they would damage substrate material considered architecturally significant. If the building is an historic property, interim controls can be used at the request of the State Historic Preservation Office (as explained in Section III.E.2.b of this preamble, above).

HUD considers conversions and major rehabilitations a special case because they usually involve major renovation of the interior, including new partitioning, new heating, ventilating, mechanical and electrical systems, plus new windows and doors. Also, conversions are, in effect, newly built housing. Such major construction activity provides an opportunity to remove lead-based paint and thus assure that such properties will be free of any possibility that lead-based paint hazards will be generated in the future as a result of the disturbance of paint during building operations, maintenance or future renovations. The incremental cost of abatement of all lead-based paint relative to the total conversion or rehabilitation cost will, in most cases, be modest, and, once done, the properties will be free of lead-based paint requirements, except to monitor any encapsulation or enclosure treatments or to engage in ongoing lead-based paint maintenance if interim controls are used in an historic property.

8. Subpart H-Project-Based Rental Assistance. This subpart sets out the requirements for the Department's project-based rental assistance programs. The Indian Housing Block Grant Program has been added as a covered program under this subpart.

The legislative history of Title X indicates that it was the intent of Congress that the requirements of a risk assessment and interim controls would apply to housing receiving project-based assistance. Therefore these procedures are required in the final rule, as they were in the proposed rule. The final rule also requires ongoing maintenance and reevaluation to assure that the housing remains lead safe, which is similar to the monitoring requirement in the proposed rule, and it has additional requirements to respond to a case of a child with an environmental intervention blood lead level, as did the proposed rule.

There is ample evidence, however, in the statute and in legislative history that Congress felt that evaluation and hazard reduction requirements should be reasonably related to the level of Federal financial assistance. Therefore, as in the proposed rule, the requirements of a risk assessment and interim controls apply only to multifamily properties receiving more than \$5,000 per dwelling unit annually in project-based rental assistance, calculated as an average of per assisted unit. For all other properties receiving project-based rental assistance under a HUD program, the initial evaluation and hazard reduction requirements are: A visual assessment to identify deteriorated paint, stabilization of deteriorated paint, and clearance (if paint stabilization is required). This less stringent requirement applies to multifamily properties receiving an average of up to and including \$5,000 per assisted dwelling unit annually in project-based rental assistance and all single family properties receiving Section 8 Moderate Rehabilitation or Project-Based Certificate assistance or project-based rental assistance from another HUD program. The stringency of the requirement is less for these properties because the amount of financial assistance is less and because the Department wanted to relieve owners of single family rental property with limited financial resources from the more extensive lead-based paint requirements that apply to owners of large multifamily projects with a high level of rental assistance. On average, the costs per dwelling unit of evaluation and hazard reduction are significantly higher for single family than for multifamily housing.

A commenter believed that the rule's definition of "project-based assistance" could be read to include assistance delivered by local governments using HUD's Community Planning and Development (CPD) program funds. It is the Department's expectation and intent that most housing-related programs

using CPD program funds will be covered by subparts J (rehabilitation), K (acquisition, leasing, support services, and operation), and M (tenant-based rental assistance). However, a CPD-funded program may be covered by subpart H if it is providing rental assistance that is tied to a particular property through contract or agreement.

The Department has decided that the term "project-based" should be given its traditional meaning of housing assistance payment programs where the funding is tied to the residential property and not to the tenant. Further, the requirement for risk assessment only makes sense when it is applied to traditionally "project-based" housing assistance payment programs, where HUD maintains an ongoing relationship with the owner and is able to require a phase-in of risk assessment requirements.

Section 1012 of Title X (at 42 U.S.C. 4822(a)(1)(B)) sets out a schedule in which risk assessments and interim controls must be performed, i.e., all pre-1960 dwelling units before January 1, 1996; 25 percent of 1960–1978 dwelling units by January 1, 1998; not less than 50 percent of 1960–1978 dwelling units by January 1, 2000; and the remainder by January 1, 2002. The Department is not issuing a final lead-based paint rule in time to meet the January 1, 1996 deadline. Therefore, the Department has delayed the start of the risk assessment schedule but is establishing an expedited phase-in schedule that is somewhat simpler than that in the statute: September 17, 2001, for properties constructed before 1960, and September 15, 2003, for properties constructed after 1959 and before 1978.

This risk assessment phase-in schedule applies only to multifamily properties receiving more than \$5,000 per unit annually in project-based rental assistance. The schedule for all other properties covered by subpart H is based on the schedule of initial or periodic inspections.

The revised schedule for risk assessments is based on the comments received on the proposed rule's risk assessment schedule, and it also takes into account the delay in meeting the deadlines established by the Congress. It is HUD's view that the revised schedule still provides adequate time for education and training in order to implement the new technical standards, requirements and procedures. The proposed rule provision that allows the Secretary to develop an alternative schedule, if necessary, remains in this subpart. The provision was included to provide the Department with flexibility in working with HUD clients whose

housing assistance payment contracts are due to expire close to the required date for completing risk assessments—an issue raised by commenters.

The final rule does not include the proposed rule's requirement that an owner develop a hazard reduction plan. The hazard reduction plan, a concept suggested by the Task Force, was intended to provide the owner with flexibility to design his or her own schedule for completing interim controls. However, it was perceived by commenters and by the Department to be a paperwork requirement that could be a burden for owners and an unsolvable administrative problem for the Department. HUD has established, therefore, the following schedule for interim controls: Dwelling units occupied by families with children under 6 years of age and common areas servicing those units shall have interim controls completed no later than 90 days after the completion of the risk assessment for those units. Dwelling units not occupied by families with children under 6 years of age, common areas servicing those units, shall have interim controls completed within 12 months of the completion of the risk assessment for those units. If the owner chooses to conduct standard treatments rather than a risk assessment and interim controls (see "Options" above), standard treatments for units occupied by children of less than 6 years of age must be completed no later than 90 days after the final date for completion of a risk assessment, and for other units no later than 12 months following the final date for completion of a risk assessment. Completion of standard treatments as well as interim controls includes clearance testing.

These policies regarding interim controls and the standard treatment option must be complied with only by owners of properties receiving more than \$5,000 per unit annually in project-based rental assistance. Other properties must complete paint stabilization and clearance, if needed, within 30 days of receiving notification of the results of the visual assessment.

HUD assumed in drafting the proposed rule that multifamily properties receiving more than \$5,000 per unit annually in project-based rental assistance would be subject to the same lead-based paint requirements that currently apply until they are required to comply with this new regulation. Commenters pointed out that more clarity and precision is needed on requirements during the phase-in period. Therefore the Department is adding to this subpart a paragraph on transitional requirements that will be

effective on September 15, 2000. Until the phase-in date that is applicable to a property, or until the owner conducts a risk assessment, whichever is first, the owner must practice ongoing lead-based paint maintenance. This consists mainly of three activities: (1) Visually assessing, at least once a year, the condition of painted surfaces to identify deteriorated paint; (2) stabilizing any deteriorated paint; and (3) using safe work practices when performing any maintenance or renovation that disturbs paint that may be lead-based paint.

As explained in Section III.D.6 of this preamble, above, environmental intervention blood lead level requirements that apply to this subpart have been revised.

9. Subpart I—HUD-Owned and Mortgagee-in-Possession Multifamily Property. In the proposed rule, two subparts addressed the disposition of HUD-owned multifamily property; one subpart set out the requirements that would apply when sufficient appropriations were available to comply with the statutory requirements of section 1013, and another set out the requirements in the absence of sufficient appropriations. The section 1013 requirements are: for pre-1960 properties, an inspection and risk assessment followed by abatement of lead-based paint hazards, and, for properties built after 1959 and before 1978, an inspection and risk assessment followed by disclosure. In the absence of sufficient appropriations, the proposed rule called for a visual evaluation to identify deteriorated paint followed by repair of deteriorated paint and cleanup of the worksite. Additional requirements were included in the case of a child with an environmental intervention blood lead level, and monitoring of paint conditions was required for properties retained in the HUD-owned inventory for more than one year. No distinction was made for the period of construction, e.g., before or after 1960.

In the final rule, the Department has removed the appropriations distinction, and set forth a single policy under this subpart, as discussed under Section III.A.3 of this preamble, above. The Department's intent in setting lead-based paint policy for HUD-owned and mortgagee-in-possession multifamily property in this final rule is to make the requirements similar to those for multifamily properties receiving more than \$5,000 per unit annually in project-based rental assistance while recognizing the intent of Congress as expressed in section 1013 of Title X. HUD finds no reason to require of itself a less stringent standard than it requires

of private owners of assisted multifamily housing. The Department must conduct a lead-based paint inspection and risk assessment before publicly advertising the property for sale, followed by interim controls of all identified lead-based paint hazards. A lead-based paint inspection is required as well as a risk assessment so information on the location of lead-based paint can be given to the purchaser pursuant to the disclosure rule at subpart A of 24 CFR part 35, who can then use it to assure that lead-based paint hazards are not generated inadvertently during future maintenance or renovation work. For dwelling units occupied by families with children of less than 6 years of age and common areas servicing such units, interim controls shall be completed no later than 90 days after the completion of the risk assessment; while dwelling units not occupied by families with children younger than 6 and associated common areas must have interim controls and clearance completed no later than 12 months after the risk assessment. If a unit becomes newly occupied by a family with a child of less than 6 years of age or such a child moves into a unit, interim controls must be completed within 90 days after said move-in if they have not already been completed. The schedule for completion of standard treatments is also the same as for multifamily housing receiving more than \$5,000 per unit annually in project-based rental assistance. The Department must provide a notice to occupants if evaluation or hazard reduction is undertaken.

If conveyance of the title by the Department at a sale of a HUD-owned property or a foreclosure sale caused by the Secretary when HUD is mortgagee-in-possession occurs before the required schedule for completion of interim controls or standard treatments, the Department must complete the hazard reduction before conveyance or foreclosure sale, or the Department shall be responsible for assuring that interim controls are carried out by the purchaser according to the following schedule: (1) In units occupied by families with children of less than 6 years of age and common areas servicing such units, no less than 90 days after the date of closing of the sale or 90 days after a family with a child less than 6 moves in; and (2) in all other units and associated common areas, no later than 180 days after the closing of the sale. The schedule for completion of hazard reduction by the purchaser is keyed to the closing date, because it is only at that time that the purchaser can begin

to make firm arrangements to conduct the treatments; but the duration of time from the closing date is somewhat less than that which HUD must meet in relation to the risk assessment date because of concern that the risk assessment may go out of date. Similar to requirements for multifamily properties receiving project-based assistance, ongoing maintenance and reevaluation are required under this subpart if the Department retains ownership of the property for more than 1 year.

This subpart requires specific actions in response to a child with an environmental intervention blood lead level; the requirements are similar to those for housing receiving project-based rental assistance.

10. Subpart J—Rehabilitation. This subpart sets out the requirements for the Department's programs which provide assistance for housing rehabilitation. The majority of this assistance is provided through programs administered by the Office of Community Planning and Development (CPD), principally the Community Development Block Grant program and the HOME program. Other rehabilitation assistance is provided under the Flexible Subsidy-Capital Improvement Loan Program (CILP) and the Mark-to-Market Program for multifamily property. Rehabilitation assistance may also be provided under the Indian Community Development Block Grant Program and the Indian Housing Block Grant Program. This subpart does not apply to the following HUD programs that may have rehabilitation activities: Mortgage insurance programs, the Section 8 Moderate Rehabilitation program, and the public housing modernization programs. Those programs are covered by other subparts.

The requirements of Title X pertaining to federally assisted residential rehabilitation are quite specific. The statute sought to take advantage of the rehabilitation event as a cost-effective opportunity to sharply reduce lead-based paint hazards in the assisted stock. Many types of rehabilitation, such as window replacement or installation of new walls or doors, often reduce lead-based paint hazards. Section 1012 requires at a minimum: (1) Inspection for the presence of lead-based paint prior to federally-funded renovation or rehabilitation that is likely to disturb painted surfaces; (2) interim controls of lead-based paint hazards in housing receiving less than \$25,000 per unit in Federal rehabilitation assistance; and (3) abatement of lead-based paint hazards

in housing receiving more than \$25,000 per unit.

Among those commenters on the proposed rule who directed their remarks towards specific HUD programs, the rehabilitation programs drew by far the most attention, largely because compliance was perceived as complex and costly. Some commenters felt that the rule would reduce the impact that rehabilitation assistance funds can have on the community and would make smaller communities determine that rehabilitation projects are "not worth it." Pointing out that some local rehabilitation assistance is provided in the form of a loan, local agencies feared that they would have difficulty getting homeowners to borrow the additional funds needed to comply with the lead-based paint hazard reduction requirements. As a long time proponent and funder of housing rehabilitation, the Department understands and shares these concerns and has attempted to provide local agencies with ways to incorporate as efficiently as possible the statutory requirements of Title X into their rehabilitation programs.

At the outset, it should be noted that rehabilitation that does not disturb a painted surface is exempt from this rule. Thus, for example, roof repairs or heating system improvements are likely to be exempt unless such activities disturb painted surfaces.

In both the proposed rule and the final rule, HUD has interpreted the statutory requirement of a lead-based paint inspection to apply only to surfaces to be disturbed by rehabilitation. In the proposed rule this procedure was called a "limited paint inspection." In response to concerns of EPA regarding possible confusion if the word "inspection" is used differently than in EPA regulations, HUD is using the term "paint testing" instead (see Section III.E.2.c. of this preamble, above). Furthermore, HUD provides the option of either conducting paint testing of the painted surfaces to be disturbed or replaced during rehabilitation or presuming that all such painted surfaces are coated with lead-based paint. Paint testing is not necessary if a complete lead-based paint inspection has been conducted of the property.

In the final rule as well as in the proposed rule, the Department has added a category of housing receiving up to and including \$5,000 per unit in Federal rehabilitation assistance to allow a lower level of lead-based paint treatment for rehabilitation of modest expenditure. HUD's intent in setting requirements for housing in this category of assistance is to allow low

level rehabilitation to occur without incurring the full expense of the statutory lead-based paint requirements but at the same time to minimize the possibility of exposure to lead-based paint hazards as a result of the assisted rehabilitation work. This has been referred to as a "do-no-harm" policy. The impact of this policy is significant. HUD estimates that the average amount of rehabilitation assistance per unit from the Community Development Block Grant program is between \$5,000 and \$6,000. The proposed rule would have required visual assessment to identify deteriorated paint on surfaces to be disturbed by rehabilitation, repair of such deteriorated paint surfaces, and cleanup of the worksite. The final rule requires paint testing of surfaces to be disturbed or presumption of lead-based paint, and, if the paint is found or presumed to be lead-based paint, the following are required: safe work practices (as specified in subpart R of the final rule) during rehabilitation, repair of any paint disturbed during rehabilitation, and clearance of the worksite. The main differences between the proposed and final rules are (1) the more explicit emphasis on safe work practices during rehabilitation as the way to avoid causing exposure to lead-based paint hazards, and (2) the clearance requirement, which assures that no lead-based paint hazards are left at the worksite. The worksite consists of only those rooms or areas where the rehabilitation is conducted. Safe work practices include the following: Not using prohibited practices of paint removal, occupant protection and worksite preparation, and specialized cleaning. These practices were included in the requirements of the proposed rule for paint repair. HUD estimates that the average cost per unit of complying with today's rule for housing receiving no more than \$5,000 in Federal rehabilitation assistance will be approximately \$150 for single family and \$115 for multifamily units.

For housing receiving more than \$5,000 and up to and including \$25,000 in Federal rehabilitation assistance, the final rule makes one significant change to the requirements in the proposed rule (which derive directly from the statute), and that is the standard treatment option. This option allows the use of standard treatments (as suggested by the Task Force; see Section III.D.3 of this preamble, above) instead of conducting a risk assessment and interim controls. If standard treatments are used, no evaluation is required. Standard treatments include stabilization of deteriorated paint, the provision of

smooth and cleanable horizontal surfaces, the correction of conditions causing rubbing, binding or crushing of painted surfaces, and the treatment of bare soil—all using safe work practices and followed by clearance. When conducted as a part of rehabilitation, standard treatments must include stabilization of paint disturbed as a result of the rehabilitation work, and clearance must be conducted after completion of rehabilitation, as is the case if interim controls are conducted. Standard treatments may be an appropriate option in housing in which experience indicates there is a high likelihood of extensive lead-based paint hazards. In such housing the risk assessment would just confirm what is expected. Standard treatments may also be appropriate in housing that is otherwise in good condition but is undergoing rehabilitation in one or more confined areas, in which case the extent of deteriorated paint, surfaces that are not smooth and cleanable, and dust-generating conditions might be minor. Another potential advantage of standard treatments is that they are a known and limited group of activities that crews can be trained to perform efficiently. A possible disadvantage is that such treatments may be performed unnecessarily on surfaces without lead-based paint, because no testing is conducted.

In Title X, the statutory requirement for hazard reduction in properties receiving more than \$25,000 per unit in Federal rehabilitation assistance is "abatement of lead-based paint hazards in the course of substantial rehabilitation projects." In the proposed rule, the statutory phrase "in the course of * * * rehabilitation" was interpreted to mean that lead-based paint hazards on surfaces to be disturbed by rehabilitation were to be abated (i.e. permanently eliminated), while hazard reduction (which includes less costly, but more temporary, interim controls as a minimum) could be conducted on lead-based paint hazards on other surfaces. This interpretation was questioned by those who thought the Congress meant that all lead-based paint hazards should be abated in these major rehabilitation projects, regardless of whether the surface was or was not being disturbed by the rehabilitation. Supporters of the proposed-rule interpretation claimed that the cost of abating lead-based paint hazards on the exterior of old houses with wood siding would be exorbitant. In the final rule, the Department has revised the proposed-rule requirement to require abatement of all lead-based hazards

identified by paint testing and/or a risk assessment and any lead-based paint hazards created as a result of the rehabilitation work, *except* that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

HUD believes that the exemptions and options in this rule provide designated parties with enough flexibility to achieve the statutory objectives with maximum efficiency. For instance, in very old housing with a high likelihood of extensive lead-based paint and undergoing Federally assisted rehabilitation of between \$5,000 and \$25,000 per unit, the grantee, participating jurisdiction or CILP recipient may find it most efficient to forego the evaluation, presume the presence of lead-based paint and lead-based paint hazards, and conduct standard treatments using trained and efficient crews. Conversely, if the presence of lead-based paint or lead-based paint hazards is questionable, a grantee, participating jurisdiction or CILP recipient may choose to test the paint and conduct a risk assessment to determine whether it is necessary to treat all, some or any of the paint as lead-based paint.

Beyond the broad objections regarding the cost impact of the rule, commenters had many questions and concerns. A frequent complaint among commenters was their inability to determine, from the proposed rule, "exactly what rehabilitation is, what are rehab soft costs, and exactly what activities are to be used to determine the various types of costs." In the final rule, HUD has adopted the policy that the determination of the category of assistance (up to and including \$5,000, more than \$5,000 and up to and including \$25,000, or more than \$25,000) will be based on the hard costs of ordinary rehabilitation, not including the additional costs of complying with this rule. The Department has made efforts to clarify the definition of hard and soft rehabilitation costs through the use of examples.

A commenter also questioned the Department's decision not to include additional provisions for dwellings occupied by children with environmental intervention blood lead levels under rehabilitation-related rules. In general, the requirements for units receiving rehabilitation assistance of more than \$5,000 (risk assessment and either interim controls or abatement of lead-based paint hazards) are similar to or more stringent than the activities that would be required in the case of an environmental intervention blood lead level child. Also, rehabilitation

assistance is usually provided at one point in time, so there is often no continuing financial involvement of HUD with the property. However, in the case of a multifamily property receiving Federal rehabilitation assistance under the HOME program or the Flexible-Subsidy-CILP program, the grantee, participating jurisdiction or CILP recipient must require the property owner to incorporate ongoing lead-based paint maintenance activities into regular building operations. Ongoing lead-based paint maintenance practices are designed to ensure that new lead-based paint hazards do not occur in the property.

A commenter representing developers noted that "subrecipient" was defined to exclude an owner or developer receiving rehabilitation assistance. "Thus the responsibility of performing subrecipient duties must fall on the local government grantee.* * *" The commenter urged that the final rule permit duties to be delegated to the owner or developer, with only monitoring and oversight functions necessarily remaining with local government grantees. Although many of the requirements under this subpart refer to the grantee or participating jurisdiction, as is the case with many CPD programs, it is the Department's intent that the grantee or participating jurisdiction may require virtually all of these functions to be performed by a subrecipient or other designated party. The exclusion of an owner or developer, however, from the definition is retained in the final rule to permit at least some degree of independent oversight of the use of public funds.

Another funded agency commenter said that the rule's requirements would "cripple" the agency's ancillary programs. The commenter stated that the agency provides funds to an organization that implements an emergency rehabilitation program for county residents. This program, the commenter argued, is staffed by volunteers, and will not be able to comply with the extensive lead-based paint requirements. The Department has attempted to respond to this concern by tailoring the requirements to the amount of Federal assistance. While even the minimum requirements of the \$5,000-or-less category may require workers to undergo a modest amount of training, such training may be necessary to protect children who may live in the unit, and it should not be inefficient where such workers are volunteers who work on multiple projects.

In the final rule, the Department has established separate requirements for insular areas operating rehabilitation

programs under the HOME and Community Development Block Grant (CDBG) programs. Insular areas include the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. The requirements for insular areas are less stringent than the regular requirements for properties receiving more than \$5,000 per dwelling unit in Federal rehabilitation assistance. There is no difference in requirements for properties receiving up to \$5,000 per unit in rehabilitation assistance. The rationale for the lesser requirements is that insular areas do not currently have the capacity to comply with more stringent requirements applicable to other CDBG grantees and HOME participating jurisdictions, nor is it likely that capacity can be developed in the foreseeable future. The remote location of the insular areas, their small populations and the limited volume of HOME- and CDBG-funded housing activity makes the development of a competitive lead "industry" (i.e., certified lead inspectors, risk assessors and contractors) unlikely.

For properties receiving more than \$5,000 per unit in rehabilitation assistance, the final rule requires, in insular areas, stabilization of all deteriorated paint and paint being disturbed by rehabilitation instead of the normal requirements of a risk assessment and interim controls or abatement of lead-based paint hazards. (As is always the case, stabilization is not required of paint found by a certified lead-based paint inspector not to be lead-based paint.) Safe work practices must be used, including occupant protection, worksite preparation and clearance. HUD believes that clearance is very important and that, if laboratory analysis of dust samples is not available on an island, it can be obtained at reasonable cost through air mail of samples and electronic response by the laboratory, as is often the practice elsewhere in the United States.

These separate requirements for rehabilitation assistance of more than \$5,000 per unit in insular areas are protective of children and other occupants. They are the same as those in the final rule for units receiving tenant-based rental assistance (subpart M), assistance for acquisition, leasing, support services or operation (subpart K), and HUD-owned single family properties at disposition (subpart F). However, when undertaking Federally-funded rehabilitation, the Department encourages insular areas to use, to the maximum extent feasible and in consultation with their respective Field Office, the more rigorous and thorough

methods and procedures required of other grantees and participating jurisdictions in subpart J.

Finally, subpart J requires that all occupants shall be provided with the lead hazard information pamphlet by the grantee, participating jurisdiction or CILP recipient (or their representative). In all cases where evaluation or hazard reduction or both are undertaken, each grantee, participating jurisdiction or CILP recipient shall post or distribute a notice to occupants of the results of the evaluation. The grantee, participating jurisdiction or CILP recipient shall also post or distribute a notice of the results of the hazard reduction activities.

11. Subpart K—Acquisition, Leasing, Support Services, or Operation. This subpart sets out the requirements for certain CPD programs and the Indian Community Development Block Grant program and the Indian Housing Block Grant program when such programs are providing Federal funding for acquisition, leasing, operating or support services for a residential property. In the proposed rule, this subpart was entitled “Community Planning and Development (CPD) Non-Rehabilitation Programs.” The title has been changed because of the addition of Indian programs to the coverage of the subpart and because the new title is more descriptive than the term, “non-rehabilitation,” used in the proposed rule. The main CPD programs that fund activities covered by this subpart are the HOME program, the Community Development Block Grant program, the Supportive Housing program, the Emergency Shelter Grant program, and Housing Opportunities for Persons with AIDS (HOPWA). Persons with AIDS are considered persons with disabilities, so assisted housing for them is exempt from the rule except when there is a child of less than 6 years of age who resides or is expected to reside in the dwelling unit.

Examples of the types of housing assistance to which subpart K applies are acquisition or leasing of a homeless facility, downpayment assistance, mortgage and utility payments for persons with AIDS (if a child under 6 resides), and payment of security deposits. Other examples are payment of the day-to-day operating expenses of housing for the homeless and assistance for various support services that are provided on site at a residential facility, such as child care, employment assistance, outpatient health care including drug treatment or counseling, case management, nutritional counseling, security arrangements, and assistance in getting permanent housing.

For properties built between 1950 and 1978, the lead-based paint requirements for these activities in the proposed rule were visual assessment, paint repair and cleanup. For properties built before 1950, the requirements were visual assessment, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint-repair worksite if the dust testing does not find dust-lead hazards. In certain instances, ongoing monitoring of paint conditions was required. For all activities, provision of the pamphlet developed by EPA under TSCA section 406 was required.

Some commenters expressed concern regarding the adverse impact that these requirements would have on small-grant acquisition assistance programs. The Department believes that families receiving such assistance should be able to move into lead-safe housing. HUD has a statutory responsibility under the Lead-Based Paint Poisoning Prevention Act to establish procedures that achieve that objective to the extent practicable.

In the final rule, as in the proposed rule, HUD has set requirements for this subpart that are the same in most aspects as those for tenant-based rental assistance, which is covered by subpart M. The basic strategy set forth in the final rule consists of a visual assessment to identify deteriorated paint, stabilization of deteriorated paint, clearance of the dwelling unit, and, where there is a continuing and active financial relationship with the property, ongoing lead-based paint maintenance. This procedure is the minimum needed to assure that the housing is lead-safe. Many of the households inhabiting residential properties assisted through programs covered by subpart K include young children. Many of the assisted households are homeless. A basic level of protection against exposure to lead-based paint hazards is essential.

In the final rule, HUD has changed the proposed rule's requirement of paint repair to paint stabilization, as it has throughout the final rule. This is explained above in Section III.D.9 of this preamble. Also, the dust testing requirement in pre-1950 housing has been eliminated, and in its place the Department has required clearance of the dwelling unit, as it has for all other HUD-assisted and HUD-owned housing. Clearance is required, however, only if paint stabilization is required. Also, the final rule eliminates the proposed rule's distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978

housing. As in the proposed rule, the grantee or participating jurisdiction must provide the lead hazard information pamphlet to all occupants except those who have received the pamphlet under the disclosure rule. Also, each grantee or participating jurisdiction must provide a notice to occupants describing the results of the clearance examination. The notice requirement does not apply to the visual assessment but does apply to clearance results after paint stabilization, because the clearance report provides known information about the presence or absence of lead-based paint hazards. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

The Department has given the grantee or participating jurisdiction the discretion to determine whether the cost of paint stabilization and clearance is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee, based on program requirements and local program design. This helps to ensure maximum flexibility for local authorities and is consistent with HUD's reinvention initiative. Because the relationship between the HUD grantee or participating jurisdiction and the property owner or developer is often a one-time event, HUD deemed it impracticable to include special requirements in the case of a child with an environmental intervention blood lead level.

12. Subpart L—Public Housing Programs. This subpart sets forth requirements for eliminating lead-based paint hazards in public housing. The proposed rule included Indian housing under this subpart, but, as explained above in Section III.A.8 of this preamble, Indian housing programs are now covered under other subparts of this rule. Section 1012 of Title X does not specifically add new requirements to public housing. The Senate Committee Report states that Congress did not intend the changes to the Lead-Based Paint Poisoning Prevention Act introduced by Title X to pose a barrier to ongoing efforts by public and Indian housing agencies to conduct risk assessments, lead-based paint inspections and abatement activities. According to the Report, “the changes made by Title X to the public housing provision of the LPPA are intended merely to conform the terminology of Title X's definition of terms” (Senate Report 102–332, page 118). Nevertheless, in order to consolidate all

of the lead-based paint requirements for HUD in a single place, the Department is including subpart L for public housing in this rulemaking. This subpart implements the requirements set out in 42 U.S.C. 4822(d)(1)(3) prior to Title X; where necessary, however, the Department has modified these requirements in order to be consistent with the intent of Title X. Such modifications are noted below.

The Lead-Based Paint Poisoning Prevention Act requires PHAs to complete lead-based paint inspections of all pre-1978 family developments by December 6, 1994. This statutory requirement has existed since 1987. HUD has data indicating that most developments have been inspected, as mandated by Congress. Those that have not must be inspected no later than the effective date of this final rule, which is September 15, 2000. Where a PHA has not complied with the statutory requirement to complete lead-based paint inspections of pre-1978 family units, the PHA is eligible only for Emergency Modernization or work needed to complete the inspections as described in 24 CFR 968.210. The Lead-Based Paint Poisoning Prevention Act also has required for many years that PHAs abate all lead-based paint found in the inspections. This is a continuing activity conducted at the time of modernization.

The Department's primary concern in developing this rule is with the safety of occupants of housing developments that have lead-based paint but have not yet been abated. In such cases, modernization (and hence abatement) may be years or decades away, and nothing is required in the interim to control lead-based paint hazards. In the proposed rule, HUD set forth the following additional requirements for these developments with the goal of assuring that they are lead-safe: visual assessment for deteriorated paint, matching the visual assessment with the lead-based paint inspection to identify the locations of deteriorated lead-based paint, dust and soil testing to determine the presence of dust-lead hazards or soil-lead hazards, and interim controls of lead-based hazards found.

A principal concern of commenters was the financial burden, the asserted "unfunded requirement," the rule would place on public housing agencies. Based on these financial hardships, a group representing public housing agency interests recommended eliminating the rule's new requirements (dust and soil testing and interim controls) as they pertained to public and Indian housing. Acknowledging the need for addressing the issue of lead in

the environment, one commenter asserted that most local housing agencies already had made a good faith effort to comply with the requirement to complete lead-based paint inspections by the end of 1994.

A more specific issue addressed by some commenters was the acceptance by the proposed rule of dust and soil testing by non-certified personnel. Some commenters objected to this because it appeared to violate the requirements of EPA's regulations implementing TSCA sections 402 and 404. Others urged HUD to establish a major training activity to assure that public housing maintenance staff would be able to conduct such sampling properly and interpret the results accurately.

In the final rule, HUD is requiring that, instead of soil and dust testing by non-certified personnel, risk assessments must be conducted by certified risk assessors in developments with lead-based paint that has not yet been abated. The Department has concluded after careful consideration that it would be wasteful and ineffective to allow PHAs to skirt the EPA certification requirements for dust and soil testing. For further discussion of this issue, see Section III.D.8 of this preamble, above.

Another question has to do with the reliability of the lead-based paint inspections that have already been conducted. In a study of prior inspections in public housing, HUD has found that approximately 13 percent of the inspections were of questionable accuracy. In the proposed rule HUD, therefore, encouraged PHAs to engage in quality control activities to determine whether a lead-based paint inspection is reliable. The final rule continues this policy. HUD's Office of Public and Indian Housing issued a detailed Notice in 1995 (PIH 95-8(HA)) explaining how quality control can be implemented for lead-based paint inspections that have already occurred.

The final rule also continues the proposed rule requirement that occupants be informed of the results of all evaluation and hazard reduction activities, and it continues the additional requirements that are triggered if a child with an environmental intervention blood lead level is identified in a public housing development. The basic requirement is that a risk assessment and interim controls be completed in the dwelling unit quickly. A more detailed explanation of the requirements for response to a child with an environmental intervention blood lead level is provided above in Section III.D.6 of this preamble.

Under this subpart the Department has included references to the liability insurance provisions found in the public housing program requirements. Also, the rule describes the circumstance under which a PHA may use financial assistance received under the modernization program for the evaluation and reduction of lead-based paint hazards, and references sections of the public housing regulations for additional information on eligible costs.

13. *Subpart M—Tenant-Based Rental Assistance.* This subpart sets out lead-based paint requirements for the Department's tenant-based rental assistance programs, including those operated under the HOME, Housing Opportunities for Persons With AIDS (HOPWA), Shelter Plus Care, and Indian Housing Block Grant programs as well as Section 8. Because there are different types of local organizations that administer tenant-based rental assistance under HUD programs, this subpart uses the general term "designated party" to refer to housing agencies, grantees, participating jurisdictions or Indian Housing Block Grant recipients. Unlike other subparts, this subpart applies only to housing occupied by families with children of less than 6 years of age.

The lead-based paint requirements for tenant-based rental assistance in the proposed rule were virtually the same as those proposed for the subpart now titled Acquisition, Leasing, Support Services, or Operation (formerly CPD Non-Rehabilitation). For properties built between 1950 and 1978, visual assessment, paint repair and cleanup; for properties built before 1950, visual evaluation, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint repair worksite if the dust testing does not find dust-lead hazards.

Comments ranged from declarations that it was illegal under the statute to apply the rule to tenant-based programs to assertions that stringent lead-control standards must be applied, *especially* in the case of the tenant-based programs. Commenters opposed to the requirements argued that there exists a "statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance." One commenter asserted that only landlords agreeing to accept assistance under a section 1011 grant (i.e., the HUD Lead-Based Paint Hazard Control Grant program) are required to adhere to requirements associated with lead-based paint testing and control. HUD disagrees. The Department's response to the question of the legality

of imposing lead-based paint requirements on tenant-based rental assistance programs is discussed above, under Section III.A.2. of this preamble.

Many commenters discussed the fair housing implications of the rule because of its focus on families with young children. Some commenters advocated simply relocating a family to another unit upon discovery of a lead hazard (leaving the unit available for other families without small children). Others advocated making special funding available in pilot programs for particular localities, to finance any necessary control or abatement activities, or providing tax or other special incentives to owners faced with unexpected repair costs arising out of the discovery of a lead hazard. Still other commenters advocated coverage for all tenant-based units without regard to family makeup.

The Department believes limiting the requirements of subpart M to dwelling units in which a family with a child less than age 6 resides is a reasonable policy because of the unique ability of designated parties to identify changes in the composition of an assisted family through the income certification process. In addition, the designated parties are able to monitor the property owner's compliance with lead-based paint requirements through initial and periodic dwelling unit inspections. These two safeguards will help to ensure that a designated party will know whether a child of less than 6 years of age resides in a dwelling unit. An owner who refuses to rent a dwelling unit to a family with a child under the age of 6 may be in violation of the provisions of the Fair Housing Act prohibiting discrimination on the basis of familial status. The same possibility applies to a designated party that requires that a family with a young child make an involuntary relocation. (See the discussion of the requirements of anti-discrimination statutes in Section III.D.7 of this preamble above.)

Comments included repeated expressions of fear that the cost of compliance with this subpart would result in a "shortfall" of housing available to families with tenant-based rental assistance, and assertions that new contractual duties were being imposed on owners that were not a part of the owners' existing agreements with the designated party. Landlords will be discouraged from participating, commenters claimed, and the rule will drive up their operating costs, without any certainty of additional compensation. Both rural housing authorities and agencies in the largest cities worried about tight rental markets

and the inability of participating families to locate lead-safe units.

Taking the more protective point of view, other commenters noted that the rule's requirements for tenant-based programs were less demanding than those set out for project-based programs and advocated applying the stricter standards uniformly. Some commenters urged that HUD impose the same protection that the Task Force on Lead-Based Paint Hazard Reduction and Financing recommended for all private units. A health department believed that because housing assistance programs were shifting toward tenant-based assistance, "the most stringent of requirements probably should be on this (type) of housing."

In considering how to respond to these comments, HUD took into account the recommendations of the Task Force. In their report, the Task Force recognized most of the concerns expressed by commenters on the proposed rule, not the least of which was the fear that expensive standards could reduce participation in the program by private landlords. It is noteworthy that the Task Force concluded that lead-based paint requirements for tenant-based assistance programs should be similar to the standards recommended by the Task Force for rental housing in general.

Under current regulations, HUD requires that designated parties administering tenant-based rental assistance programs visually inspect pre-1978 dwelling units that are to be occupied by children under the age of 6 to identify defective paint, and that owners correct any defective paint surfaces and clean up the worksite carefully. Except for the explicit cleanup requirement, which was issued in 1995, these requirements have been part of the Housing Quality Standards (HQS) for over ten years.

In the final rule, as in the proposed rule, HUD is retaining the requirement of a visual assessment to identify deteriorated paint to be performed usually by a housing quality inspector at initial and periodic inspections. (There is no effective difference between the meaning of "defective paint," the term used in the current regulations, and "deteriorated paint," which is the term used in Title X.) Also, the final rule retains the proposed rule requirement that such inspectors be trained to perform the activities required of them by this rule. The Department is developing a training course that will enable such inspectors to meet this requirement. The purpose of the course is to assure that persons performing the visual assessment understand why they

are doing it, what they should look for, and why deteriorated paint should be stabilized. The course was pilot tested in 1998 and will be available well before the effective date of this final rule.

The basic concept of treating defective paint is being retained, but the final rule modifies the details of the standard applying to that requirement. First, as explained above in Section III.D.4 of this preamble, the minimum area of defective paint that must be treated has been changed. The minimum that was promulgated in the Housing Quality Standards in 1995, and was included in the proposed rule, is being withdrawn at the request of many housing agencies, health departments and other commenters who found it complicated, difficult to administer, and contrary to the purpose of the regulations. As was the case before 1995, all deteriorated paint must be treated.

Second, the painted surfaces that are subject to the rule have changed.

Current requirements apply to all interior surfaces within the dwelling unit, the entrance and hallway serving the unit in a multi-unit building, and exterior surfaces up to five feet from the floor or ground that are readily accessible to children under 6 years of age, but excluding outbuildings. The proposed rule was the same as the current regulations, except for the addition of playground equipment and fences surrounding an exterior play area. The final rule sets no limits to the surfaces covered by the requirement, saying only that the designated party shall conduct a visual assessment of "all painted surfaces." It is HUD's intent that such surfaces shall include all surfaces within the dwelling unit, all surfaces on the exterior of the structure regardless of height from the ground, and all common areas servicing the dwelling unit. The definition of "common area" in the rule includes all areas on the property available for use by occupants of more than one unit, including outbuildings such as garages.

Third, in the final rule the details regarding the method of treatment are somewhat different than those in current regulations and in the proposed rule. Current regulations require removal of defective paint (using specified acceptable methods) and covering surfaces "with durable materials with joints and edges sealed and caulked as needed to prevent escape of dust." The proposed rule called for "paint repair", which was repainting with proper surface preparation using safe practices and including occupant protection and cleanup. The final rule requires "paint stabilization," which is the same as

paint repair except that it includes the additional requirement that any physical defect in the substrate that is causing deterioration be repaired. Such defects include dry-rot, rust, moisture, crumbling plaster, and missing siding or other components that are not securely fastened. As discussed above in Section III.D.9 of this preamble, HUD is uniformly requiring paint stabilization across this final rule, because otherwise the treatment of the deteriorated paint will be ineffective.

The fourth change to the standard for treating deteriorated paint is the requirement in the final rule that there be clearance of the dwelling unit if paint stabilization is conducted. As explained above, this is also a uniform requirement across this rule whenever hazard reduction is conducted. It does not exist in current regulations nor was it required for tenant-based rental assistance programs in the proposed rule. HUD believes unit-wide clearance is an essential factor in establishing that a dwelling unit is lead safe, and therefore is requiring that clearance tests be conducted by certified risk assessors or certified lead-based paint inspectors. The final rule eliminates the dust testing requirement for pre-1950 housing that was in the proposed rule and the distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978 housing.

All occupants shall be provided the lead hazard information pamphlet by the owner, except that a pamphlet does not have to be provided if it has already been provided by the owner or other designated party pursuant to the disclosure rule. Also, the owner must provide a notice to occupants describing the results of the clearance examination. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

HUD estimates in the Economic Analysis for this rule that the average cost of the new requirements imposed by this subpart will be approximately \$250 per unit in single family units and \$100 per unit in multifamily units during the first year after the effective date. In subsequent years, costs will doubtless be less. Net benefits are clearly positive. For single family units, the estimated average net benefit (benefits minus costs) is \$850 per unit using a discount rate of three percent for increased lifetime earnings and \$125 per unit using a seven percent rate. For multifamily units, the comparable net benefits are \$840 and \$150. For further

information on costs and benefits of the rule, see Section VI. of this preamble, below.

Another subject of public comment was the policy on responding to the existence of an environmental intervention blood lead level child in the home of a family receiving tenant-based rental assistance. Some commenters felt that the proposed policy of requiring a risk assessment and interim controls would reduce participation in the program by property owners. HUD believes that compliance with the basic policy of paint stabilization and unit clearance, combined with ongoing maintenance is so inexpensive and will so reduce the likelihood of environmental intervention blood lead level cases in these dwellings that landlords will not leave the program. To ensure that the designated party is aware of environmental intervention blood lead level cases in assisted families, the final rule clarifies the requirements of the proposed rule for exchanging information between public health departments and designated parties and matching environmental intervention blood lead level addresses with those of assisted families. (See further discussion in Section III.D.6 of this preamble, above.) Also, for purposes of clarity, the rule states that if a dwelling unit does not comply with the requirements of this rule, the unit does not meet Housing Quality Standards (HQS). If a family is occupying a unit that is out of compliance, the designated party may offer the family the right to move to another unit. If the family refuses to move, the designated party may curtail assistance.

14. *Subparts N–Q reserved.*

15. *Subpart R—Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction Activities.* This subpart replaces part 37 of the proposed rule. It is shorter than the proposed part 37 because it references methods and standards established by EPA-authorized State or tribal programs or by EPA itself for risk assessment, lead-based paint inspection and abatement. Revised, streamlined sections are provided on interim controls (including paint stabilization), occupant protection and worksite preparation, and ongoing lead-based paint maintenance and reevaluation (called “monitoring” in the proposed rule). New sections are provided on standard treatments and safe work practices, concepts recommended by the Task Force (see Section I.D.2 of this preamble, above).

a. *Standards.* Although HUD defers to a large extent to methods and standards set by States, Indian tribes or EPA for

lead-based paint inspections, risk assessments, lead-hazard screens and abatements, the Department is requiring that Federal standards for lead-based paint, dust-lead hazards and soil-lead hazards be used when conducting evaluations and hazard reductions in housing covered by this final rule unless a State, tribal or local government requirement is more protective.

As explained above in Section III.D.4 of this preamble, above, the standard for deteriorated paint in the proposed rule contained de minimis areas that are not included in the final rule. The definition of lead-based paint, however, is the same. HUD is including interim standards for dust-lead hazards and soil-lead hazards pending effective EPA standards pursuant to TSCA section 403. The interim standard for soil-lead hazards, and the concentration for abating bare soil, are unchanged from the proposed rule; but the interim dust-lead standards have changed. The proposed dust-lead standard for risk assessments and reevaluations was 100 µg/sq.ft (micrograms per square foot) for interior floors (both hard and carpeted) and 500 µg/sq.ft for interior window sills; there was no proposed standard for window troughs (sometimes called window wells); the standards for clearance were the same as for risk assessments; and there was no standard for lead hazard screens, which were not recognized in the proposed rule. In the final rule, the interim dust-lead standard for risk assessments and reevaluations is 40 µg/sq.ft for interior floors (both hard and carpeted) and 250 µg/sq.ft for interior window sills. Risk assessments and reevaluations do not have a standard for window troughs. Standards for clearance and lead hazard screens are also provided. Exterior floors, such as unenclosed porches, and patios, do not have a standard; the floor standard applies to enclosed porches. A complete discussion of dust-lead standards is provided below in Section III.E.15.b of this preamble, “Adequacy of Dust-Lead Standards.”

One commenter questioned the advisability of HUD specifying a dust standard in the proposed rule for carpets, arguing that there is no consensus about how to test for dust hazards in carpets or what level of lead is dangerous. HUD agrees with the commenter that research on this question is needed, and it initiated such studies in 1997. It is known, however, that carpeting can be a dust reservoir with significant amounts of lead (Battelle 1997). The Department believes that it would be wrong to do nothing to protect children in this situation. The

effect of failing to provide a standard for carpeted floors would mean that the children who happen to be living in homes that are covered by the rule and have wall-to-wall carpeting would remain unprotected from floor dust-lead hazards, and the children living with area rugs would be only partially protected. Preliminary data from the HUD Evaluation of the Lead-Based Paint Hazard Control Grant program indicate that about 25–30 percent of the bedrooms and living rooms in the study had carpeting, with the percentage much higher in certain areas.

HUD acknowledges that the proposed EPA rule implementing TSCA section 403 did not include a dust-lead standard for carpets because EPA felt that currently available data are insufficient for establishing a health-based standard and because it is not clear what hazard reduction methods are effective. EPA acknowledged that “the lack of a standard for carpeted floors is a significant limitation” and requested comment on the impact of not having a standard and on information that would be helpful in setting such a standard.

As explained below under “Adequacy of Dust-Lead Standards,” a study by the University of Rochester (Lanphear 1996) shows a significant correlation between dust lead in carpets and children’s blood lead. Furthermore, HUD provides in subpart R of the rule a method for dust-lead hazard control in carpets or rugs. This method relies on thorough vacuuming and is based on the HUD Guidelines and on recent data from the Evaluation of the HUD Lead-Based Paint Hazard Control Grant program. The feasibility of removing dust lead from carpets to achieve the interim standard is discussed below in Section III.E.15.b. of this preamble. Therefore, HUD is including in the final rule an interim standard for dust lead in carpeting using a wipe sampling method, pending the issuance by EPA of a health-based standard pursuant to TSCA section 433.

The HUD interim standard for clearance in the final rule is the same as for risk assessments on floors and interior window sills, but a clearance standard of 800 $\mu\text{g}/\text{sq. ft}$ is added for window troughs. The Department’s intent in setting a clearance standard for window troughs is to encourage their cleaning. It is not unusual for window troughs to have very high loadings of lead in dust, perhaps because they are perceived as an exterior surface and are rarely cleaned, and perhaps because lead-based paint on window friction surfaces contributes to the dust lead loading in the trough. In the evaluation of HUD’s Lead-Based Paint Hazard Control Grant Program, the median pre-

intervention dust-lead loading on troughs for occupied dwelling units was over 11,500 $\mu\text{g}/\text{sq. ft}$, and 10 percent of the units had loadings over 100,000 $\mu\text{g}/\text{sq. ft}$. Comments were both for and against sampling troughs. A large city housing agency agreed with the policy on troughs in the proposed rule. A State agency disagreed, pointing out that, in the Rochester study of the relationship between dust lead and childhood blood lead, dust lead in troughs correlated well with blood lead.

In the final rule HUD has included an option to conduct a lead hazard screen, and, as in the HUD Guidelines, the dust-lead standard is set at approximately one-half the risk assessment standard: 25 $\mu\text{g}/\text{sq. ft}$ for floors and 125 $\mu\text{g}/\text{sq. ft}$ for interior window sills. The floor standard for the lead hazard screen was set at 25 $\mu\text{g}/\text{sq. ft}$ instead of 20, reflecting practical laboratory detection limits.

Several commenters addressed aspects of the proposed rule’s treatment of soil-lead standards or soil treatments. EPA questioned HUD’s interpretation of the soil-lead levels in EPA’s guidance on lead in soil (60 FR 47248, September 11, 1995). In its guidance, EPA recommended that when lead levels in bare soil exceed 400 ppm at “areas expected or intended to be used by children,” interim controls be undertaken to change use patterns and/or create barriers between children and contaminated soil. “Where bare soil-lead levels are found to be 2,000 ppm or more, interim controls should be implemented even if the area is not frequented by children.” At 5,000 ppm or more, EPA recommended abatement of bare soil. In the proposed rule, HUD applied the 400 ppm standard to bare soil “in play areas;” the 2,000 ppm standard was applied to bare soil in “other areas.” EPA called this interpretation incorrect, indicating that permitting 2000 ppm levels anywhere near areas occupied by children “may present an unreasonable risk.” The Agency recommended that the 400 ppm standard apply to the entire yard. HUD believes that its interpretation of the guidance is reasonable and also that it reflects the guidance on this matter given in the HUD Guidelines, which is referenced in the EPA regulation. In the final rule, HUD has retained, therefore, the same interpretation as in the proposed rule. The standard for soil-lead hazards addresses bare soil in play areas frequented by children under 6 years of age. HUD intends that these play areas include those intended for these children’s routine use, as demonstrated by such evidence as the presence of play equipment or similar

attractions, collections of toys or other children’s possessions, or observations of children’s play patterns.

EPA questioned the basis for the proposed rule standard of no more than 200 $\mu\text{g}/\text{g}$ for material used to cover soil-lead hazards. While conclusive scientific data on which to base the standard are not available, HUD believes that a standard is needed and that making it one-half of the level considered to be a soil-lead hazard in children’s play areas is reasonable.

Throughout the rule, units of measurement are provided in metric forms as well as corresponding conventional unit values, in accordance with the Metric Conversion Act of 1975, as amended by Public Law 100–418, at 15 U.S.C. 205b; and Executive Order 12770, “Metric Usage in Federal Government Programs” (56 FR 35801, July 25, 1991). Persons covered by the rule should consistently apply the units they use routinely in their work. For example, lead-based paint professionals who use conventional units (such as feet) in their work should use the risk assessment standards of micrograms per square foot ($\mu\text{g}/\text{ft}^2$); professionals who use metric units (such as meters) in their work should use the fully metric standards of micrograms per square meter ($\mu\text{g}/\text{m}^2$).

HUD is aware of efforts by voluntary consensus standards bodies to develop private-sector standards in the lead-based paint hazard evaluation, management and control areas, and on related subjects. HUD has been supportive of, and participated in, some of these efforts. For example, over a dozen standards of the American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428–2392) are cited in the HUD Guidelines. The Guidelines, in turn, are cited by subpart R itself and in the EPA rule on lead hazard control work practices (40 CFR 745.227(a)(3)), which is cited by subpart R. ASTM and other committees are continuing to develop standards in the lead-based paint hazard field (such as occupant notices with more detail). The Department will review these standards, when issued, for their applicability to and practicality for the programs covered by this rule.

b. Adequacy of Dust-Lead Standards. One commenter stated that the permissible levels of lead in dust referenced in the proposed rule would not be sufficiently protective of children and cited several recent scientific studies as evidence. Other commenters stated that HUD failed to require clearance testing in all programs to determine if housing units undergoing lead hazard reduction activities were

safe to reoccupy. The proposed rule contained standards for lead in dust of 100 $\mu\text{g}/\text{ft}^2$ on floors and 500 $\mu\text{g}/\text{ft}^2$ on window sills for both risk assessment and clearance purposes. The proposed rule eliminated an earlier standard of 800 $\mu\text{g}/\text{ft}^2$ for window troughs. In preparing the final rule, HUD considered the health benefits and feasibility of lead dust standards for both clearance and risk assessment purposes.

(1) *Health Benefits.* Clark and coworkers reported a study of 23 homes in Cincinnati where the floor dust-lead level required to prevent 95% of the children from exceeding a blood lead level of 10 $\mu\text{g}/\text{dL}$ was found to be almost an order of magnitude lower than the existing standard of 100 $\mu\text{g}/\text{ft}^2$ (Clark 1996). In a study of 205 children in Rochester, NY, Lanphear et al. found that approximately 20% of children exposed to a floor dust-lead level of 40 $\mu\text{g}/\text{ft}^2$ had blood lead levels greater than 10 $\mu\text{g}/\text{dL}$ (Lanphear 1996).

Earlier studies have demonstrated the importance of establishing adequate dust-lead standards. From data collected in 1990, Ashengrau reported an increase in blood lead level of 6.5 $\mu\text{g}/\text{dL}$ ($p=0.05$) in children who had baseline blood lead levels below 20 $\mu\text{g}/\text{dL}$ and whose houses were treated for lead-based paint hazards using a floor clearance standard of 200 $\mu\text{g}/\text{ft}^2$ (Ashengrau 1997). These houses were also treated mainly through extensive dry scraping, which under this rule is now a prohibited method of paint removal in federally-assisted or federally-owned housing.

In a study conducted between 1987 and 1990 where clearance testing may not have been conducted at all and where children had baseline blood lead levels less than 20 $\mu\text{g}/\text{dL}$, only 35% of the children had lower blood lead levels following hazard control work. The mean blood lead level increased significantly from 16.8 $\mu\text{g}/\text{dL}$ to 19.3 $\mu\text{g}/\text{dL}$ ($p<0.05$) (Swindell 1990).

These studies demonstrate that without clearance testing and without adequate dust-lead standards, children's blood lead levels may worsen as a result of lead-based paint hazard control work in housing. Therefore, HUD has provided for clearance testing when lead hazard control work is done in housing covered by this rule.

Although each of the studies cited above have limitations, it is clear that the weight of the scientific evidence suggests that children may not be adequately protected under the dust-lead standards in HUD's proposed rule. As a result of such studies, HUD has progressively lowered its dust-lead standard over the years. In 1990, HUD used a floor dust-lead standard of 200 $\mu\text{g}/\text{ft}^2$ in its Interim Guidelines, based primarily on a standard adopted by the State of Maryland and research conducted at Johns Hopkins University (Farfel 1990).

At that time, the Centers for Disease Control and Prevention (CDC) had established a blood lead level of concern of 25 $\mu\text{g}/\text{dL}$. In 1991, CDC adopted a new multi-tier blood lead level response system. That system indicated that blood lead levels of 10–14 $\mu\text{g}/\text{dL}$ in many children in a community should trigger community-wide childhood lead poisoning prevention activities. A blood lead level of 15–19 $\mu\text{g}/\text{dL}$ that persists in an individual child should result in an environmental investigation and intervention. Higher blood lead levels require more intensive medical evaluation and pharmacologic treatment. Because CDC lowered the blood lead level of concern, it is logical that dust-lead standards would also need to be reduced. Consequently, HUD reduced its floor dust-lead standard to 100 $\mu\text{g}/\text{ft}^2$ in its 1994 draft Guidelines, which was released in final form in 1995. EPA adopted the same guidance dust-lead level in 1994 and published it the next year (60 FR 47248, September 11, 1995).

Dust-lead standards in this rule will be used in risk assessments to determine whether hazard reduction should be conducted and in clearance examinations to determine whether dust in housing units, common areas and/or work sites has been properly cleaned and removed after hazard reduction activities. The goal of these activities is to protect children from exposure to lead at or above the CDC level of concern, 10 $\mu\text{g}/\text{dL}$. As explained below, HUD has considered both cost and feasibility in setting the interim standards.

To better understand the existing science, HUD conducted a study pooling the data from virtually all available epidemiological studies that examined the relationship between dust-lead and blood-lead levels, taking into account differences across the studies (Lanphear et al. 1998). After combining data sets from each study, a cohort of 1,861 children aged 6 to 36 months was created. This age group has been found to have the clearest relationship between dust lead and blood lead. The pooled analysis excluded children who had been individually selected for study on the basis of high blood lead, due to the bias this could introduce. Environmental lead measurements and other variables (season, presence of industrial sources of exposure, year of study, race, sex, socioeconomic status and measurement error) were standardized across all studies.

The pooled analysis of epidemiological studies estimated the expected prevalence rate of blood lead levels greater than or equal to 10 and 15 $\mu\text{g}/\text{dL}$ in young children using a number of different candidate dust-lead standards and holding all other environmental variables and other covariates at their national averages. Table 1 shows the results of this analysis.

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS

Floor dust-lead loading ($\mu\text{g}/\text{ft}^2$)	Percentage of children with blood lead levels greater than or Equal to 10 $\mu\text{g}/\text{dL}$ (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 $\mu\text{g}/\text{dL}$ (95% confidence intervals)
1	1.0 (0.3–3.8)	0.1 (0.0–0.6)
5	4.4 (1.7–11.0)	0.7 (0.4–2.6)
10	7.4 (3.1–16.5)	1.4 (0.4–4.6)
20	12 (5–24)	2.7 (0.9–7.8)
25	14 (6–27)	3.2 (1–9)
40	18 (9–33)	4.7 (2–13)
70	24 (12–42)	7.2 (3–18)

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS—Continued

Floor dust-lead loading ($\mu\text{g}/\text{ft}^2$)	Percentage of children with blood lead levels greater than or equal to 10 $\mu\text{g}/\text{dL}$ (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 $\mu\text{g}/\text{dL}$ (95% confidence intervals)
100	28 (14–48)	9.3 (4–23)

The pooled analysis indicates that, using the old standard (i.e., 100 $\mu\text{g}/\text{sq. ft.}$ on floors), 28 percent of young children may have a blood lead level greater than or equal to 10 $\mu\text{g}/\text{dL}$, and nearly 10 percent may have a blood lead level equal to or greater than 15 $\mu\text{g}/\text{dL}$. Using a floor dust-lead standard of 40 $\mu\text{g}/\text{sq. ft.}$, 18 percent of young children may have a blood level of 10 $\mu\text{g}/\text{dL}$ or greater, and less than 5 percent will be a 15 $\mu\text{g}/\text{dL}$ or greater. To achieve a prevalence of only 5 percent of young children with blood levels at 10 $\mu\text{g}/\text{dL}$ or greater, the analysis indicates that dust-lead loadings on floors would have to be at 5 $\mu\text{g}/\text{sq. ft.}$

For reasons of feasibility, HUD is setting an interim dust-lead standard for floors of 40 $\mu\text{g}/\text{sq. ft.}$ The feasibility issues are discussed in the following paragraphs. It is noteworthy that, based on Table 1, a standard of 40 $\mu\text{g}/\text{sq. ft.}$ is expected to protect more than 95 percent of young children against exposure to lead in blood equal to or greater than 15 $\mu\text{g}/\text{dL}$, which is the level recommended by CDC at which environmental intervention should be conducted. This is also the environmental intervention blood lead level used in this rule, as explained above in Section III.D.6 of this preamble.

With regard to carpeted floors, Lanphear *et al.* found a significant correlation between dust lead in carpets (using wipe sampling) and children's blood lead levels (Lanphear 1996). Furthermore, the study showed that about 19.8 percent of children would have blood lead levels at or above 10 $\mu\text{g}/\text{dL}$ with carpeted floors at 40 $\mu\text{g}/\text{sq. ft.}$, a percentage that is not significantly different from the 18 percent found with hard-floor dust lead at 40 $\mu\text{g}/\text{sq. ft.}$ Therefore HUD is setting an interim dust lead standard for carpeted floors that is the same as that for hard floors.

(2) *Feasibility.* There are two issues that affect the feasibility and cost of any given dust-lead standard: (1) The ability of cleaning techniques to meet a given level of cleanliness and the percentage of houses that can be expected to pass and maintain a given dust-lead

standard; and (2) the ability to measure dust-lead levels in the range of interest using readily available analytical techniques (and the increased cost of using more sensitive detection methods if needed).

The largest study of residential lead hazard control conducted to date is HUD's on-going evaluation of its first 14 grantees under the Lead-Based Paint Hazard Control Grant program. These grantees are State and local governments receiving grants to address lead-based paint hazards in low-income, privately owned dwelling units. Almost 3,000 dwelling units are enrolled in this evaluation. Using modern hazard control techniques, this study provides important insights into the degree of cleanliness that is feasible using current measurement, cleaning and hazard reduction technologies. The final report will not be issued until after the year 2000 due to on-going evaluation of the dwellings and the children who live in them.

Interim results show that, on average, initial floor dust-lead levels are below 20 $\mu\text{g}/\text{ft}^2$ (National Center 1998). Furthermore, the data show that dust-lead levels on floors do not reaccumulate continuously, as assumed in the Economic Analysis for the proposed rule, which was prepared before these reaccumulation data were available. The new data show that median dust-lead levels on floors continue to drop for at least the first year following the hazard control work, from 19 $\mu\text{g}/\text{ft}^2$ to 14 $\mu\text{g}/\text{ft}^2$ twelve months later. The average dwelling unit undergoing lead hazard control had a median floor dust-lead level of 17 $\mu\text{g}/\text{ft}^2$ immediately following hazard control work. That level declined to 14 $\mu\text{g}/\text{ft}^2$ six months later and remained at the same level one year following the work. Therefore, it is feasible to reach and maintain a floor dust-lead standard of 40 $\mu\text{g}/\text{ft}^2$.

The pooled epidemiological analysis also shows that a floor dust-lead standard of 5 $\mu\text{g}/\text{ft}^2$ would be required to ensure that 95 percent of children do not have a blood lead level greater than or equal to 10 $\mu\text{g}/\text{dL}$. However, modern

hazard reduction techniques do not appear to be capable of reaching a floor dust-lead level of 5 $\mu\text{g}/\text{ft}^2$ routinely, since the median level following hazard control work is three to four times greater (see also the discussion below about detection limits).

Importantly, many of the units treated under the HUD lead hazard control grant program are high-risk houses and often initially contain children with seriously elevated blood lead levels. In more typical dwelling units, it is likely that even lower dust-lead levels can be achieved. Indeed, HUD's 1990 National Survey of Lead-Based Paint Hazards in Private Housing found that the average dust-lead loading on floors (converted to wipe sampling) was estimated to be only 5 $\mu\text{g}/\text{ft}^2$. This survey did not include houses where lead hazard reduction had occurred.

The HUD Evaluation Study data show that 17.4 percent of these high risk houses have floor dust-lead levels above 100 $\mu\text{g}/\text{ft}^2$ (the existing standard). A dust-lead standard of 40 $\mu\text{g}/\text{ft}^2$ would increase the percentage of "high risk" houses above the standard to about 26 percent. This is fairly consistent with the blood lead levels found in this population, because 28.9% of the children enrolled had environmental intervention blood lead levels.

More typical houses that are served by other HUD programs are likely to have a far lower percentage failing the reduced dust-lead interim standard, because these programs do not target housing with lead-poisoned children. For example, data from HUD's National Survey show that the percentage of all U.S. housing exceeding a floor dust-lead level of 100 $\mu\text{g}/\text{ft}^2$ is 7.6 percent in "dry" rooms (i.e., rooms without plumbing fixtures). The percentage exceeding a floor dust-lead level of 40 $\mu\text{g}/\text{ft}^2$ is 10.2 percent in dry rooms. In short, the lower floor dust-lead interim standard of 40 $\mu\text{g}/\text{ft}^2$ will increase the percentage of houses requiring hazard control by a modest 2.6 percent.

With regard to carpeted floors, preliminary data from the HUD Evaluation indicate that only 15 percent of carpeted entry areas and 8 percent of

other carpeted rooms had dust-lead loadings equal to or greater than 40 $\mu\text{g}/\text{sq. ft.}$ based on wipe sampling. The Evaluation data also indicate that grantees were able to reduce dust-lead loadings in carpets, but the data are limited by the fact that grantees were working with a clearance standard of 100 $\mu\text{g}/\text{sq. ft.}$ instead of 40 $\mu\text{g}/\text{sq. ft.}$

(3) *Detection Limits.* Detection limits of dust wipe analysis also have an effect on the feasibility of lower dust-lead standards. A standard cannot be set at a level that cannot be measured reliably. Many analytical laboratories currently report method detection limits of 25 $\mu\text{g}/\text{wipe}$. For floors, this means a method detection limit of 25 $\mu\text{g}/\text{ft}^2$, since a one square foot area is typically sampled. A method detection limit at least 4 times lower than the regulatory standard is desirable to ensure reliable results.

For all laboratories in the HUD Evaluation Study, the average method detection limit is currently 11 $\mu\text{g}/\text{wipe}$. Therefore, HUD believes that laboratories will be able to report detection limits of 10 $\mu\text{g}/\text{wipe}$ without having to resort to more sensitive and more expensive types of analytical procedures. In short, no increase in analytical cost is expected in order to achieve a detection limit of 10 $\mu\text{g}/\text{wipe}$, which is one-fourth the new floor dust-lead standard of 40 $\mu\text{g}/\text{ft}^2$. This will ensure that reliable measures of dust-lead loading can be made.

A floor dust-lead standard of 5 $\mu\text{g}/\text{ft}^2$ is well below method detection limits reported by most laboratories and is therefore not feasible to implement.

(4) *Window Dust Standards.* For interior window sills and window troughs, epidemiological data are less available than for floors, because only a few studies have collected samples from these areas. For interior window sills, the final rule establishes a dust-lead standard of 250 $\mu\text{g}/\text{ft}^2$, which is based on a study in Rochester, NY (Lanphear 1996). This standard also should protect virtually all children from developing an environmental intervention blood lead level. In the high risk houses enrolled in the HUD Evaluation Study, 47.5 percent of the units had baseline window sill dust lead levels below 250 $\mu\text{g}/\text{ft}^2$, which is close to the percentage of children who had blood lead levels below 10 $\mu\text{g}/\text{dL}$ in the evaluation (54.3 percent). At clearance following lead hazard control work, the median dust-lead level on window sills was 44 $\mu\text{g}/\text{ft}^2$ at the time of clearance, 83 $\mu\text{g}/\text{ft}^2$ six months later, and 88 $\mu\text{g}/\text{ft}^2$ 12 months later. For more typical houses, the HUD National Survey found that the percentage of interior window sills failing a new dust-lead standard of 250

$\mu\text{g}/\text{ft}^2$ would increase by a modest 5.4 percent (compared to the current standard of 500 $\mu\text{g}/\text{ft}^2$).

In short, the window sill standard is both feasible and health-based. It is feasible because dust-lead levels at the new interim standard can be reached and maintained and because the increase in the percentage of houses failing the new standard is small. It is health-based because the percentage of houses failing the standard is about the same as the percentage of children with blood lead levels greater than 10 $\mu\text{g}/\text{dL}$ in the HUD Evaluation Study.

In the proposed rule, HUD did not include the window trough standard of 800 $\mu\text{g}/\text{ft}^2$ it had established in the HUD Guidelines and the 1990 Interim Guidelines. However, several commenters indicated that a window trough standard should be retained for clearance purposes, as a way of ensuring that window troughs are cleaned and/or treated during hazard reduction work. The HUD Evaluation Study shows that median dust-lead levels in window troughs immediately following hazard reduction work is 72 $\mu\text{g}/\text{ft}^2$, indicating that it is feasible to implement a window trough clearance standard of 800 $\mu\text{g}/\text{ft}^2$.

On the other hand, development of a feasible window trough risk assessment standard is more problematic, because nearly all pre-1978 dwellings have very high window trough dust-lead levels. For example, data from HUD's Evaluation Study indicate that the median window trough dust-lead level for occupied dwelling units prior to hazard control work is more than 11,500 $\mu\text{g}/\text{ft}^2$. Because HUD believes it is important to have a reliable way to determine whether or not window troughs were cleaned during hazard reduction work, and because window trough lead dust does appear to contribute to children's exposure, HUD has reestablished a window trough clearance standard of 800 $\mu\text{g}/\text{ft}^2$ in the final rule. Because most dwelling units have window trough levels above 800 $\mu\text{g}/\text{ft}^2$, HUD believes it is not feasible to establish a window trough dust-lead standard for risk assessment and reevaluation purposes at this time. Therefore, the window trough dust standard of 800 $\mu\text{g}/\text{ft}^2$ is used for clearance purposes only. To meet this clearance requirement, window troughs should be cleaned as a routine part of all lead hazard control work.

(5) *Lead Hazard Screen Standards.* The lead hazard screen levels for floor and interior window sill dust lead in this rule are 25 $\mu\text{g}/\text{ft}^2$ and 125 $\mu\text{g}/\text{ft}^2$, respectively. These are about half of the standards used for risk assessment

purposes. This ensures that the screen will be sufficiently sensitive to uncover those houses that should have a full risk assessment.

Lead hazard screens are a form of risk assessment applied to housing in good condition where lead-based paint hazards are unlikely to be present. The protocol for a lead hazard screen referenced in the HUD Guidelines involves (among other things) collection of two composite dust samples: one from floors and a second from window troughs. Each composite sample consists of 4 individual samples collected from a like surface. If a level found in the screen is more than one half of the applicable risk assessment dust-lead standard, then a full risk assessment is to be conducted to determine if lead-based paint hazards are actually present.

In this final regulation, HUD has modified slightly the lead hazard screen protocol of the HUD Guidelines regarding dust. In the final rule, interior window sills are sampled instead of window troughs for three reasons: (1) Interior window sills are easier to wipe-sample than troughs; (2) dust-lead loadings on troughs may reflect exterior sources not related to the residential structure itself; and (3) dust-wipe loadings on sills and troughs are highly correlated (the correlation coefficient of the logarithms of the loadings is 0.60, which is higher than that for any other pairs of paint- or dust-lead measurements (Lanphear 1995)). EPA made a similar judgment in deciding not to propose a window trough dust-lead hazard standard in the proposed regulations pursuant to TSCA section 403 (63 FR 30335-6, June 3, 1998). Future research or technological advances may result in different recommendations, which the Department will review.

Similarly, HUD is noting that single-wipe samples may be used instead of composite samples as part of the lead hazard screen. When two or more single-wipe samples are used for a single building component type (such as two or more interior window sills), the dust loadings for that component type are averaged to give the equivalent composite sample result. Users may wish to take single-wipe samples, rather than composite samples, as part of lead hazard screens for several reasons: the cost of laboratory analyses is low enough for many users that they may perceive little economic benefit to analyzing composite samples instead of single-wipe samples, and the EPA's National Lead Laboratory Accreditation Program (NLLAP) does not, at the time of issuance of this rule, have a formal

quality assurance program for composite dust samples. EPA is working on this latter issue, and will advise NLLAP participants and others if and when such a program becomes available. Potential users of composite dust wipe analyses may contact the National Lead Information Center Clearinghouse toll-free at 1-800-424-LEAD for information on this subject.

If less than 125 µg/ft² (half of 250 µg/ft²) of lead dust is detected on the composite interior window sill sample, and the composite floor sample shows that less than 25 µg/ft² is present, the screen shows that lead-based paint hazards are not present. In this case, a full risk assessment is not needed. Conversely, if a lead hazard screen

shows that dust-lead is present at a level equal to or greater than 125 µg/ft² on interior window sills or equal to or greater than 25 µg/ft² on floors, a lead-based paint hazard may be present and a full risk assessment should be conducted to confirm or reject the results of the screen.

HUD has also modified slightly the lead hazard screen protocol of the HUD Guidelines regarding soil. In the final rule, soil is to be sampled and analyzed, and the analyses evaluated, using the same protocol as for a risk assessment. With analytical costs having dropped since the publication of the HUD Guidelines, the cost of performing soil analyses as part of lead hazard screens for single family housing in good

condition undergoing rehabilitation above \$5,000 per unit (the cases where the lead hazard screens are likely to be used) has become insignificant; the additional time associated with the samples, for lead professionals already at the site, is also insignificant.

To summarize, the final rule establishes the dust-lead standards in Table 2. The dust-lead standards in this rule are interim standards until EPA promulgates and makes effective dust-lead hazard standards under TSCA section 403. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

TABLE 2.—INTERIM DUST-LEAD STANDARDS

Evaluation method	Surface		
	Floors (µg/ft ²)	Interior Window Sills (µg/ft ²)	Window troughs (µg/ft ²)
Risk Assessment Screen	25	125	Not Applicable.
Risk Assessment	40	250	Not Applicable.
Reevaluation	40	250	Not Applicable.
Clearance	40	250	800.

Note: "Floors" includes carpeted and uncarpeted interior floors.

c. *Summary Notice Formats.* Subparts D, and F through M of the final rule require that occupants be notified of the results of evaluations and hazard reduction activities (including clearance examinations). Also, if lead-based paint or lead-based paint hazards are presumed to exist, notification must be made. The major elements of these notices are described in Subpart B.

Subpart B places responsibility for any required occupant notification on the designated party. HUD recognizes that many designated parties may not have the expertise from staff or consultants to extract the pertinent information from the inspection, risk assessment or clearance reports to prepare the notices. As a result, the Department, in subpart R, makes a strong recommendation that the lead-based paint professional who prepares such a report provide the designated party with the summary notice of the results suitable for posting or distribution to occupants.

Sample (i.e., non-mandatory) notice formats that can be used are provided in Appendix A for a lead-based paint inspection, Appendix B for a risk assessment, Appendix C for presumption of the presence of lead-based paint or lead-based paint hazards, and Appendix D for completion of hazard reduction activities (including

clearance). These formats include the information described in Subpart B and are based on: (1) The sample formats developed by HUD and EPA for the disclosure rule (see 61 FR 9074-5, March 6, 1998, in the preamble to the final rules implementing section 1018 of Title X, 24 CFR 35.80-98 and 40 CFR 745.100-119); and (2) formats developed by the California Department of Health Services (Emeryville, CA 94608-1939) for notices of abatement of lead hazards (DHS form 8551) and lead hazard evaluation (DHS form 8552).

Requirements for reports of evaluation or abatement clearance used to develop the corresponding notices to occupants are found in EPA's TSCA section 402/404 rule (40 CFR 745.227) and are cited by subpart R. Requirements for reports on hazard reduction activities other than abatement are in subpart R itself. Guidance on preparing these reports is found in the HUD Guidelines, chapters 5 (risk assessment), 7 (inspection), and 15 (clearance). There are currently no detailed standards for preparing these reports, and HUD-funded research on lead-based paint inspection reports has found considerable variability in them, in both format and measures of completeness and accuracy (HUD 1998). ASTM committee work developing detailed voluntary consensus standard protocols for report preparation is

beginning; HUD will evaluate any standards, when issued, for their applicability to, and practicality for, the programs covered by this rule.

d. *Interim Controls.* The section on interim controls in the final rule is similar to that of the proposed rule. As mentioned above in Section III.D.8 of this preamble, the proposed rule required that workers performing interim controls be supervised by a certified abatement supervisor, and this was met with criticism by several commenters. In response to these comments, in the final rule HUD is following the Task Force recommendation that such workers be trained in the basic requirements of safe lead-based paint hazard reduction, and several choices of acceptable training courses are mentioned. All such training is designed to meet OSHA requirements; several choices meet EPA requirements as well.

Another significant modification of the proposed-rule section on interim controls is the addition of explicit factors that must be present for interim controls to be required under this rule for friction, impact and chewable surfaces. HUD developed these factors in response to comments that greater specificity is needed to prevent unnecessary, ineffective and wasteful hazard reduction actions. Friction

surfaces are required to be treated only if: (1) Dust-lead levels on the nearest horizontal surface (i.e., the surface on which the dust settles that is nearest to the friction surface) are greater than the risk assessment dust-lead standards; (2) there is evidence that the surface is subject to abrasion; and (3) lead-based paint is known or presumed to be present on the surface. Impact surfaces are required to be treated only if: (1) Paint on the surface is damaged; (2) the damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and (3) lead-based paint is known or presumed to be present on the surface. HUD intends that impact as a result of misuse by occupants is not necessarily an acceptable basis for requiring treatment. Chewable surfaces are required to be treated only if: (1) There is evidence that a child of less than 6 years of age has chewed on the surface; and (2) lead-based paint is known or presumed to be present on the surface.

As in the proposed rule, interim control methods, when required, must be selected from among those identified as acceptable in a current risk assessment report. (As noted in subpart B, abatement is also acceptable when interim controls are required.) When interim controls are required and no risk assessment has been done or no risk assessment that has been done is current, a new risk assessment must be conducted (except when only paint stabilization of deteriorated paint is required, because the response has been specified in the rule). Techniques for repairing physical defects in a substrate before performing paint stabilization are discussed in the HUD Guidelines, chapter 11.

The proposed rule required a minimum two-stage cleaning process for the control of dust-lead hazards on hard surfaces: first HEPA vacuuming, then wet cleaning. Also, HEPA vacuuming was required for surfaces covered by carpeting or rugs. One commenter noted that recent research has indicated that a variety of cleaning methods may achieve clearance levels, and that one of the critical variables affecting the difficulty of cleaning is the condition of the surface. To avoid rigidity, HUD has modified the dust-lead hazard control requirements in the interim controls section of subpart R of the final rule in three ways. First, the two-stage process is no longer required; second, if hard surfaces are rough and pitted, they must be made smooth and cleanable; and third, rather than requiring HEPA vacuuming, HUD is requiring the use of a "HEPA vacuum or other method of

equivalent efficacy." One of the main reasons for revision of required cleaning methods is that the final rule requires clearance after all hazard reduction activities, whereas the proposed rule omitted the clearance requirement for some housing programs. In the context of this rule, the goal of cleaning should be to achieve clearance, not to comply with prescriptive regulations on how to clean. Making surfaces smooth and cleanable is an important objective, because it makes it possible for occupants to maintain their dwellings safe from dust-lead hazards in the future. Revision of the HEPA filter requirement will facilitate the application of advances in technology resulting from ongoing research on cleaning lead-contaminated surfaces. Information on the status of this field of technology is provided in Section III.E.2.a of this preamble, in the discussion of HEPA vacuums.

A commenter recommended that clearance not be required after "basic interim controls," because many interim controls are like routine maintenance activities that will be performed frequently by in-house staff. In the final rule, the Department has retained the clearance requirement for initial interim controls, because clearance is the only method of determining whether a dwelling unit is free of lead-based paint hazards. HUD, however, is not requiring clearance after ongoing lead-based paint maintenance activities that are conducted after interim controls and that do not disturb painted surfaces of a total area greater than 20 square feet on exterior surfaces, 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area such as window sills, baseboards and other trim.

e. *Standard Treatments.* As explained above in Section III.E.2.c of this preamble, standard treatments, when used, must include: (1) Stabilization of all deteriorated paint, interior and exterior; (2) the provision of smooth and cleanable horizontal hard surfaces; (3) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (4) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls.

f. *Clearance.* Methods and standards for clearance in this rule refer to the EPA requirements for clearance after

abatement at 40 CFR 745.227(e) but also specify the dust-lead loading levels to be used for clearance. To pass clearance, dust-lead levels, using wipe sampling, must be less than 40 µg/ft² for interior floors, 250 µg/ft² for interior window sills, and 800 µg/ft² for window troughs. The rule also specifies the content of clearance reports that must be prepared for clearances after hazard reduction activities other than abatement. For clearance of the worksite only, which is required in subpart J after rehabilitation receiving no more than \$5,000 per unit and also in some ongoing maintenance activities, dust samples must be taken from the floor and windows (if available) that represent the area within the dust containment area of the worksite. Worksite clearance is not required if the rehabilitation or maintenance does not disturb painted surfaces totaling more than the safe work practices de minimis levels (see Section III.D.4 of this preamble, above). For a discussion of qualification requirements for persons performing clearance, see Section III.D.8 of this preamble, above.

While subpart R allows recleaning immediately after a clearance failure, owners, designated parties and contractors are urged to consider the cause of the failure, and to address the cause, if identified, before recleaning the affected area.

A commenter recommended that property owners (or other designated parties) be allowed to retain a certified inspector or risk assessor to perform the clearance examinations. In the final rule, HUD has allowed this, provided the clearance examiner is independent from any contractor used to perform the hazard reduction work. The property owners (or other designated parties) may, however, use in-house employees for both hazard reduction and clearance examination, provided that the same employee does not do hazard reduction and clearance.

After clearance, a report is to be prepared that documents the hazard reduction or maintenance activity as well as the results of the clearance examination. It is the responsibility of the designated party to ensure that this report is prepared, signed, and kept for at least three years. For an abatement activity, the report is an abatement report as described in EPA regulations at 40 CFR 745.227(e)(10). The abatement report includes the results of the clearance examination as well as a detailed written description of the abatement, and its preparation is the responsibility of the abatement supervisor. For another hazard reduction activity requiring a clearance

report (including interim controls, paint stabilization, standard treatments, lead-based paint maintenance, or rehabilitation), the EPA rule does not apply; so the final rule provides an outline of the required report that parallels the EPA abatement report outline. However, the designated party must make sure: (1) That a report describing the hazard reduction activity is prepared; and (2) that the clearance examiner provides a signed clearance report with the information required by the rule.

Designated parties should also bear in mind that HUD has requirements in subparts D, and F through M for occupant notification following hazard reduction activities. The major elements of this notice are described in Subpart B. A sample (i.e., non-mandatory) format that can be used for notification of the completion of hazard reduction activities, including clearance, is provided in Appendix D (see discussion, above, in Section III.E.15.c of this preamble).

g. Occupant Protection and Worksite Preparation. Requirements for occupant protection and worksite preparation in this final rule are similar to those in the proposed rule, which were based largely on the HUD Guidelines.

Many hazard reduction activities can be completed in one work shift. As a result, the Department has streamlined the requirements for occupant relocation for work that will be completed within one period of 8 daytime hours. For work lasting longer, the rule provides for either occupant relocation or, for work lasting up to five days, occupancy of parts of the dwelling unit outside the worksite. The five-day *de minimis* criterion is used in chapter 8 of the HUD Guidelines; the regulation closely parallels, but streamlines the guidance in tables 8.1, 8.2, and 8.3 of the Guidelines.

At rooms where hazard reduction activities are conducted when occupants are present; or buildings from which occupants have been relocated, a warning sign shall be posted at each entry. For exterior hazard reduction activities, the sign placement is based on the HUD Guidelines, chapter 8, but the rule is somewhat more flexible, in that the position of the sign for exterior work is not specified beyond the performance requirement of its being easily read at 20 feet (6 meters) from the edge of the worksite. The wording of the sign is that of the four-line warning sign in the OSHA lead in construction standard (29 CFR 1926.62(m)), "WARNING / LEAD WORK AREA / POISON / NO SMOKING OR EATING." The OSHA wording is used by HUD for

interagency regulatory consistency. Based on the approach used in subpart B for occupant notification, the warning sign is to be provided in the occupants' primary language or in the language of the occupants' lease or contract.

h. Safe Work Practices. A section on safe work practices has been added to this final rule to specify the practices to be observed during paint stabilization, ongoing lead-based paint maintenance, and rehabilitation receiving no more than \$5,000 per unit in Federal rehabilitation assistance. Safe work practices include occupant protection and worksite preparation, specialized cleanup, and the prohibition of certain methods of paint removal (see Section III.E.2.g of this preamble, above). Safe work practices are not required if the total area of paint surfaces being disturbed is no more than the *de minimis* exemption levels of 20 square feet on exterior surfaces, or 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area (such as window sills, baseboards, and other trim).

i. Ongoing Lead-Based Paint Maintenance and Reevaluation. The proposed monitoring of housing after interim controls was the subject of several comments. Commenters expressed doubts about the efficacy of the proposed monitoring requirements, regarded them as expensive to maintain and enforce, and questioned the ability of designated parties to assure, into the future, that monitoring responsibilities assigned to owners would be carried out. Monitoring, as proposed, consisted of a visual survey by the owner at least annually, repair of any deteriorated paint, and a professional reevaluation by a risk assessor for the presence of lead-based paint on a schedule based on the hazards found and the action taken.

In the final rule, the monitoring requirement has been changed in several ways. The term, "monitoring," is no longer used in the rule; the visual assessment by the owner is now part of the ongoing maintenance requirement, which has been patterned after the "essential maintenance practices" recommended by the Task Force; and the reevaluation schedule has been simplified so that all reevaluations are on the same schedule. The new schedule calls for reevaluation at intervals of two years, plus or minus 60 days. If two consecutive reevaluations at two-year intervals find no lead-based paint hazards, no further reevaluation is required. Similarly, if the initial risk assessment found no lead-based paint hazards, no reevaluation is required.

Ongoing lead-based paint maintenance is required in specified situations in subparts F through M. This can involve such activities as visual assessment, stabilizing deteriorated paint, standard treatments, interim controls, repair of failed lead-based paint hazard controls, and notifications of evaluation and hazard reduction activities. (Sample formats and language requirements for notices are discussed above in Sections III.E.15.c and g of this preamble, respectively.)

Reevaluation is required for housing receiving project-based assistance greater than \$5,000 per unit per year and for public housing. The strategy for selecting portions of residential properties to reevaluate considers two factors: How many dwelling units and common areas are present, and at how many worksites hazard reduction activities were performed previously. The selection and reevaluation procedures for dwelling units and common areas are the same as for risk assessment, as provided in subpart R, and as detailed in the HUD Guidelines, chapter 5. Similar dwelling units are grouped, and the number to be reevaluated in each such group is determined from tables in the Guidelines.

For a targeted sample of units with the highest likelihood for finding lead-based paint hazards, there is a table in chapter 5; for a random sample of units, chapter 5 refers users to a table in chapter 7. Separately, the number of worksites of previous hazard reduction activities to be reevaluated is determined using the same procedure as for selecting the number of units. Specifically, worksites are grouped on the basis of similarities of their original lead-based paint hazards (e.g., similarities in the type of location, original condition and, as applicable, building component type, of the lead-based paint hazards), and types of hazard reduction activities performed on them. The number of such similar worksites to be reevaluated is determined using the tables in chapters 5 or 7, and worksites are selected. Reevaluations are not to be duplicated in locations selected by both processes (that is, selecting units and common areas, and selecting worksites).

When a risk assessor performing a reevaluation finds deteriorated paint or deteriorated or failed interim controls, encapsulations or enclosures, the designated party shall respond, selecting from among the acceptable options for controlling the hazard identified in the risk assessor's report of the reevaluation. When the risk assessor reports newly-identified lead-based

paint hazards, the designated party shall treat each dust-lead hazard by cleaning or hazard reduction measures, and each soil-lead hazard by hazard reduction measures.

IV. Deletions of Current Regulations

Most of the regulatory changes in parts of title 24 other than part 35 consist, as noted in Section III.A.7 of this preamble, above, of replacing explicit descriptions of lead-based paint requirements with references to part 35. Retaining mention of lead-based paint in each HUD program's part of title 24 maintains the visibility of the lead-based paint requirements, and promotes compliance with requirements under Title X and the Lead-Based Paint Poisoning Prevention Act. Consolidating references in affected program parts will help program managers, property owners and other users recognize that they can apply the same procedures to the same situations, even if they arise under different HUD programs. The consolidation also shortens these other parts of title 24.

To aid users, the relevant program-oriented subpart of part 35 is identified in the other parts of title 24, as is subpart A, the Disclosure Rule. Each program-oriented subpart in part 35 describes and cites applicable requirements elsewhere in that part.

References to Title X are added to the existing references to the Lead-Based Poisoning Prevention Act, as bases for the regulations in part 35. The terminology of Title X regarding evaluation and hazard reduction replaces previous wording regarding inspection and abatement, respectively, which were used in accordance with the earlier LPPPA.

For public housing, the regulations on liability insurance coverage found at § 965.215 fit better in their original location than they would in part 35, and their substantive text remains in place. The section has been modified, as described above for other sections, to reflect Title X terminology and requirements.

V. Additional Public Comment

As noted earlier in this preamble, the rule will not take effect for a period of one year. If in the review of this rule, there are questions, concerns or other comments, HUD welcomes these questions, concerns and comments. It is HUD's intention that the rule achieve the objectives of the statute in the least burdensome manner. If there are any serious inconsistencies or deficiencies in the rule, HUD will make every effort to correct these before the rule takes effect. Comments should be submitted

to the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P-3206, Washington, DC 20410-0500.

VI. Regulatory Assessment

A. Economic Analysis

An Economic Analysis (EA) has been prepared that examines the costs and benefits of this final rule. This document fulfills the requirements of Executive Order 12866, which requires HUD to prepare an EA for all significant rulemakings. A discussion of public comments on the EA of the proposed rule is provided below in Section VI.A.6 of this preamble.

1. *Summary and Methodology of Cost-Benefit Analysis.* HUD estimates the costs associated with this rule to be \$253.2 million for the first year, and the benefits to be \$1,143.3 million using a three percent discount rate for increased lifetime earnings and \$324.2 million using a seven percent discount rate (see discussion of discount rates below). The analysis in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities in housing units affected under the final rule. The estimated annual number of HUD-assisted and HUD-owned units affected reflect an annual flow of units under HUD programs (e.g., insurance and rehabilitation programs), except in the case of project-based assistance and public housing, for which the affected units are divided by the number of years allowed under the final rule for completion of required activities. The costs and benefits for each year's activities include the present value of future costs and benefits associated with first year hazard reduction activities. For example, the costs associated with first year activities include the present value of future reevaluation costs. Similarly, the benefits of first year activities include the present value of lifetime earnings benefits for children living in or visiting the affected unit during the first year, and for children living in or visiting that unit during the second and subsequent years after hazard reduction activities.

After the first year, the number of units for which initial hazard evaluation and reduction must be done will decline significantly because some large housing assistance programs, such as public housing and project-based assistance, have a relatively stable stock and do not experience a large annual inflow of new units. In these programs, owners will need only to engage in ongoing maintenance and reevaluation

after initial hazard evaluation and reduction is completed. There is a two-year phase-in of requirements in the public housing program and a four-year phase-in for housing with project-based assistance of more than \$5,000 per unit per year. HUD estimates that the total number of dwelling units newly covered by the rule will be approximately 1,289,000 in the first year, 513,000 in the second year, 341,000 in years three and four, and 314,000 per year after the fourth year. The estimated present value of costs associated with the first five years of the rule is \$564.2 million. Using a seven percent discount rate for increased lifetime earnings, HUD estimates the present value of total benefits associated with the first five years to be \$715.6 million, with net benefits for the same period at \$151.4 million. Using a three percent discount rate, total benefits over five years are \$2.65 billion, and net benefits are \$2.08 billion.

The primary monetized benefit of childhood lead poisoning prevention is increased lifetime earnings associated with the higher cognitive abilities of persons not lead poisoned as children. The present value of lifetime earnings benefits is particularly sensitive to discount rate assumptions in the analysis, because these benefits reflect lifetime earnings many decades into the future. The EA presents estimated benefits using two different discount rates for lifetime earnings—three percent and seven percent. For all other benefit and cost estimates, the EA uses only a seven percent rate. The analysis assumes that preventing a one µg/dL increase in a one-year old child's blood lead level saves \$2,367 in lifetime earnings discounted at three percent, and \$544 at seven percent.

While the Office of Management and Budget (OMB) specifies seven percent as the appropriate discount rate for most regulatory analyses, a special social rate of time preference is appropriate when conducting intergenerational analysis. HUD believes that an intergenerational discount rate is applicable to the final rule because the costs will be borne by adult taxpayers, and lifetime earnings benefits will be realized by the children and grandchildren of these adult taxpayers. The analysis of this issue by the Environmental Protection Agency, in the 1996 EA for the regulations implementing sections 402(a) and 404 of the Toxic Substances Control Act, concluded that a three percent discount rate best reflects the social rate of time preference for annualized, non-capital costs and benefits.

An intermediate approach, not quantified in the EA, could have used

a real discount rate based on the long-term borrowing costs of the Federal government. The seven percent rate used in most regulatory analyses is intended to reflect OMB's estimate of the opportunity cost of capital, based on the average real rates of return on private investments. This rate is appropriate for most regulatory analyses because most regulations impose costs on the private sector. The final rule, however, imposes costs on federally assisted housing. Most of these costs will be funded directly or indirectly by Federal expenditures. If these expenditures increase the national debt, then the real cost of that debt to future generations will compound at the real long-term Federal rate. The Internal Revenue Service's Applicable Federal Rate (AFR) measures the nominal cost of government borrowing over obligations with different maturities. The long-term AFR adjusted for the implicit price deflator results in real AFRs of approximately four to five percent over recent years. Therefore, benefits could be discounted at this real AFR rate (i.e., 4 to 5 percent).

By presenting results using both three and seven percent, HUD is providing the broadest view of costs and benefits. Additional information on the methodology and results of the cost-benefit analysis is provided below.

The methodology used in this analysis to estimate annual costs and benefits for the final rule is based on the following simple formulas:

Regulatory Costs = (dwelling unit cost) × (unit cost frequency) × (number of affected units); and
Regulatory Benefits = (dwelling unit benefit) × (unit benefit frequency) × (number of affected units).

The unit cost estimates reflect the average costs associated with specific hazard evaluation and reduction activities in a single housing unit.

The unit benefit estimates are the benefits achieved by conducting hazard reduction activities in a single housing unit. Unit cost frequencies reflect the extent of required hazard evaluation activities under the final rule, and the occurrence frequencies of different lead-based paint hazards that trigger hazard reduction requirements. Unit benefit frequencies are also determined by the occurrence frequencies of lead-based paint hazards, because benefits are realized by hazard reduction activities. Frequencies are estimated by three periods of construction: Pre-1940, 1940–1959, and 1960–1977. The affected units, for regulatory costs and benefits, are federally assisted and federally owned units affected by the final rule.

2. Regulatory Costs. The cost estimates used in the EA reflect the estimated average cost per unit for LBP hazard evaluation and reduction activities in single and multifamily units affected by the final rule. In the case of rehabilitation programs, the regulatory cost estimates for paint stabilization and LBP hazard abatement activities reflect only the incremental costs of the final rule. For example, the unit cost of stabilizing paint that would not otherwise have been repaired is significantly greater than the incremental cost of safe work practices and cleanup to reduce lead-based paint hazards in the course of scheduled repainting. The full cost of lead-based paint hazard abatement includes a variety of activities that are also associated with housing rehabilitation activities. Therefore, housing rehabilitation programs affected by the final rule incur only incremental costs for paint stabilization and abatement.

Under non-rehabilitation programs, the full costs of paint stabilization are recognized as regulatory costs, but these costs are substantially offset by the market value of housing-related benefits for paint stabilization. The EA assumes that the full market value of paint stabilization is realized whenever paint stabilization is required under the final rule. Therefore, the incremental costs of paint stabilization (e.g., safe work practices) are the only costs of these activities that are not offset by market value benefits.

Although the final rule only requires hazard abatement in rehabilitation units receiving more than \$25,000 of Federal assistance, the EA anticipates that some units subject to interim control requirements will find it economical to treat friction impact surfaces in part by replacing old windows with new energy efficient (low-e) windows. In such cases, the EA recognizes the market value of new windows based on the present value of estimated fuel savings (discounted at seven percent). It is possible, however, that the market value estimates for painting and window replacement may overstate the market benefits of the final rule. For example, the market value of paint stabilization required for HUD-owned housing may not be fully recovered when these repainted units are sold by HUD. Therefore, the cost-benefit analysis for non-rehabilitation programs explicitly separates the estimated market value benefits of the final rule from the monetized health benefits of LBP hazard reduction to facilitate recalculations of net benefits under alternative market value assumptions. The EA details the basis for unit cost estimates and

associated market values and explains the available data on occurrence frequencies and the number of housing units affected by the final rule.

3. Monetized Benefits. Although many benefits of lead-based paint hazard reduction cannot be quantified or monetized, the EA does provide monetized estimates of the benefits of preventing children from developing elevated blood lead levels (EBLs). Such benefits include avoiding the costs of special education and medical treatment for EBL children, as well as increasing lifetime earnings associated with higher IQs for children with lower blood lead levels. The monetized benefit of increased lifetime earnings due to lower blood lead levels accounts for 99 percent of all monetized health benefits of the rule.

The benefits quantified in this analysis reflect the benefits of preventing EBLs in children rather than the benefits of lowering the blood lead levels of children already affected by lead poisoning. As shown in the analysis, the benefits associated with avoiding childhood lead poisoning substantially exceed the benefits of reducing hazards for children already affected by lead poisoning. The EA details the basis for the health benefit estimates.

4. Monetized Net Benefits. The analysis of net benefits in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities under the final rule. These costs and benefits, however, include the present value of future costs and benefits associated with first year hazard reduction activities.

Tables 3a and 3b present net benefits or costs by housing program at three percent and seven percent discount rates respectively for increased lifetime earnings. All programs have a net benefit at three percent. The following programs have a net cost at seven percent: HUD-owned single family and multifamily housing, housing with project-based assistance, single family housing receiving rehabilitation assistance of more than \$5,000 per unit, and housing receiving assistance for acquisition, leasing, support services or operation. The specificity of statutory requirements limits the Department's ability to devise policies with net benefits for these programs at a seven percent discount rate.

Table 3c presents a summary of the costs, benefits, and net benefits of the first year activities under the final rule, using a three percent and seven percent discount rate for lifetime earnings. The total cost of first year hazard evaluation and reduction activities is \$253.2

million. The total benefit of first year activities is \$1.14 billion using a three percent discount rate, and \$324 million using a seven percent discount rate. Net benefits of first year activities are therefore either \$890 million or \$71 million, depending on the discount rate used. The EA details the costs and benefits of the final rule by subpart of the rule and by period of construction.

The individual rows of Table 3c detail the components of hazard evaluation and reduction costs and monetized hazard reduction benefits. Although the components of hazard reduction costs and monetized benefits are often identified by the same brief descriptors (e.g., paint stabilization, soil cover, dust

cleanup) the cost components are not directly comparable to the benefit components. For example, dust-cleanup costs reflect only the costs of cleanup. Cleanup benefits, however, reflect the assumption that low dust-lead levels have a benefit duration of five years with paint stabilization and ten years with lead-based paint hazard abatement.

The duration of dust removal benefits reflects the anticipated benefits over five or ten years to a new population of young children, associated with births and unit turnover. This estimated duration of benefits could not be realized without the hazard reduction activities of paint stabilization or abatement, friction/impact work, and

soil cover, to the extent required by the rule. The monetized benefits in the table for paint stabilization and abatement reflect only the health benefits of avoided paint chip ingestion. The cost of paint stabilization includes the incremental cost for rehabilitation programs, and the full cost for non-rehab programs. Paint stabilization market value benefits reflect the estimated market value for non-rehabilitation programs. Subtracting paint stabilization market value benefits from paint stabilization costs yields the incremental cost of all paint stabilization required under the rule.

TABLE 3a.—NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Three percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for subpart
Single Family Insured Housing (E)	\$0	\$0	\$0	\$0
HUD-Owned Single Family Housing (F)	804,349	(104,790)	(267,451)	432,108
Multifamily Insured Housing (G)	3,712,523	2,981,836	0	6,694,360
Multifamily Housing With Project-Based Assistance > 5K (Hm1) ...	7,858,982	6,284,595	4,395,518	18,539,094
Multifamily Housing With Project-Based Assistance > 5K (Hm2) ...	22,150,600	7,055,126	4,798,460	34,004,186
Single Family Housing With Project-Based Assistance (Hs)	5,359,054	1,570,456	848,160	7,777,670
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	221,666	551,460	316,903	1,090,029
Single Family Rehab <5K (J1s)	26,705,720	19,813,315	3,103,588	49,622,624
Single Family Rehab 5K–25K (J2s)	40,365,551	29,115,276	4,186,525	73,667,352
Single Family Rehab 25K (J3s)	3,192,504	8,466,423	421,773	12,080,700
Multifamily Rehab <5K (J1m)	3,103,001	2,488,518	491,894	6,083,413
Multifamily Rehab 5K–25K (J2m)	12,303,357	9,541,269	3,316,929	25,161,554
Multifamily Rehab >25K (J3m)	8,536,151	6,932,896	1,504,944	16,973,991
Single Family Acquisition, Leasing, Operating, and Support (Ks) ..	318,545	124,334	20,862	463,741
Multifamily Acquisition, Leasing, Operating, and Support (Km)	608,761	146,925	47,221	802,907
Multifamily Public Housing (Lm)	58,623,013	188,764,843	34,665,629	282,053,485
Single Family Public Housing (Ls)	13,930,634	44,625,006	7,001,718	65,557,359
Single Family Tenant-Based Rental Assistance (Ms)	68,354,171	31,214,436	15,578,130	115,146,737
Multifamily Tenant-Based Rental Assistance (Mm)	102,509,490	46,573,257	24,862,934	173,945,681
Total Net Benefit	378,658,072	406,145,182	105,293,738	890,096,991

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Single Family Insured Housing (E)	\$0	\$0	\$0	\$0
HUD-Owned Single Family Housing (F)	(1,927,841)	(689,268)	(539,603)	(3,156,712)
Multifamily Insured Housing (G)	246,690	176,627	0	423,317
Multifamily Housing With Project-Based Assistance > 5K (Hm1) ...	391,267	240,304	(3,053,108)	(2,421,537)
Multifamily Housing With Project-Based Assistance < 5K (Hm2) ...	(2,093,138)	(2,104,432)	(5,644,938)	(9,842,508)
Single Family Housing With Project-Based Assistance (Hs)	(1,667,495)	(1,102,037)	(3,184,370)	(5,953,901)
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	(15,690)	(40,308)	(368,895)	(424,892)
Single Family Rehab <5K (J1s)	3,659,065	2,291,784	(2,361,222)	3,589,628
Single Family Rehab 5K–25K (J2s)	332,951	(564,095)	(4,419,314)	(4,650,458)
Single Family Rehab >25K (J3s)	(202,701)	(259,968)	(467,775)	(930,445)
Multifamily Rehab <5K (J1m)	506,967	370,441	(153,853)	723,554
Multifamily Rehab 5K–25K (J2m)	1,820,172	1,315,448	(76,463)	3,059,158
Multifamily Rehab >25K (J3m)	1,191,958	963,529	(42,968)	2,112,520
Single Family Acquisition, Leasing, Operating, and Support (Ks) ..	(99,117)	(87,249)	(78,325)	(264,691)
Multifamily Acquisition, Leasing, Operating, and Support (Km)	(57,525)	(43,825)	(55,551)	(156,902)
Multifamily Public Housing (Lm)	8,942,287	27,902,848	(1,523,858)	35,321,277
Single Family Public Housing (Ls)	1,380,411	4,213,020	(2,151,524)	3,441,908
Single Family Tenant-Based Rental Assistance (Ms)	11,717,061	4,619,772	1,484,946	17,821,779
Multifamily Tenant-Based Rental Assistance (Mm)	19,667,574	7,933,157	4,751,523	32,352,254

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES—Continued

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Total Net Benefit	43,792,895	45,135,748	(17,885,295)	71,043,348

TABLE 3C.—COST-BENEFIT SUMMARY FOR FIRST YEAR ACTIVITIES USING A THREE PERCENT AND A SEVEN PERCENT DISCOUNT RATE FOR LIFETIME EARNINGS

[\$ millions]

	Three per cent	Seven per cent
Hazard Evaluation Costs	\$ 99.5	\$ 99.5
Hazard Reduction Costs:		
Paint Stabilization	75.7	75.7
Window Replacement	4.6	4.6
Friction/Impact Work	8.5	8.5
Soil Cover	2.3	2.3
Paint Hazard Abatement	2.0	2.0
Dust Cleanup	60.5	60.5
Total First Year Costs	253.2	253.2
Monetized Benefits:		
Paint Stabilization	71.2	20.3
Paint Hazard Abatement	1.1	0.3
Soil Cover	88.0	20.2
Dust Cleanup	908.6	209.0
Paint Stabilization Market Value	70.2	70.2
Window Replacement	4.2	4.2
Total First Year Benefits	1,143.3	324.2
Total First Year Net Benefits	890.1	71.0

5. *Data Sources.* The following data sources are referenced extensively in the EA:

- The HUD national survey of lead-based paint in housing, conducted in 1989 and 1990.

- “Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: a Report to Congress,” prepared by HUD, December 7, 1990.

- “TSCA Title IV, Sections 402(a) and 404: Target Housing and Child-Occupied Facilities Final Rule

Regulatory Impact Analysis,” prepared by Abt Associates for EPA, August 1996.

- The Evaluation of the HUD Lead-Based Paint Hazard Control Grant program—interim data collected through March 1998.

- National Academy of Sciences, National Research Council Committee on Measuring Lead in Critical Populations, “Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations,” October 1993.

- Third National Health and Nutrition Examination Survey, as reported in “Blood Lead Levels in the U.S. Population” and “The Decline in Blood Lead Levels in the United States,” Journal of the American Medical Association, July 27, 1994; and “Update Blood Lead Levels—United States, 1991–1994,” MMWR, February 21, 1997; and additional detail obtained from NHANES III data on CD-ROM.

6. *Public Comments.* An industry group criticized the EA for the proposed rule on several grounds. The group stated that population blood lead levels may have declined further since the NHANES III Phase 1 data were released. For the final rule, HUD has used the most current data available, which is the NHANES III, Phase 2 data covering the years 1992–1994.

The group also suggested that HUD’s conclusion that declining dust lead levels will reduce blood lead levels in children is not supportable because it is based on a single study. In fact, there are at least 18 epidemiological studies which have estimated the blood lead/dust lead relationship; HUD has not relied on a single study in developing the final EA, but has conducted an extensive pooled analysis of virtually all available epidemiological data (Lanphear 1998).

The group stated that HUD’s EA relied on a 1991 CDC finding that 10 µg/dL represents a threshold level, below which there are no adverse effects, and that therefore the EA should not have calculated benefits below 10 µg/dL. This is an incorrect interpretation of CDC’s position. In fact, the 1991 CDC guidance document indicated that there was evidence of adverse health effects below 10 µg/dL. Neither HUD nor CDC have stated that 10 µg/dL is a “threshold.” The conclusion that it is reasonable to assume cognitive benefits to reducing childhood blood lead levels, including

below 10 µg/dL, has been approved by EPA, the EPA external peer review process, CDC, the HHS internal peer review process and the National Academy of Sciences. It is clear that HUD’s analysis is consistent with the consensus of the scientific community.

The group also stated that the EA cited the correlation between blood lead and low IQ, but erred in suggesting that correlation could be used to establish causality and that the available scientific studies failed to control for a variety of confounding variables. HUD agrees that correlation alone cannot establish causality. The idea that lead exposure causes a reduction in IQ is supported by not only correlation, but also by time precedence, biological plausibility, dose-effect relationship, and animal studies. When taken together, HUD believes that all these factors establish conclusively that lead exposure does in fact cause reductions in IQ. Time precedence has been established by those studies that measure blood lead level at birth, showing that the cause exists before the consequence. Biological plausibility has been established by the studies showing anatomical, physiological, and biochemical changes in the brain due to lead exposure. Dose-response has also been clearly established in the literature. Finally, all modern lead studies have in fact controlled for confounding variables, such as socioeconomic status, parent’s education and race.

The group also suggested that the lead studies upon which the EA relied used imprecise or incomplete methods of measuring IQ. However, if IQ was in fact measured inappropriately, one would expect to see the studies equally distributed between those showing no effect and those that did. In fact, virtually all of the studies on lead show the same IQ effect. While the size of the effect and degree of statistical significance may vary from one study to another, the basic conclusion remains the same: increased lead exposure is related to reduced IQ.

Another industry group suggested that HUD’s EA for the proposed rule had overestimated the benefits, because children living in HUD-assisted housing will grow up to earn less than the average income, and thus the calculated loss in lifetime earnings was too great.

First, HUD does not believe it is appropriate to declare that the value of damage to children in one socioeconomic group is less than the value of damage to children in another socioeconomic group. Furthermore, there is evidence that earnings may have in fact been underestimated, because per capita productivity has increased in recent years, which often results in increased wages. HUD used data covering the past 20 years to estimate growth in real wages, which has been low. If in fact the country returns to the growth rate over the past century, HUD's EA would underestimate the size of the lost lifetime earnings. HUD has used an updated estimate of the size of the lost lifetime earnings benefit (Salkever 1995) in the EA for this final rule to respond to this criticism. Salkever updated the analysis of labor force participation and other pathways by which lead can reduce expected future earnings. Finally, HUD's EA assumed that there would be no benefit to reducing lead exposure in adults, even though a number of studies have demonstrated that lead can increase blood pressure and cause a decline in both kidney function and cognition in adults. In short, HUD's EA is likely to underestimate the total benefit involved, not overestimate it.

An industry group suggested that HUD should use the lower confidence bound of the scientific studies, which would reduce the benefits of the proposed rule. HUD agrees that this would reduce the benefits, but notes that if it chose to use the upper bound as a health protective measure, the benefit would increase. On balance, HUD believes that measures of central tendency appear to be best when faced with the need to make public policy in the face of scientific uncertainty, which is always present to some extent. HUD encourages public comment on the EA and the final rule and will make revisions to both documents as new evidence comes to light.

B. Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 2501–3520), and have been assigned OMB control number 2539–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

C. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

When the proposed rule was published on June 7 1996, HUD certified that the proposed regulatory requirements would not have a significant economic impact on a substantial number of small entities. On October 9, 1998 (63 FR 54422), HUD published a Notice in the **Federal Register** containing additional information about its determination that the proposed rule would not have a significant impact on a substantial number of small entities. HUD has concluded, upon further consideration, that its certification that the rule will not have a significant economic impact on a substantial number of small entities could reasonably be questioned. Although the Department continues to believe that the certification was reasonable and justified, the degree of uncertainty as to what constitutes a “significant” impact and a “substantial” number of small entities in the housing industry has led to the decision not to make such a certification at this time. HUD is seeking to comply fully with the intent of the Regulatory Flexibility Act and is publishing this Final Regulatory Flexibility Analysis to describe the likely impact. This analysis expands on the analysis published on October 9, 1998 and summarizes and responds to public comments. HUD requests written public comment on this analysis of the impact of the rule on small entities. The final rule does not take effect until one year after publication, so there is time for the Department to arrange for responses to economic impacts that it believes would significantly diminish the effectiveness of its housing assistance programs in providing affordable housing to families of low and moderate income.

Comments on this notice must be received on or before November 1, 1999. Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are *not* acceptable. For further information, contact: Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Telephone: (202) 755–1785, ext. 106

(this is not a toll-free number). E-Mail: stevenson_p._weitz@hud.gov. Hearing or speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

1. *Need For and Objectives of the Final Rule.* The Lead-Based Paint Poisoning Prevention Act of 1971, as amended, directs the U.S. Department of Housing and Urban Development (HUD) to establish procedures to eliminate to the extent practicable lead-based paint hazards in federally associated housing. HUD issued implementing regulations in 1976 and made Department-wide revisions in 1986, 1987, and 1988. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act, which was Title X of the Housing and Community Development Act of 1992 (Title X). Sections 1012 and 1013 of Title X amend the Lead-Based Paint Poisoning Prevention Act to require specific new procedures for lead-based paint notification, evaluation, and hazard reduction activities in housing receiving Federal assistance (section 1012) and federally owned housing at the time of sale (section 1013).

In enacting Title X, the Congress found that low-level lead poisoning is widespread among American children, with minority and low-income communities disproportionately affected. The Congress also found that, at low levels, lead poisoning in children causes IQ deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. In addition the Congress found that the health and development of children living in as many as 3.8 million homes is endangered by chipping or peeling lead paint or excessive amounts of lead-contaminated dust in their homes.

Among the stated purposes of Title X are to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock; to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments; and to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government.

The final rule sets forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. The rule takes into consideration the substantial advancement of lead-based paint remediation technologies and the

improved understanding of the causes of childhood lead poisoning by the scientific and medical communities. Perhaps the most important results of research on this subject during the last 10–12 years have been: (1) The finding that lead in house dust is the most common pathway of childhood lead exposure; and (2) the measurement of the statistical relationship between levels of lead in house dust and lead in the blood of young children. The final rule updates the existing HUD regulations to reflect this knowledge, giving importance to procedures that identify and remove dust-lead hazards as well as chipping, peeling or flaking lead-based paint.

The rule also offers a consolidated, uniform approach to addressing lead-based paint hazards. Currently, each individual HUD program has a separate set of lead-based paint requirements incorporated into its program regulations. The final regulation consolidates the HUD lead-based paint regulations and groups requirements by type of housing assistance, rather than by individual program. For example, the rule contains subparts that address multifamily mortgage insurance; project-based assistance; rehabilitation assistance; assistance for acquisition, leasing, support services and operation; public housing; and tenant-based assistance. Moreover, the final rule uses a clear and consistent set of terms to specify notification, evaluation, and hazard reduction requirements. Organizing the requirements by the type of housing assistance and using new terminology will avoid subjecting properties receiving assistance from more than one program to inconsistent or redundant HUD lead-based paint requirements. These changes will also ease the burden on HUD clients in locating and understanding the applicable requirements and help ensure that lead hazards are identified and safely reduced.

2. *Public Comments.* The Notice published in the **Federal Register** on October 9, 1998 outlined the impact of the proposed rule on small entities. Eight comments were received. Following is a summary of the significant issues raised by the comments and a description of the Department's assessment of and response to such issues.

a. *Information Not Adequate.* Two commenters requested additional information. One commenter said they were unable to assess the impact of the proposed regulations with the information provided in the published Notice and requested that the Department extend the comment period

on the Notice until supporting materials are available for public review. Another requested that HUD prepare a more detailed analysis and submit it for comment before publishing a final rule.

In response, HUD is providing more detailed information in this analysis and welcomes further comment. However, HUD is not delaying further the publication of this important regulation, which is expected to significantly reduce lead poisoning among children living in Federally owned housing that is sold and in housing that receives Federal assistance.

b. *Capital vs. Operating Costs.* One commenter stated that the analysis was "confusing," because it compared the cost of lead-based paint hazard reduction to current rent revenue. According to this commenter, lead-based paint activities are major capital improvement costs that would be financed from reserves or through a loan.

HUD agrees that some property managers may budget the required work out of reserves, some may have to finance it through a loan, while others will be able to handle it as an operating expense. Regardless of how the work is budgeted and financed, HUD believes that comparison to annual rent revenues is a reasonable method of gaining a general understanding of the significance of the costs. However, Section 3 of this Notice includes additional financial statistics for HUD-insured multifamily housing with project-based rental assistance; these statistics are net annual cash flow per unit before income taxes, total reserves per unit, and backlog of physical needs per unit.

c. *Costs Will Be Higher Than HUD Assumes.* Three commenters thought HUD underestimated the cost of complying with the requirements. All of these commenters were concerned primarily with rehabilitation programs. One commenter stated that the cost would be between \$2,000 and \$4,000 per unit, while the others claimed that rehabilitation costs are 35–50 percent more when lead-based paint is involved.

While it is possible that the costs in some jurisdictions may exceed those estimated for this analysis, HUD believes it has estimated the national average costs of the requirements in the rule as accurately as possible, given available data. It is important to remember that *average* costs may be much lower than costs one may have heard reported for heavily contaminated housing. Even in older housing, some structures have a great deal of lead-based paint while others have only a small amount, and the condition of the

paint varies as well. Also, the anecdotal costs reported in some jurisdictions may not be for the same activities as those required in this rule. Furthermore, the costs used in the analysis for rehabilitation are incremental costs. For example, if it is estimated that rehabilitation will replace windows for other reasons, that cost is not charged to lead-based paint hazard reduction. Finally, HUD believes that the cost of lead-based paint hazard evaluation and reduction will decline as program managers learn how to administer the requirements efficiently and as staff and contractors become experienced in the work.

HUD has estimated unit costs for lead-based paint hazard evaluation and reduction based on interviews with contractors and data from the ongoing Evaluation of HUD's Lead-Based Paint Hazard Control Grant Program (National Center 1998). It has estimated the frequencies of hazard occurrence based on both the Evaluation and the 1990 National Survey of Lead-Based Paint in Housing (EPA 1995). Also, it used American Housing Survey data to estimate the frequency with which rehabilitation involves activities like repainting or window replacement that overlap the requirements of lead-based paint hazard reduction. These estimates are explained in the HUD EA for the final rule (HUD 1999).

d. *There Will Be a Significant Impact.* Many commenters stated or implied that HUD was incorrect in its determination that the rule will not have a significant economic impact on a substantial number of small entities. While the Department has chosen not to make such a determination for this final rule, it continues to think that the cost of compliance, and therefore the impact, will not be as significant as many commenters believe.

As explained below, in section 4 of this Analysis, HUD has written provisions into the rule, consistent with Title X, designed to alleviate the impact of the lead-based paint evaluation and reduction requirements on entities receiving limited Federal assistance. For example, for most housing affected by this regulation, all that is required is stabilization of deteriorated paint, if any is present, followed by cleanup and clearance.

In multifamily housing, HUD estimates that compliance with this requirement costs only about \$100 per unit more than routine repainting, and less if only a small amount of deteriorated paint is present. This requirement pertains to housing that receives tenant-based rental assistance and is occupied by children of less than

six years of age, and it applies to housing receiving project-based rental assistance averaging less than \$5,000 per unit per year (which includes most housing that is affected by this rule and is receiving project-based assistance). The requirements are greater for multifamily housing receiving project-based assistance of more than \$5,000 per unit per year; but that is a relatively small percentage of the assisted stock that was built before 1978, and most of it is professionally managed, in relatively good physical and financial condition, and not expected to have a high prevalence of lead-based paint hazards. For housing receiving Federal rehabilitation assistance of \$5,000 per unit or less (which is almost one-half of the housing receiving such assistance), the rule requires only that the rehabilitation be done in a lead-safe manner so that it causes no contamination.

For these reasons and because there currently exist lead-based paint regulations for virtually all HUD programs prescribing notice, evaluation and treatment procedures, HUD continues to believe that the economic impact of the rule will be much less than many of the commenters believe.

e. *Owners Whose Entire Portfolio Is Affected May Be Impacted Especially Hard.* One organization stated that "small property owners whose portfolio may only contain target properties and will have to bear this additional expense throughout their portfolio, may well be forced out of business by such extreme financial requirements."

HUD agrees that the impact on an owner may depend to some extent on the percentage of his or her portfolio that is affected by the rule. However, many if not most housing owned by small entities will be only partially affected by the rule. A dwelling unit is not covered if it was built after 1977, or designated exclusively for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside), or is a zero bedroom dwelling (e.g., efficiency, studio, or single-room occupancy unit), or is found to be free of lead-based paint, or all lead-based paint has been removed. Many residential properties, especially those built after 1960, have little or no lead-based paint hazards. If a unit has no deteriorated paint or no lead-based paint hazards (depending on the

housing program), no hazard reduction is required. Thus, owners can minimize the cost effect of the rule through good maintenance of paint surfaces and careful cleanup at turnover. In the case of units with tenant-based assistance, the rule applies only to units occupied by families with children of less than six years of age. Many properties with project-based assistance have only part of their units under housing assistance payments contracts. For all of these reasons, the total annual rental revenue for affected small entities may substantially exceed the total annual rental revenue associated with just those units subject to the rule.

3. *Impact on Small Entities.* a. *Number of Small Entities Affected by the Rule.* For this analysis, HUD defines a small entity as one with less than \$5 million in total revenues per year. This standard is based on the report, "Small Business Administration Standard Industrial Code (SIC) Size Standards," dated January 1998.

Table 4 provides, for each program group, an estimate of the number of small entities that will be affected by the first effective year of the rule. Although some additional housing units and ownership entities will become subject to the rule after the first effective year, focusing on the first year facilitates analysis of impact on an annual basis. Estimates are given for the same program groups used in the EA for the rule, and the number of housing units for each program is taken from the EA. For all program groups, it is estimated that approximately 203,000 small entities will be affected in the first year of the rule. Of these, about 122,000, or 60 percent, are owners of single-family housing being rehabilitated with HUD rehabilitation assistance.

The vast majority of these owners are expected to be individuals who are rehabilitating their own residences. They are not businesses, organizations or units of local government, which are the entities of concern under the Regulatory Flexibility Act. Nevertheless data are provided for these owners for completeness of analysis. Of the remaining 81,000 small entities, the great majority will be owners of rental housing; and, of those, about 56,000 will be owners of housing with tenant-based rental assistance, 17,000 will be owners of housing with project-based rental assistance, 1,500 will own multifamily

housing receiving rehabilitation assistance, and about 1,400 will be local public housing authorities. HUD believes that the great majority of local public housing authorities are not covered by the Regulatory Flexibility Act, because they are not agencies of local governments with populations of less than 50,000. Nevertheless, public housing data are included in this analysis for completeness.

(1) *Housing With Multifamily Mortgage Insurance and/or Project-Based Rental Assistance.* The first and second rows of Table 4 pertain to multifamily housing that has HUD mortgage insurance but not HUD subsidies. For this program group, the rule will apply only to properties built before 1978 that are covered by a new application for mortgage insurance. These properties tend to be relatively large, with an average of 160 units per property. Twenty-one percent of the properties have more than 200 units (Abt Associates 1999). Average annual total revenues for unassisted HUD-insured multifamily properties are assumed for purposes of this analysis to be \$8,000 per unit. (This assumption is based on Abt Associates 1999, Exhibit 3-1, which reports a mean average annual total revenue for all unassisted insured properties of \$7,978.) To earn \$5 million per year in total revenues, a property with per unit annual revenue of \$8,000 would have to have 625 housing units. Few projects are of this size. However, it is well known that many of these projects are part of multiproperty portfolios. Of all rental housing in properties with 50 or more units, 25 percent of the properties and 50 percent of the units are owned by limited partnerships, general partnerships, real estate corporations or other corporations, or joint ventures (HUD 1996). Therefore it is assumed for this analysis that 25 percent of the unassisted multifamily properties with HUD mortgage insurance are owned by large entities and 75 percent are owned by small entities. It is also assumed that none of the properties owned by small entities are part of a multiproperty portfolio. This assumption may overstate the number of small entities somewhat. Based on this analysis, it is estimated that each year 70 applicants for unassisted multifamily mortgage insurance will be small entities.

TABLE 4.—NUMBER OF SMALL ENTITIES AFFECTED BY THE FIRST YEAR OF THE HUD LEAD-BASED PAINT REGULATIONS, FINAL RULE

Program group	Number of units	Units per property	Number of properties	Small owner entities as percent of number of properties	Number of small ownership entities
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	3,750	160	23	75	17
Post-1959 Housing w/ MF Mortgage Insurance	11,250	160	70	75	53
MF Housing w/ Project-Based Assistance, >\$5K/Unit	35,750	115	311	75	233
MF Housing w/ Project-Based Assistance, <\$5K/Unit	408,690	115	3,554	85	3,021
Single Family (SF) Housing w/ Project-Based Assistance	134,280	2	67,140	20	13,428
MF Housing w/ Tenant-Based Assistance	207,050	7	29,579	99	29,283
SF Housing w/ Tenant-Based Assistance	134,500	1	134,500	20	26,900
Public Housing	164,000	N/A	1,500	96	1,440
SF Housing w/ Rehab Assistance, <\$5K/Unit	66,836	1	66,836	100	66,836
MF Housing w/ Rehab Assistance, <\$5K/Unit	7,834	20	392	99	388
SF Housing w/ Rehab Assistance, \$5K–\$25K	48,998	1	48,998	100	48,998
MF Housing w/ Rehab Assistance, \$5K–\$25K	15,877	20	794	98	778
SF Housing w/ Rehab Assistance, >\$25K	5,817	1	5,817	100	5,817
MF Housing w/ Rehab Assistance, >\$25K	7,306	20	365	98	358
SF Housing w/ Acquisition, Leasing, etc. Assistance	5,093	1	5,093	100	5,093
MF Housing w/ Acquisition, Leasing, etc. Assistance	6,103	20	305	99	302
Total	1,263,134	.....	365,277	.....	202,945

The third and fourth rows of Table 4 present estimates for multifamily housing with project-based rental assistance. These are somewhat smaller properties, with an average of 115 units per project; only 13 percent have more than 200 units (Abt Associates 1999). For this analysis it is assumed that average annual total revenues are \$10,000 per unit for properties receiving an average of more than \$5,000 in rental assistance per unit per year and \$6,000 for those with less than \$5,000. (The Abt Associates 1999 report estimates that mean annual total revenues were \$5,868 in 1995 for all “older assisted” multifamily properties and \$10,057 for “newer assisted” properties. Older assisted properties receive either mortgage interest subsidies (under section 236 or 221(d)(3) Below Market Interest Rate insurance programs) or rental assistance under the Section 8 Loan Management Set Aside, Rent Supplement, Rental Assistance Payment, Section 8 Property Disposition, or Preservation programs. Newer assisted properties receive rental assistance under one of the following Section 8 programs: New Construction, Substantial Rehabilitation, or Moderate Rehabilitation. Older assisted properties had mean assistance payments of \$2,576 per unit per year, with a median of \$2,310. Newer assisted properties had mean assistance payments of \$7,448, with a median of \$7,106. Thus HUD assumes for purposes of this Regulatory Flexibility Analysis that virtually all of the housing receiving more than \$5,000 per unit per year in project-based assistance are in the newer assisted

properties and that virtually all of the housing receiving less than \$5,000 are in the older assisted category.) A project with \$10,000 in annual revenue per unit would have to have 500 units to earn \$5 million in total revenue. A project with \$6,000 in annual revenue per unit would need 834 units. It is assumed that 75 per cent of the owners of properties receiving more than \$5,000 per unit in assistance will be small entities—the same as for unassisted insured properties. However, recognizing the sharp difference in average revenues between properties receiving more than and less than \$5,000 per unit per year, it is assumed that 85 percent of the less-than-\$5,000 group will be small entities. Based on this analysis, it is estimated that 3,254 small entities will own multifamily properties with project-based assistance that will be affected by the rule in its first year. All of these should complete initial work in the first year, with only ongoing maintenance and some reevaluation required after that. In each of the second, third and fourth years, it is expected that 233 additional small entities will be affected.

The fifth row in Table 4 presents estimates for all *single family* housing receiving project-based assistance. HUD assumes for the purposes of this analysis of ownership that there is an average of two units per property in this inventory. This assumption derives from American Housing Survey data which indicates that there are a large number of three-and four-unit properties with project-based assistance as well as single unit properties. (The

HUD-FHA definition of “single family property” is one-to-four units.) It is further assumed that owners of single-family housing with project-based assistance own an average of five properties. This assumption recognizes that it requires a certain additional amount of managerial knowledge to participate in project-based assistance programs compared to owning an unassisted rental unit, and that such owners tend to try to maximize the benefits of such knowledge by owning several homes. HUD also assumes, however, that 100 percent of the owners of such housing are small entities. It is estimated that 13,428 small entities will own single family housing with project-based assistance that is affected by the first year of the rule. After that, only ongoing maintenance is required. No additional entities are expected to be affected in later years.

(2) *Tenant-Based Rental Assistance.* Families assisted by tenant-based rental assistance programs are living in housing that is similar in size and age to the nation’s entire non-luxury rental housing stock. Therefore HUD assumes that the average number of units per multifamily property is 20, which is much smaller than the projects with mortgage insurance and project-based assistance. However, in the tenant-based assistance programs, HUD lead-based paint regulations apply only to housing occupied by children of less than 6 years of age. Therefore, based on occupancy data from a subsample of the American Housing Survey, it is assumed that 35 percent of the 20 units (or seven) are occupied by such children. Because

of the small average property size, HUD assumes that only one percent of the owners of multifamily housing assisted under tenant-based programs are large entities.

For single-family housing with tenant-based assistance, it is assumed that an average of one unit per property will house families with children of less than six years of age, that owners will own an average of five properties, and that 100 percent of the properties are owned by small entities.

Counting owners of both multifamily and single family housing, it is estimated that 56,183 small entities will own housing with tenant-based assistance affected by the first year of the rule. In future years, because of housing turnover in these programs, it is expected that about 20,000 small entities will become newly affected each year.

(3) *Public Housing.* HUD estimates that approximately 1,500 public housing agencies will be affected by the rule. Although HUD believes that the Regulatory Flexibility Act does not apply to the vast majority of public housing authorities, data are presented here for completeness. Many public housing agencies own both multifamily and single family units, so no attempt is made in Table 1 to distinguish between agencies owning one or the other. Although rents paid by tenants of public housing are relatively low, HUD estimates that subsidies boosted public housing agency revenues to an average of approximately \$7,400 per unit per year in 1995. A public housing agency with average revenues per unit would have to have 676 units to have revenues of \$5 million. Only about 2 percent of public housing agencies have that many units. However, many housing agencies have revenues from sources other than the public housing program, including the project-based and tenant-based rental assistance programs. Therefore HUD assumes for this analysis that 4 percent of the public housing agencies are large entities and that 96 percent, or 1,440, are small entities.

(4) *Rehabilitation Assistance.* There are at least three types of entities that will be affected by the lead-based paint requirements for housing receiving rehabilitation assistance. They are: (1) The State and local governmental agencies and tribal agencies that are the grantees and participating jurisdictions that receive funding from HUD; (2) nonprofit organizations that are subrecipients or funded directly by HUD and that operate housing development and rehabilitation programs; and (3) private owners of housing being rehabilitated. Of these

three, the greatest concern of those commenting on the proposed rule was with the potential economic impact on private owners. Therefore this analysis focuses on that group.

The number of small-owner entities participating in the rehabilitation programs is estimated to be large, because many local programs concentrate on the rehabilitation of single family, owner-occupied homes. HUD assumes for purposes of this analysis that in any given year all single family units assisted by rehabilitation programs are individually owned, i.e., that the number of owners equals the number of units. While this may produce an overestimate of the actual number of owners, the error is expected to be small. For multifamily units, the same average number of 20 units per property is used as was used in the tenant-based assistance programs; and 98 to 99 percent of the owners are assumed to be small entities. In total, it is estimated that 125,028 small-owner entities will be affected by the rehabilitation assistance programs each year.

(5) *Acquisition, Leasing, Support Services, or Operation.* Assumptions for the Acquisition, Leasing, Support Services or Operation group are the same as for Rehabilitation. The number of small entities affected is estimated to be 5,395.

b. *Economic Impact.* This section examines, for each program group, the financial impact of the rule on small entities.

(1) *Housing With Multifamily Mortgage Insurance, Project-Based Rental Assistance, Tenant-Based Rental Assistance, or Public Housing.* Table 5 provides a comparison of the incremental cost of compliance with total revenues for most of the rental housing programs affected by the rule. Table 6 provides the following additional financial statistics that are available from a study of the insured multifamily inventory: annual net cash flow, total reserves, and backlog of physical needs—all per unit (Abt Associates 1999, exhibits 2–2, 3–3, and 3–7). Annual net cash flow equals revenues less expenses before income taxes. Expenses include deposits to reserve accounts and debt service as well as operating expenses. Total reserves include replacement reserves and, for some properties, residual receipts accounts. The physical needs backlog is the estimated cost of repairs and replacements beyond ordinary maintenance required to restore a property to its original condition. The financial statistics in Table 6 are available only for the multifamily HUD-

insured stock that is unassisted or assisted with project-based subsidies; they are not available for housing receiving tenant-based assistance or for public housing.

Two sets of compliance cost estimates are provided for each program group in Table 5. The first column is the mean incremental cost per unit for all properties. Incremental costs are new costs incurred in compliance with this rule over and above the costs of compliance with existing regulations. There is a great deal of variation around this mean that is associated with the age, size and condition of the housing. Many properties will have no cost at all. Therefore, the second column of Table 5 provides the estimated incremental cost per unit for “high-cost properties.” This is an approximation of the average cost that may be incurred by properties that have all the hazards for which the rule requires remediation for a given program. The frequency of such high-cost cases is not known but is expected to be between one and eight percent of all properties, depending on the program group. All compliance cost estimates are incremental, i.e., over and above the costs of current HUD lead-based paint regulations. The cost estimates are derived from the EA, which in turn is based on data collected from discussions with lead-based paint inspectors and hazard reduction contractors in 1995 and the evaluation of the HUD Lead-Based Paint Hazard Control Grant Program (data collected 1994–1997). No cost estimates are shown for post-1959 unassisted housing with HUD multifamily mortgage insurance because the rule requires only that sponsors agree to conduct ongoing lead-based paint maintenance.

Estimates of mean annual total revenues per unit are based on a 1995 survey of HUD-insured multifamily rental housing (Abt Associates 1999, exhibit 3–1) and estimates by HUD staff. As with Table 4, all estimates pertain to housing affected by the first year of the rule.

In comparing compliance costs with revenue or with other financial data, it is important to remember that the compliance costs are not continuing annual costs. Rather they are one-time costs of hazard evaluation and control, after which the owner must simply maintain the paint surfaces and conduct maintenance and repair activities in a lead-safe manner. For some program groups, owners will have to conduct at least two reevaluations in two-year intervals after the initial hazard reduction activity to assure that lead-based paint hazards have not reoccurred. Also, many owners have

properties that are not covered by the rule as well as those that are affected. The financial impact on such owners will be less than on those whose portfolios consist solely of pre-1978 HUD-associated housing.

Table 5 indicates that, in the first effective year of the rule, the mean incremental cost of compliance is expected to vary from 1.0 to 6.9 percent of total annual revenues for the insured multifamily stock and housing receiving project-based rental assistance. Public housing and unassisted insured multifamily housing built before 1960 have the highest average costs and the highest percentage of revenue, because of the stringency of the requirements and the age of the stock. High-cost properties have ratios of cost to revenue of 9.0 to 28 percent; but these percentages should be used only as rough indicators, because the universe of the revenue estimate (all properties) does not correspond to that of the high-cost properties.

Table 6 provides additional financial statistics from the Abt Associates report on the multifamily insured stock. Data from the Abt study for unassisted properties are not included in this table, because they are not necessarily representative of properties that will apply for mortgage insurance when the rule becomes effective. For newer assisted properties (defined as properties receiving Section 8 New Construction, Substantial Rehabilitation, or Moderate Rehabilitation), the average (mean) cash flow was a substantial \$1,105 per unit. This compares to lead-based paint regulatory compliance costs of \$255 (average for all properties) and \$1,120 (high-cost properties) for housing with project-based assistance of more than \$5,000 per unit. While reserves also appeared respectable for most of these newer assisted properties, the mean backlog of physical needs was \$3,214 compared to a median of \$1,324, indicating that a few properties had very

high backlog needs. Also, 13 percent of the newer assisted properties had negative cash flow, again indicating that some properties are in financial distress.

For the older assisted properties, which correspond to housing with project-based assistance of less than \$5,000 per unit, mean annual net cash flow per unit was \$283, compared with compliance costs of \$60–\$82 per unit (average for all properties) and \$570–\$870 (high-cost properties). The Abt study found that 33 percent of the older assisted properties had a negative cash flow and that another 42 percent had a cash flow of \$0–\$500 per unit. Further, the study found \$3,929 in average (mean) backlog of physical needs per unit, with a median of \$2,096, indicating that some properties have very high deferred needs. Thus it appears that a certain percentage of this older stock is in financial distress, even more than with the newer assisted properties.

TABLE 5.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF ANNUAL REVENUE, BY PROGRAM GROUP:
NONFEDERAL RENTAL HOUSING AFFECTED BY THE FIRST YEAR OF THE RULE

[Not including housing receiving assistance for rehabilitation or acquisition, leasing, support services or operation. Cost and revenue data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average annual total revenue per unit, all properties	Average incremental compliance cost as a percent of revenue, all properties	Average incremental compliance cost as a percent of revenue, high-cost properties
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	\$414	\$1,120	\$8,000	5.2	14
Post-1959 Housing w/MF Mortgage Ins.	0	0	8,000	0	0
MF Housing w/Project-Based Assistance, >\$5K/Unit	255	1,120	10,000	2.6	11
MF Housing w/Project-Based Assistance, <\$5K/Unit	60	570	6,000	1.0	9.5
SF Housing w/Project-Based Assistance	82	870	6,500	1.3	13
MF Housing w/Tenant-Based Rental Assistance	59	560	6,200	1.0	9.0
SF Housing w/Tenant-Based Rental Assistance	103	870	6,200	1.7	14
MF Public Housing	311	1,120	7,400	4.2	15
SF Public Housing	511	2,095	7,400	6.9	28

TABLE 6.—FINANCIAL STATISTICS FOR MULTIFAMILY PROPERTIES WITH HUD-INSURED MORTGAGES 1995
[In 1995 dollars per 2-bedroom equivalent unit]

	Newer assisted properties	Older assisted properties
Annual Net Cash Flow Per Unit:		
Mean	\$1,105	\$283
Median	\$742	\$162
Percentage of Properties With Negative Cash Flow	13%	33%
Percentage of Properties With Cash Flow of \$0–\$500	22%	42%
Total Reserves Per Unit:		
Mean	\$1,924	\$1,766
Median	\$1,163	\$1,240
Backlog of Physical Needs Per Unit:		
Mean	\$3,214	\$3,929
Median	\$1,324	\$2,096

It is apparent from these statistics that some properties will not be able to fund lead-based paint compliance out of current income. HUD estimates that no more than half of the housing with project-based assistance will be able to obtain an adjustment in assistance levels to finance the cost of the lead-based paint requirements. For projects that do not qualify for a rent adjustment and do not have sufficient income to cover the cost of compliance with the rule, HUD will work with owners to find funds from other sources. Depending on the property, this process may include the financial restructuring known as Mark to Market. Mark-to-Market processing will address lead-

based paint requirements in the restructuring commitment. Other possible sources of funds include replacement reserves, grants, and Community Development Block Grant funds.

(2) *Housing Receiving Rehabilitation Assistance.* For housing receiving rehabilitation assistance, Table 7 compares the cost of compliance to an assumed average total cost of rehabilitation. Assumed average total rehabilitation costs are \$4,000 for projects receiving \$5,000 or less in rehabilitation assistance, \$15,000 for those receiving between \$5,000 and \$25,000 in assistance, and \$30,000 for those receiving more than \$25,000 in assistance. Average compliance costs

vary from 1.1 to 4.2 percent of these total project costs. Costs for high-compliance-cost projects vary from 3.3 to 9.3 percent of total rehabilitation cost. Single family properties tend to have a higher cost impact than multifamily, because they are larger units on average and usually require more exterior work.

Virtually all HUD rehabilitation assistance is administered by State, local and tribal agencies, and many, if not most, of these programs are operated as low-interest loans. If property owners are unable to finance loans for the incremental cost of lead hazard control, the administering agencies have the option to finance such costs with a grant out of program funds.

TABLE 7.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF AVERAGE REHABILITATION COST, BY PROGRAM GROUP HOUSING RECEIVING FEDERAL REHABILITATION ASSISTANCE
[Cost data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average cost of rehabilitation, all properties	Average incremental compliance cost as a percentage of average rehab cost, all properties	Average incremental compliance cost as a percentage of average rehab cost, high-cost properties
Single Family (SF) Housing w/ Rehab Assistance, <\$5K/Unit	\$153	\$170	\$4,000	3.8	4.3
Multifamily (MF) Housing w/ Rehab Assistance, <\$5K/Unit	113	130	4,000	2.8	3.3
SF Housing w/ Rehab Assistance, \$5K–\$25K	627	1,275	15,000	4.2	8.5
MF Housing w/ Rehab Assistance, \$5K–\$25K	265	720	15,000	1.8	4.8
SF Housing w/ Rehab Assistance, >\$25K/Unit	891	2,775	30,000	3.0	9.3
MF Housing w/ Rehab Assistance, >\$25K/Unit	342	1,140	30,000	1.1	3.8

(3) *Acquisition, Leasing, Support Services, and Operation.* This program group does not appear on Table 5, because HUD has no aggregate financial information for the housing affected by this subpart of the rule. For single family properties, the average cost of compliance is estimated at \$251 per unit for all properties; the high cost is \$870. For multifamily properties, the average cost per unit is \$122 for all properties and \$460 for high-cost properties. These costs are similar to those of housing with tenant-based assistance, and the financial impact is likely to be similar also.

4. *Final Rule Requirements.* The final rule establishes the following types of lead-based paint requirements: (1) Distribution of a lead hazard information pamphlet; (2) notice to occupants of evaluation and hazard reduction activities; (3) evaluation of lead-based paint hazards; (4) reduction of lead-based paint hazards; (5) ongoing monitoring and reevaluation; (6) response to a child with an elevated blood lead level; and (7) record keeping.

a. *Lead Hazard Information Pamphlet.* The rule, in accordance with the statute, requires the distribution of the EPA pamphlet entitled, “Protect Your Family From Lead in Your Home” to all existing tenants or owner-occupants who have not already received it in compliance with the lead-based paint disclosure rule (24 CFR part 35, subpart H) or the EPA rule implementing TSCA section 406(b) (40 CFR part 745, subpart E). Since the disclosure rule was effective in the Fall of 1996, HUD expects that most tenants will have already received the pamphlet when the rule becomes effective in year 2000 (see discussion of effective date below). Current HUD regulations require provision of information similar to that in the EPA pamphlet, so this is not a totally new requirement.

b. *Resident Notice.* The rule, in accordance with Title X, requires that occupants of rental housing receiving Federal assistance be provided written notice of risk assessments, paint inspections, or hazard reduction activities required by this regulation and

undertaken at the property. This is a new requirement in HUD regulations. The required notice following risk assessment or inspection provides information to occupants about the nature, scope, and results of the evaluation and a name and phone number to contact for more information or for access to the actual evaluation reports. Notices to tenants regarding hazard reduction activities must contain information about the treatments performed and the location of any remaining lead-based paint. HUD is providing a sample format for resident notices in the final rule.

c. *Evaluation.* The rule establishes four types of evaluation procedures: (1) A lead-based paint inspection, which is a surface-by-surface investigation to determine the presence of lead-based paint on painted surfaces of a dwelling, typically through the use of a portable X-ray fluorescence (XRF) analyzer; (2) paint testing, which is a limited form of lead-based paint inspection aimed at determining the lead content of deteriorated paint or paint to be

disturbed by rehabilitation; (3) a risk assessment, which is an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards, which, in accordance with Title X, include dust-lead and soil-lead hazards as well as deteriorated lead-based paint, as well as lead-based paint on friction, impact and chewable surfaces; and (4) clearance, which is an examination conducted after hazard reduction, rehabilitation, or maintenance activities (a) to visually determine that deteriorated surfaces that are known or presumed to be lead-based paint have been controlled or abated and that visible dust, debris, paint chips, or other residue have been cleaned up; and (b) to collect samples of settled dust and test them for lead content to determine that no dust-lead hazards remain. A risk assessment includes limited dust wipe sampling or other environmental sampling techniques, identification of hazard reduction options, and a report explaining the results of the investigation. In some housing programs, the rule calls for a visual assessment instead of a lead-based paint inspection or risk assessment. A visual assessment does not require environmental sampling but requires the visual examination of interior and exterior painted surfaces for signs of deterioration. The rule requires different types of evaluation for different types of housing assistance programs and different ages of housing. The differences in the requirements largely reflect the extent of Federal involvement in the property or the availability of funding.

Existing HUD lead-based paint regulations require a visual inspection for defective paint surfaces and, in some cases, testing of and abatement of any lead-based paint on chewable paint surfaces. These methods are similar in kind to the visual assessment and paint testing requirements under the proposed rule.

d. *Hazard Reduction Activities.* Three types of hazard reduction activities are required in the rule: (1) Abatement, which is a set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards through removal, permanent enclosure or encapsulation, replacement of components, or removal or covering of lead-contaminated soil; (2) interim controls, which are designed to reduce temporarily human exposure to lead-based paint hazards through repairs, maintenance, painting, temporary containment, specialized cleaning, and ongoing monitoring; and (3) paint stabilization, which is the removal of

deteriorated paint, repair of any physical defect in the substrate that may be causing paint deterioration, and repainting. Specialized cleanup and clearance are required after all these activities.

As with the requirements for evaluation, the final rule requires different types of hazard reduction activities for different types of housing assistance programs and different periods of construction. In the case of public housing, abatement of lead-based paint and lead-based paint hazards is required during the course of modernization under the current regulation. Under the final rule, the public housing requirements would remain essentially the same, with the additional requirement of interim controls to reduce identified lead-based hazards before scheduled abatement can occur.

e. *Ongoing Lead-Based Paint Maintenance and Reevaluation.* If temporary hazard reduction measures are used and there is a continuing financial relationship between HUD and the residential property, the final rule requires that owners conduct an annual check to identify any new deteriorated paint and to ensure that prior hazard reduction treatments are still intact. If there is new deteriorated paint, it is to be repaired; if old treatments are failing, they are to be fixed. For some housing programs, the rule requires that a certified risk assessor conduct a reevaluation of the property at specified intervals to identify any reaccumulation of lead-contaminated dust and any failure of prior hazard reductions.

f. *Response To a Child With an Elevated Blood Lead Level.* In some HUD programs, existing regulations use the presence of a child under age seven with an elevated blood lead level (EBL) as a trigger to initiate testing for and abatement of lead-based paint on chewable surfaces. The final rule changes the cutoff age from seven to six, to conform to guidance from the Centers for Disease Control and Prevention (CDC). The rule also changes the response requirement to a risk assessment and interim controls of any identified lead-based paint hazards, and changes the definition of an elevated blood lead level for the purposes of this rule from equal to or exceeding 25 micrograms per deciliter ($\mu\text{g}/\text{dL}$) to 20 $\mu\text{g}/\text{dL}$ for a single venous test or of 15–19 $\mu\text{g}/\text{dL}$ in two tests taken at least 3 months apart. This definitional change was made in consultation with CDC to conform to their existing medical guidelines.

g. *Record Keeping.* Grantees, owners, public housing authorities, and other

designated parties are responsible for keeping a copy of each notice, evaluation, clearance or hazard reduction report for at least three years. If ongoing lead-based paint maintenance and/or reevaluation is required, such records must be kept and made available for HUD review until at least three years after such ongoing activities are no longer required.

5. *Description of Alternatives and Minimization of Economic Impact.* The specificity of the statute left HUD with no alternative to issuing an implementing regulation. However, in developing the final rule, HUD considered several alternative policies related to minimizing the burden of the rule on grantees, property owners and other parties responsible for complying with its requirements. Other alternatives were suggested by commenters on the proposed rule. In many cases, the public comments on the proposed rule articulated the issues discussed within the Department and at meetings with interested parties.

a. *Effective Date.* One consideration pertained to the effective date of the rule. On the one hand, an early effective date (such as 30 or 60 days after publication) seemed appropriate because the health of young children was at stake and the rule was delayed relative to the statutory schedule. On the other hand, HUD was aware that property owners, State and local agencies and other responsible parties needed time to prepare for compliance. The Department has concluded that such preparation is essential for safe, effective compliance and therefore is setting the effective date as one year after publication.

Commenters also urged HUD to make it clear that projects for which financing had been committed prior to the effective date should not have to be redesigned or refinanced in midstream. In response, HUD is including in the rule provisions that clarify exactly when projects in the pipeline are affected by the new requirements.

In addition to the phase-in period of one year, the final rule, in accordance with the statute, provides a more extended phase-in period for multifamily housing receiving project-based assistance of more than \$5,000 per unit per year and was constructed after 1959. For some housing, this phase-in could last for 4 years after publication of the final rule.

b. *Stringency of Requirements in Relation to Amount of Federal Assistance and Nature of Program.* The Department recognizes that the statute and the legislative history indicates a desire on the part of Congress to make

the stringency of requirements reasonable in relation to the amount of Federal assistance, the type and size of property, and the nature of the program. HUD considered various ways to achieve this goal and concluded with three important policies: (1) Multifamily properties receiving no more than \$5,000 per unit per year in project-based assistance and all single family properties receiving project-based assistance have less stringent requirements than multifamily properties receiving more than \$5,000 in project-based assistance; (2) housing receiving no more than \$5,000 per unit in Federal rehabilitation assistance have much less stringent requirements than those receiving more than \$5,000; and (3) the requirements for housing occupied by families with tenant-based rental assistance apply only to units occupied by families with children of less than 6 years of age. By applying the rule narrowly to tenant-based rental assistance programs, HUD has mitigated some of the cost and burden on small businesses, while still realizing significant benefits by targeting units that house families with young children.

c. De Minimis Area of Deteriorated Paint. In the proposed rule, in an attempt to make the requirements of the rule as cost-effective as possible, the Department proposed a certain area of deteriorated paint that had to be present before treatment was required under the rule. This "de minimis" was drawn from the HUD Guidelines, where it was established as a way to focus resources on the highest priority hazards while maintaining effectiveness in hazard reduction. The de minimis areas were as follows: More than 10 square feet on an exterior wall; more than two square feet on a component with a large surface area other than an exterior wall (such as interior walls, ceilings, floors and doors); or more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to window sills, baseboards, and trim. Comments on this proposal were mixed. Some commenters found it difficult to understand and put in practice, indicating that people would spend too much time measuring the exact areas of deteriorated paint instead of focusing on making housing lead safe. Others welcomed the proposal as a reasonable way to target hazard reduction resources. In preparing the final rule, HUD has removed the de minimis provision with regard to deteriorated paint, after concluding that experience in the tenant-based assistance programs (where the de minimis provision was

made effective in 1995) indicates that it is a cause of confusion.

d. Qualifications. Another subject of concern to HUD and to commenters on the proposed rule was the qualifications of individuals performing the hazard evaluation and reduction activities required by the rule. The proposed rule allowed dust and soil testing by persons employed by local housing agencies that are trained but not certified. Two commenters felt that it would be a mistake to allow uncertified individuals to take dust and soil tests, indicating that this appeared to be an avoidance of the certification law established by EPA regulations. EPA agreed with this point of view. HUD concluded that, because of the importance of dust and soil testing to the effectiveness of the regulation, there must be an established set of qualifications for those doing such testing. At this time, the only such program is that administered by EPA under authority of sections 402 and 404 of the Toxic Substances Control Act. Therefore HUD requires in the final rule that all dust and soil testing, as well as lead-based paint inspections, risk assessments, clearances and abatements, be performed or approved by people certified in accordance with EPA regulations or a State or tribal program authorized by EPA. To increase the availability of persons qualified to perform clearance examinations, HUD allows certified clearance technicians to perform clearances; and HUD also allows uncertified but trained technicians to perform clearances, provided the clearance report is signed by a certified lead-based paint inspector or risk assessor.

The proposed rule also required workers performing interim controls to be supervised by a person who is certified under EPA procedures as an abatement supervisor. Some commenters felt that it was unnecessary to require that interim controls workers be supervised by a certified abatement supervisor, suggesting that such workers could simply be trained in safe work practices. HUD agrees and requires in the final rule that workers performing lead-based paint maintenance and interim controls, including paint stabilization, only be trained in safe work practices. A series of optional acceptable training programs is listed.

e. Options to Provide Greater Flexibility. Several commenters on the proposed rule urged that HUD allow greater flexibility in ways to meet the goals of the rule. In particular, it was suggested that options be provided, such as the standard treatments recommended by the Task Force on Lead-Based Hazard Reduction and

Financing as an option to conducting a risk assessment and interim controls. Such options would allow owners to select the procedure that is most cost-effective for them to achieve the goal of lead-based paint hazard control. The standard treatments option has been incorporated into today's final rule.

In the proposed rule, HUD included a provision requiring owners of multifamily housing with project-based rental assistance to prepare a lead hazard reduction plan. The hazard reduction plan was a suggestion of the Task Force on Lead-Based Paint Hazard Reduction and Financing. Its purpose was to give owners flexibility in prioritizing hazard reduction work. Several commenters, however, noted that it would be a paperwork "nightmare," not only for the owners but for HUD as well. Therefore the final rule requires simply that the hazard reduction work be completed within 90 days after completion of the risk assessment report in units occupied by children of less than six years of age and within 12 months in all other units. HUD believes this change provides flexibility without unnecessary paperwork.

HUD recognizes that some States, tribes, or local governments may have established procedures for lead-based paint evaluation and hazard reduction that may be somewhat different than but as protective as those in this rule. Therefore the rule provides that HUD may waive or modify certain requirements if the Department determines that such local provisions are as protective as those of the HUD rule.

f. Avoidance of Duplication. The final rule was written with careful consideration of existing regulations developed by other Federal agencies, States, Indian tribes and localities. To minimize duplication and avoid confusion, HUD has explicitly stated that this rulemaking does not preclude States, Indian tribes or localities from conducting a more protective procedure than the minimum requirements set out in the proposed rule. Similarly, if more than one requirement covers a condition or activity, the most protective method shall apply. HUD has worked and continues to work closely with the EPA and CDC to ensure that regulations from two or more Federal agencies are consistent and not duplicative. Wherever possible, HUD has referenced relevant requirements established by EPA.

VII. Findings and Certifications

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

C. Executive Order 12866, Regulatory Planning and Review

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. OMB determined that this rule is an economically significant regulatory action, as defined in section 3(f)(1) of the Order. As described in section VI of this preamble, an Economic Analysis (EA) has been prepared that examines the economic costs and benefits of the final rule. The EA is available for inspection and copying in the office of the Departments' Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is also available for public inspection in the office of the Rules Docket Clerk.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose

lead-based paint hazards to young children. It implements Title X of the Housing and Community Development Act of 1992. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

E. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk for children.

F. Congressional Review of Major Final Rules

This final rule is a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8).

VIII. References

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List of Subjects

24 CFR Part 35

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income

housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 573

Condominiums, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements.

24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 901

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD is amending title 24 of the Code of Federal Regulations as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for 24 CFR part 35 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4821, and 4851.

2. Remove Subpart A and redesignate subpart H, consisting of §§ 35.80

through 35.98, as subpart A, consisting of §§ 35.1 through 35.19. The table of contents to redesignated subpart A is revised to read as follows:

Subpart A—Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Sec.

- 35.1 Purpose.
- 35.3 Scope and applicability.
- 35.5 Effective dates.
- 35.7 Definitions.
- 35.9 Disclosure requirements for sellers and lessors.
- 35.11 Opportunity to conduct an evaluation.
- 35.13 Certification and acknowledgement of disclosure.
- 35.15 Agent responsibilities.
- 35.17 Enforcement.
- 35.19 Impact on State and local requirements.

3. Revise subparts B through G and add subparts H through R to read as follows:

Subpart B—General Lead-Based Paint Requirements and Definitions for All Programs

- 35.100 Purpose and applicability.
- 35.105 Effective dates.
- 35.106 Information collection requirements.
- 35.110 Definitions.
- 35.115 Exemptions.
- 35.120 Options.
- 35.125 Notice of evaluation and hazard reduction activities.
- 35.130 Lead hazard information pamphlet.
- 35.135 Use of paint containing lead.
- 35.140 Prohibited methods of paint removal.
- 35.145 Compliance with Federal laws and authorities.
- 35.150 Compliance with other State, tribal, and local laws.
- 35.155 Minimum requirements.
- 35.160 Waivers.
- 35.165 Prior evaluation or hazard reduction.
- 35.170 Noncompliance with the requirements of subparts B through R.
- 35.175 Records

Subpart C—Disposition of Residential Property Owned by a Federal Agency Other Than HUD

- 35.200 Purpose and applicability.
- 35.205 Definitions and other general requirements.
- 35.210 Disposition of residential property constructed before 1960.
- 35.215 Disposition of residential property constructed after 1959 and before 1978.

Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD

- 35.300 Purpose and applicability.
- 35.305 Definitions and other general requirements.
- 35.310 Notices and pamphlet.
- 35.315 Risk assessments.
- 35.320 Hazard reduction.
- 35.325 Child with an environmental intervention blood lead level.

Subpart E [Reserved]

Subpart F—HUD-Owned Single Family Property

- 35.500 Purpose and applicability.
- 35.505 Definitions and other general requirements.
- 35.510 Required procedures.

Subpart G—Multifamily Mortgage Insurance

- 35.600 Purpose and applicability.
- 35.605 Definitions and other general requirements.
- 35.610 Exemption.
- 35.615 Notices and pamphlet.
- 35.620 Multifamily insured property constructed before 1960.
- 35.625 Multifamily Insured Property constructed after 1959 and before 1978.
- 35.630 Conversions and Major Rehabilitations

Subpart H—Project-Based Rental Assistance

- 35.700 Purpose and applicability.
- 35.705 Definitions and other general requirements.
- 35.710 Notices and pamphlet.
- 35.715 Multifamily properties receiving more than \$5,000 per unit.
- 35.720 Multifamily properties receiving up to \$5,000 per unit, and single-family properties.
- 35.725 Section 8 rent adjustments.
- 35.730 Child with an environmental intervention blood lead level.

Subpart I—HUD-Owned and Mortgagee-in-Possession Multifamily Property.

- 35.800 Purpose and applicability.
- 35.805 Definitions and other general requirements.
- 35.810 Notices and pamphlet.
- 35.815 Evaluation.
- 35.820 Interim controls.
- 35.825 Ongoing lead-based paint maintenance and reevaluation.
- 35.830 Child with an environmental intervention blood lead level.

Subpart J—Rehabilitation

- 35.900 Purpose and applicability.
- 35.905 Definitions and other general requirements.
- 35.910 Notices and pamphlet.
- 35.915 Calculating rehabilitation costs, except for the CILP program.
- 35.920 Calculating rehabilitation costs for the Flexible-Subsidy—CILP Program.
- 35.925 Examples of determining applicable requirements.
- 35.930 Evaluation and hazard reduction requirements.
- 35.935 Ongoing lead-based paint maintenance activities.
- 35.940 Special requirements for insular areas.

Subpart K—Acquisition, Leasing, Support Services, or Operation.

- 35.1000 Purpose and applicability.
- 35.1005 Definitions and other general requirements.
- 35.1010 Notices and pamphlet.
- 35.1015 Visual assessment, paint stabilization, and maintenance.

35.1020 Funding for evaluation and hazard reduction.

Subpart L—Public Housing Programs

- 35.1100 Purpose and applicability.
- 35.1105 Definitions and other general requirements.
- 35.1110 Notices and pamphlet.
- 35.1115 Evaluation.
- 35.1120 Hazard reduction.
- 35.1125 Evaluation and hazard reduction before acquisition and development.
- 35.1130 Child with an environmental intervention blood lead level.
- 35.1135 Eligible costs.
- 35.1140 Insurance coverage

Subpart M—Tenant-Based Rental Assistance

- 35.1200 Purpose and applicability.
- 35.1205 Definitions and other general requirements.
- 35.1210 Notices and pamphlet.
- 35.1215 Activities at initial and periodic inspections.
- 35.1220 Ongoing lead-based paint maintenance activities
- 35.1225 Child with an environmental intervention blood lead level.

Subparts N–Q [Reserved]

Subpart R—Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities.

- 35.1300 Purpose and applicability
- 35.1305 Definitions and other general requirements.
- 35.1310 References.
- 35.1315 Collection and laboratory analysis of samples.
- 35.1320 Lead-based paint inspections and risk assessments.
- 35.1325 Abatement.
- 35.1330 Interim controls.
- 35.1335 Standard treatments.
- 35.1340 Clearance.
- 35.1345 Occupant protection and worksite preparation
- 35.1350 Safe work practices.
- 35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

Subpart B—General Lead-Based Paint Requirements and Definitions for All Programs.

§ 35.100 Purpose and applicability.

(a) *Purpose.* The requirements of subparts B through R of this part are

promulgated to implement the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 *et seq.*), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*).

(b) *Applicability.*—(1) *This subpart.*

This subpart applies to all target housing that is federally owned and target housing receiving Federal assistance to which subparts C, D, F through M, and R of this part apply, except where indicated.

(2) *Other subparts.*—(i) *General.*

Subparts C, D, and F through M of this part each set forth requirements for a specific type of Federal housing activity or assistance, such as multifamily mortgage insurance, project-based rental assistance, rehabilitation, or tenant-based rental assistance. Subpart R of this part provides standards and methods for activities required in subparts B, C, D, and F through M of this part.

(ii) *Application to programs.* Most HUD housing programs are covered by only one subpart of this part, but some programs can be used for more than one type of assistance and therefore are covered by more than one subpart of this part. A current list of programs covered by each subpart of this part is available on the internet at www.hud.gov, or by mail from the National Lead Information Center at 1–800–424–LEAD. Examples of flexible programs that can provide more than one type of assistance are the HOME Investment Partnerships program, the Community Development Block Grant program, and the Indian Housing Block Grant Program. Grantees, participating jurisdictions, Indian tribes and other entities administering such flexible programs must decide which subpart applies to the type of assistance being provided to a particular dwelling unit or residential property.

(iii) *Application to dwelling units.* In some cases, more than one type of assistance may be provided to the same dwelling unit. In such cases, the subpart

or section with the most protective initial hazard reduction requirements applies. Paragraph (c) of this section provides a table that lists the subparts and sections of this part in order from the most protective to the least protective. (This list is based only on the requirements for initial hazard reduction. The summary of requirements on this list is not a complete list of requirements. It is necessary to refer to the applicable subparts and sections to determine all applicable requirements.)

(iv) *Example.* A multifamily building has 100 dwelling units and was built in 1965. The property is financed with HUD multifamily mortgage insurance. This building is covered by subpart G of this part (see § 35.625—Multifamily mortgage insurance for properties constructed after 1959), which is at protectiveness level 5 in the table set forth in paragraph (c) of this section. In the same building, however, 50 of the 100 dwelling units are receiving project-based assistance, and the average annual assistance per assisted unit is \$5,500. Those 50 units, and common areas servicing those units, are covered by the requirements of subpart H of this part (see § 35.715—Project-based assistance for multifamily properties receiving more than \$5,000 per unit), which are at protectiveness level 3. Therefore, because level 3 is a higher level of protectiveness than level 5, the units receiving project-based assistance, and common areas servicing those units, must comply at level 3, while the rest of the building can be operated at level 5. The owner may choose to operate the entire building at level 3 for simplicity.

(c) *Table One.* The following table lists the subparts and sections of this part applying to HUD programs in order from most protective to least protective hazard reduction requirements. The summary of hazard reduction requirements in this table is not complete. Readers must refer to relevant subpart for complete requirements.

Level of protection	Subpart, section, and type of assistance	Hazard reduction requirements
1	Subpart L, Public housing. Subpart G, § 35.630, Multifamily mortgage insurance for conversions and major rehabilitations.	Full abatement of lead-based paint.
2	Subpart J, § 35.930(d), Properties receiving more than \$25,000 per unit in rehabilitation assistance.	Abatement of lead-based paint hazards.
3	Subpart G, § 35.620, Multifamily mortgage insurance for properties constructed before 1960, other than conversions and major rehabilitations. Subpart H, § 35.715, Project-based assistance for multifamily properties receiving more than \$5,000 per unit. Subpart I, HUD-owned multifamily property. Subpart J, § 35.930(c), Properties receiving more than \$5,000 and up to \$25,000 per unit in rehabilitation assistance.	Interim controls.
4	Subpart F, HUD-owned single family properties. Subpart H, § 35.720, Project-based rental assistance for multifamily properties receiving up to \$5,000 per unit and single family properties. Subpart K, Acquisition, leasing, support services, or operation. Subpart M, Tenant-based rental assistance.	Paint stabilization.

Level of protection	Subpart, section, and type of assistance	Hazard reduction requirements
5	Subpart G, § 35.625, Multifamily mortgage insurance for properties constructed after 1959	Ongoing lead-based paint maintenance.
6	Subpart J, § 35.930(b), Properties receiving up to and including \$5,000 in rehabilitation assistance	Safe work practices during rehabilitation.

§ 35.105 Effective dates.

The effective date for subparts B through R of this part is September 15, 2000, except that the effective date for prohibited methods of paint removal, described in § 35.140, is November 15, 1999. Subparts F through M of this part provide further information on the application of the effective date to specific programs. Before September 15, 2000, a designated party has the option of following the procedures in subparts B through R of this part, or complying with current HUD lead-based paint regulations.

§ 35.106 Information collection requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 2501–3520), and have been assigned OMB control number 2539–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

§ 35.110 Definitions.

Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of “permanent”).

Abatement includes:

(1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and

(2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

Act means the Lead-Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4822 *et seq.*

Bare soil means soil or sand not covered by grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering.

Certified means licensed or certified to perform such activities as risk assessment, lead-based paint inspection,

or abatement supervision, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), or by the EPA, in accordance with 40 CFR part 745, subparts L or Q.

Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an “accessible surface” as defined in 42 U.S.C. 4851b(2)(j). Hard metal substrates and other materials that cannot be dentured by the bite of a young child are not considered chewable.

Clearance examination means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this part, exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples. Dust-lead standards for clearance are found at § 35.1320.

CILP recipient means an owner of a multifamily property which is undergoing rehabilitation funded by the Flexible Subsidy-Capital Improvement Loan Program (CILP).

Common area means a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, garages and boundary fences.

Component means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

Composite sample means a collection of more than one sample of the same medium (e.g., dust, soil or paint) from the same type of surface (e.g., floor, interior window sill, or window trough), such that multiple samples can be analyzed as a single sample.

Containment means the physical measures taken to ensure that dust and

debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

Designated party means a Federal agency, grantee, subrecipient, participating jurisdiction, housing agency, CILP recipient, Indian tribe, tribally designated housing entity (TDHE), sponsor or property owner responsible for complying with applicable requirements.

Deteriorated paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dry sanding means sanding without moisture and includes both hand and machine sanding.

Dust-lead hazard means surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the standards in § 35.1320.

Dwelling unit means a:

(1) Single-family dwelling, including attached structures such as porches and stoops; or

(2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

Encapsulation means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate.

Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of “permanent”).

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of

abatement if it is designed to be permanent (see definition of "permanent").

Environmental intervention blood lead level means a confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or 15–19 µg/dL in two tests taken at least 3 months apart.

Evaluation means a risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Expected to reside means there is actual knowledge that a child will reside in a dwelling unit reserved for the elderly or designated exclusively for persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.

Federal agency means the United States or any executive department, independent establishment, administrative agency and instrumentality of the United States, including a corporation in which all or a substantial amount of the stock is beneficially owned by the United States or by any of these entities. The term "Federal agency" includes, but is not limited to, Rural Housing Service (formerly Rural Housing and Community Development Service that was formerly Farmer's Home Administration), Resolution Trust Corporation, General Services Administration, Department of Defense, Department of Veterans Affairs, Department of the Interior, and Department of Transportation.

Federally owned property means residential property owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator.

Firm commitment means a valid commitment issued by HUD or the Federal Housing Commissioner setting forth the terms and conditions upon which a mortgage will be insured or guaranteed.

Friction surface means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

g means gram, mg means milligram (thousandth of a gram), and µg means microgram (millionth of a gram).

Grantee means any State or local government, Indian tribe, IHBG recipient, insular area or nonprofit organization that has been designated by HUD to administer Federal housing assistance under a program covered by

subparts J and K of this part, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP).

Hard costs of rehabilitation means:

(1) Costs to correct substandard conditions or to meet applicable local rehabilitation standards;

(2) Costs to make essential improvements, including energy-related repairs, and those necessary to permit use by persons with disabilities; and costs to repair or replace major housing systems in danger of failure; and

(3) Costs of non-essential improvements, including additions and alterations to an existing structure; but

(4) Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).

Hazard reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

HEPA vacuum means a vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific Federal housing assistance program.

Housing receiving Federal assistance means housing which is covered by an application for HUD mortgage insurance, receives housing assistance payments under a program administered by HUD, or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program administered by an agency other than HUD.

HUD means the United States Department of Housing and Urban Development.

HUD-owned property means residential property owned or managed by HUD, or for which HUD is a trustee or conservator.

Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Indian Housing Block Grant (IHBG) recipient means a tribe or a tribally designated housing entity (TDHE) receiving IHBG funds.

Indian tribe means a tribe as defined in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*)

Inspection (See Lead-based paint inspection).

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands and American Samoa.

Interim controls means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room, adjacent to the window sash when the window is closed. The interior window sill is sometimes referred to as the window stool.

Lead-based paint means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-based paint hazard means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

Lead-based paint inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Lead hazard screen means a limited risk assessment activity that involves paint testing and dust sampling and analysis as described in 40 CFR 745.227(c) and soil sampling and analysis as described in 40 CFR 745.227(d).

Mortgagee means a lender of a mortgage loan.

Mortgagor means a borrower of a mortgage loan.

Multifamily property means a residential property containing five or more dwelling units.

Occupant means a person who inhabits a dwelling unit.

Owner means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor,

or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

Paint stabilization means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint testing means the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

Paint removal means a method of abatement that permanently eliminates lead-based paint from surfaces.

Painted surface to be disturbed means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

Participating jurisdiction means any State or local government that has been designated by HUD to administer a HOME program grant.

Permanent means an expected design life of at least 20 years.

Play area means an area of frequent soil contact by children of less than 6 years of age, as indicated by the presence of play equipment (e.g. sandboxes, swing sets, sliding boards, etc.) or toys or other children's possessions, observations of play patterns, or information provided by parents, residents or property owners.

Project-based rental assistance means Federal rental assistance that is tied to a residential property with a specific location and remains with that particular location throughout the term of the assistance.

Public health department means a State, tribal, county or municipal public health department or the Indian Health Service.

Public housing development means a residential property assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), but not including housing assisted under section 8 of the 1937 Act.

Reevaluation means a visual assessment of painted surfaces and limited dust and soil sampling conducted periodically following lead-

based paint hazard reduction where lead-based paint is still present.

Rehabilitation means the improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

Replacement means a strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

Residential property means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

Risk assessment means:

(1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

Single family property means a residential property containing one through four dwelling units.

Single room occupancy (SRO) housing means housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both (see Zero-bedroom dwelling).

Soil-lead hazard means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the following levels: 400 µg/g in play areas; and 2000 µg/g in other areas with bare soil that total more than 9 square feet (0.8 square meters) per residential property.

Sponsor means mortgagor (borrower).

Subrecipient means any nonprofit organization selected by the grantee or participating jurisdiction to administer all or a portion of the Federal rehabilitation assistance or other non-rehabilitation assistance, or any such organization selected by a subrecipient of the grantee or participating

jurisdiction. An owner or developer receiving Federal rehabilitation assistance or other assistance for a residential property is not considered a subrecipient for the purposes of carrying out that project.

Standard treatments means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

Substrate means the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, HUD may designate an earlier date.

Tenant means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

Visual assessment means looking for, as applicable:

- (1) Deteriorated paint;
- (2) Visible surface dust, debris and residue as part of a risk assessment or clearance examination; or
- (3) The completion or failure of a hazard reduction measure.

Wet sanding or wet scraping means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

Window trough means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

Worksite means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

Zero-bedroom dwelling means any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings (see Single room occupancy (SRO)).

§ 35.115 Exemptions.

(a) Subparts B through R of this part do not apply to the following:

(1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see § 35.160).

(2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.

(3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of "housing for the elderly" and "expected to reside" in § 35.110).

(4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with § 35.1320(a) (for more information regarding inspection procedures consult the 1997 edition of Chapter 7 of the HUD Guidelines). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.

(5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with §§ 35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.

(6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.

(7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.

(8) Any rehabilitation that does not disturb a painted surface.

(9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to

the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.

(10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, §§ 35.210 and 35.215 shall not apply to the property.

(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

(12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.

(13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with § 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with § 35.1355.

(b) For the purposes of subpart C of this part, each Federal agency other than HUD will determine whether appropriations are sufficient to implement this rule. If appropriations are not sufficient, subpart C of this part shall not apply to that Federal agency. If appropriations are sufficient, subpart C of this part shall apply.

§ 35.120 Options.

(a) *Standard treatments.* Where interim controls are required by this part, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Standard treatments shall then be conducted in accordance with § 35.1335 on all applicable surfaces, including soil. Standard treatments are

completed only when clearance is achieved in accordance with § 35.1340.

(b) *Abatement.* Where abatement is required by this part, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Abatement shall then be conducted on all applicable surfaces, including soil, in accordance with § 35.1325, and completed when clearance is achieved in accordance with § 35.1340. This option is not available in public housing, where inspection is required.

(c) *Lead hazard screen.* Where a risk assessment is required, the designated party may choose first to conduct a lead hazard screen in accordance with § 35.1320(b). If the results of the lead hazard screen indicate the need for a full risk assessment (e.g., if the environmental measurements exceed levels established for lead hazard screens in § 35.1320(b)(2)), a complete risk assessment shall be conducted. Environmental samples collected for the lead hazard screen may be used in the risk assessment. If the results of the lead hazard screen do not indicate the need for a follow-up risk assessment, a risk assessment is not required.

(d) *Paint testing.* Where paint stabilization or interim controls of deteriorated paint surfaces are required by this rule, the designated party has the option to conduct paint testing of all surfaces with non-intact paint. If paint testing indicates the absence of lead-based paint on a specific surface, paint stabilization or interim controls are not required on that surface.

§ 35.125 Notice of evaluation and hazard reduction activities.

The following activities shall be conducted if notice is required by subparts D and F through M of this part.

(a) *Notice of evaluation or presumption.* When evaluation is undertaken and lead-based paint or lead-based paint hazards are found to be present, or if a presumption is made that lead-based paint or lead-based paint hazards are present in accordance with the options described in § 35.120, the designated party shall provide a notice to occupants within 15 calendar days of the date when the designated party receives the report or makes the presumption.

(1) The notice of the evaluation shall include:

(i) A summary of the nature, scope and results of the evaluation;

(ii) A contact name, address and telephone number for more information,

and to obtain access to the actual evaluation report; and

(iii) The date of the notice.

(2) The notice of presumption shall include:

(i) The nature and scope of the presumption;

(ii) A contact name, address and telephone number for more information; and

(iii) The date of the notice.

(b) *Notice of hazard reduction activity.* When hazard reduction activities are undertaken, each designated party shall:

(1) Provide a notice to occupants no more than 15 calendar days after the hazard reduction activities have been completed. Notice of hazard reduction shall include, but not be limited to:

(i) A summary of the nature, scope and results (including clearance), of the hazard reduction activities.

(ii) A contact name, address and telephone number for more information; and

(iii) Available information on the location of any remaining lead-based paint in the rooms, spaces or areas where hazard reduction activities were conducted, on a surface-by-surface basis;

(2) Update the notice, based on reevaluation of the residential property and as any additional hazard reduction work is conducted.

(c) *Availability of notices of evaluation, presumption, and hazard reduction activities.* (1) The notices of evaluation, presumption, and hazard reduction shall be of a size and type that is easily read by occupants.

(2) To the extent practicable, each notice shall be made available, upon request, in a format accessible to persons with disabilities (e.g., Braille, large type, computer disk, audio tape).

(3) Each notice shall be provided in the occupants' primary language or in the language of the occupants' contract or lease.

(4) The designated party shall provide each notice to the occupants by:

(i) Posting and maintaining it in centrally located common areas and distributing it to any dwelling unit if necessary because the head of household is a person with a known disability; or

(ii) Distributing it to each occupied dwelling unit affected by the evaluation, presumption, or hazard reduction activity or serviced by common areas in which an evaluation, presumption or hazard reduction has taken place.

§ 35.130 Lead hazard information pamphlet.

If provision of a lead hazard information pamphlet is required in

subparts D and F through M of this part, the designated party shall provide to each occupied dwelling unit to which subparts D and F through M of this part apply, the lead hazard information pamphlet developed by EPA, HUD and the Consumer Product Safety Commission pursuant to section 406 of the Toxic Substances Control Act (15 U.S.C. 2686), or an EPA-approved alternative; except that the designated party need not provide a lead hazard information pamphlet if the designated party can demonstrate that the pamphlet has already been provided in accordance with the lead-based paint notification and disclosure requirements at § 35.88(a)(1), or 40 CFR 745.107(a)(1) or in accordance with the requirements for hazard education before renovation at 40 CFR part 745, subpart E.

§ 35.135 Use of paint containing lead.

(a) *New use prohibition.* The use of paint containing more than 0.06 percent dry weight of lead on any interior or exterior surface in federally owned housing or housing receiving Federal assistance is prohibited. As appropriate, each Federal agency shall include the prohibition in contracts, grants, cooperative agreements, insurance agreements, guaranty agreements, trust agreements, or other similar documents.

(b) *Pre-1978 prohibition.* In the case of a jurisdiction which banned the sale or residential use of lead-containing paint before 1978, HUD may designate an earlier date for certain provisions of subparts D and F through M of this part.

§ 35.140 Prohibited methods of paint removal.

The following methods shall not be used to remove paint that is, or may be, lead-based paint:

(a) Open flame burning or torching.

(b) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.

(c) Abrasive blasting or sandblasting without HEPA local exhaust control.

(d) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(e) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. (0.30 m.) of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. (0.2 sq. m.) in any one interior room or space, or totaling no more than 20 sq. ft. (2.0 sq. m.) on exterior surfaces.

(f) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission

at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

§ 35.145 Compliance with Federal laws and authorities.

All lead-based paint activities, including waste disposal, performed under this part shall be performed in accordance with applicable Federal laws and authorities. For example, such activities are subject to the applicable environmental review requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Toxic Substances Control Act, Title IV (15 U.S.C. 2860 *et seq.*), and other environmental laws and authorities (see, e.g., laws and authorities listed in § 50.4 of this title).

§ 35.150 Compliance with other State, tribal, and local laws.

(a) *HUD responsibility.* If HUD determines that a State, tribal or local law, ordinance, code or regulation provides for evaluation or hazard reduction in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of subparts B, C, D, F through M and R of this part and that adherence to the requirements of subparts B, C, D, F through M, and R of this part, would be duplicative or otherwise cause inefficiencies, HUD may modify or waive some or all of the requirements of the subparts in a manner that will promote efficiency while ensuring a comparable level of protection.

(b) *Participant responsibility.* Nothing in this part is intended to relieve any participant in a program covered by this subpart of any responsibility for compliance with State, tribal or local laws, ordinances, codes or regulations governing evaluation and hazard reduction. If a State, tribal or local law, ordinance, code or regulation defines lead-based paint differently than the Federal definition, the more protective definition (i.e., the lower level) shall be followed in that State, tribal or local jurisdiction.

§ 35.155 Minimum requirements.

(a) Nothing in subparts B, C, D, F through M, and R of this part is intended to preclude a designated party or occupant from conducting additional evaluation or hazard reduction measures beyond the minimum requirements established for each program in this regulation. For example, if the applicable subpart requires visual

assessment, the designated party may choose to perform a risk assessment in accordance with § 35.1320. Similarly, if the applicable subpart requires interim controls, a designated party or occupant may choose to implement abatement in accordance with § 35.1325.

(b) To the extent that assistance from any of the programs covered by subparts B, C, D, and F through M of this part is used in conjunction with other HUD program assistance, the most protective requirements prevail.

§ 35.160 Waivers.

In accordance with § 5.110 of this title, on a case-by-case basis and upon determination of good cause, HUD may, subject to statutory limitations, waive any provision of subparts B, C, D, F through M, and R of this part.

§ 35.165 Prior evaluation or hazard reduction.

If an evaluation or hazard reduction was conducted at a residential property or dwelling unit before the property or dwelling unit became subject to the requirements of subparts B, C, D, F through M, and R of this part, such an evaluation, hazard reduction or abatement meets the requirements of subparts B, C, D, F through M, and R of this part and need not be repeated under the following conditions:

(a) *Lead-based paint inspection.* (1) A lead-based paint inspection conducted before August 30, 1999, meets the requirements of this rule if:

(i) At the time of the inspection the lead-based paint inspector was approved by a State or Indian tribe to perform lead-based paint inspections. It is not necessary that the State or tribal approval program had EPA authorization at the time of the inspection.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the inspection was conducted and accepted as valid by a housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program.

(2) A lead-based paint inspection conducted after August 29, 1999 must have been conducted by a certified lead-based paint inspector.

(b) *Risk assessment.* (1) A risk assessment must be no more than 12 months old to be considered current.

(2) A risk assessment conducted before August 30, 1999 meets the requirements of this part if at the time of the risk assessment the risk assessor was approved by a State or Indian tribe to perform risk assessments. It is not necessary that the State or tribal approval program had EPA

authorization at the time of the risk assessment.

(3) A risk assessment conducted after August 29, 1999 must have been conducted by a certified risk assessor.

(4) Paragraph (b) of this section does not apply in a case where a risk assessment is required in response to the identification of a child with an environmental intervention blood lead level. In such a case, the requirements in the applicable subpart for responding to a child with an environmental intervention blood lead level shall apply.

(c) *Interim controls.* If a residential property is under a program of interim controls and ongoing lead-based paint maintenance and reevaluation activities established pursuant to a risk assessment conducted in accordance with paragraph (b) of this section, the interim controls that have been conducted meet the requirements of this part if clearance was achieved after such controls were implemented. In such a case, the program of interim controls and ongoing activities shall be continued in accordance with the requirements of this part.

(d) *Abatement.* (1) An abatement conducted before August 30, 1999 meets the requirements of this part if:

(i) At the time of the abatement the abatement supervisor was approved by a State or Indian tribe to perform lead-based paint abatement. It is not necessary that the State or tribal approval program had EPA authorization at the time of the abatement.

(ii) Notwithstanding paragraph (d)(1)(i) of this section, it was conducted and accepted by a housing agency in fulfillment of the lead-based paint abatement requirement of the public housing program or by an Indian housing authority (as formerly defined under the U.S. Housing Act of 1937) in fulfillment of the lead-based paint requirement of the Indian housing program formerly funded under the U.S. Housing Act of 1937.

(2) An abatement conducted after August 29, 1999 must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

§ 35.170 Noncompliance with the requirements of subparts B through R of this part.

(a) *Monitoring and enforcement.* A designated party who fails to comply with any requirement of subparts B, C, D, F through M, and R of this part shall be subject to the sanctions available under the relevant Federal housing assistance or ownership program and

may be subject to other penalties authorized by law.

(b) A property owner who informs a potential purchaser or occupant of lead-based paint or possible lead-based paint hazards in a residential property or dwelling unit, in accordance with subpart A of this part, is not relieved of the requirements to evaluate and reduce lead-based paint hazards in accordance with subparts B through R of this part as applicable.

§ 35.175 Records.

The designated party, as specified in subparts C, D, and F through M of this part, shall keep a copy of each notice, evaluation, and clearance or abatement report required by subparts C, D, and F through M of this part for at least three years. Those records applicable to a portion of a residential property for which ongoing lead-based paint maintenance and/or reevaluation activities are required shall be kept and made available for the Department's review, until at least three years after such activities are no longer required.

Subpart C—Disposition of Residential Property Owned by a Federal Agency Other Than HUD

§ 35.200 Purpose and applicability.

The purpose of this subpart C is to establish procedures to eliminate as far as practicable lead-based paint hazards prior to the sale of a residential property that is owned by a Federal agency other than HUD. The requirements of this subpart apply to any residential property offered for sale on or after September 15, 2000.

§ 35.205 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.210 Disposition of residential property constructed before 1960.

(a) *Evaluation.* The Federal agency shall conduct a risk assessment and a lead-based paint inspection in accordance with 40 CFR 745.227 before the closing of the sale.

(b) *Abatement of lead-based paint hazards.* The risk assessment used for the identification of hazards to be abated shall have been performed no more than 12 months before the beginning of the abatement. The Federal agency shall abate all identified lead-based paint hazards in accordance with 40 CFR 745.227. Abatement is completed when clearance is achieved in accordance with 40 CFR 745.227. Where abatement of lead-based paint hazards is not completed before the

closing of the sale, the Federal agency shall be responsible for assuring that abatement is carried out by the purchaser before occupancy of the property as target housing and in accordance with 40 CFR 745.227.

§ 35.215 Disposition of residential property constructed after 1959 and before 1978.

The Federal agency shall conduct a risk assessment and a lead-based paint inspection in accordance with 40 CFR 745.227. Evaluation shall be completed before closing of the sale according to a schedule determined by the Federal agency. The results of the risk assessment and lead-based paint inspection shall be made available to prospective purchasers as required in subpart A of this part.

Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD

§ 35.300 Purpose and applicability.

The purpose of this subpart D is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives more than \$5,000 annually per project in project-based assistance on or after September 15, 2000, under a program administered by a Federal agency other than HUD.

§ 35.305 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.310 Notices and pamphlet.

(a) *Notice.* A notice of evaluation or hazard reduction shall be provided to the occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.315 Risk assessment.

Each owner shall complete a risk assessment in accordance with 40 CFR 745.227(d). Each risk assessment shall be completed in accordance with the schedule established by the Federal agency.

§ 35.320 Hazard reduction.

Each owner shall conduct interim controls consistent with the findings of the risk assessment report. Hazard reduction shall be conducted in accordance with subpart R of this part.

§ 35.325 Child with an environmental intervention blood lead level.

If a child less than 6 years of age living in a federally assisted dwelling unit has an environmental intervention blood lead level, the owner shall immediately conduct a risk assessment in accordance with 40 CFR 745.227(d). Interim controls of identified lead-based paint hazards shall be conducted in accordance with § 35.1330. Interim controls are complete when clearance is achieved in accordance with § 35.1340. The Federal agency shall establish a timetable for completing risk assessments and hazard reduction when an environmental intervention blood lead level child is identified.

Subpart E [Reserved]

Subpart F—HUD-Owned Single Family Property

§ 35.500 Purpose and applicability.

The purpose of this subpart F is to establish procedures to eliminate as far as practicable lead-based paint hazards in HUD-owned single family properties that have been built before 1978 and are sold with mortgages insured under a program administered by HUD. The requirements of this subpart apply to any such residential properties offered for sale on or after September 15, 2000.

§ 35.505 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.510 Required procedures.

(a) The following activities shall be conducted for all properties to which this subpart is applicable:

(1) A visual assessment of all painted surfaces in order to identify deteriorated paint;

(2) Paint stabilization of all deteriorated paint in accordance with § 35.1330(a) and (b); and

(3) Clearance in accordance with § 35.1340.

(b) Occupancy shall not be permitted until all required paint stabilization is complete and clearance is achieved.

(c) If paint stabilization and clearance are not completed before the closing of the sale, the Department shall assure that paint stabilization and clearance are carried out pursuant to subpart R of this part by the purchaser before occupancy.

Subpart G—Multifamily Mortgage Insurance

§ 35.600 Purpose and applicability.

The purpose of this subpart G is to establish procedures to eliminate as far

as practicable lead-based paint hazards in a multifamily residential property for which HUD is the owner of the mortgage or the owner receives mortgage insurance, under a program administered by HUD.

§ 35.605 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.610 Exemption.

An application for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by HUD is excluded from the coverage of this subpart.

§ 35.615 Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, the sponsor shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The sponsor shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.620 Multifamily insured property constructed before 1960.

Except as provided in § 35.630, the following requirements apply to multifamily insured property constructed before 1960:

(a) *Risk assessment.* Before the issuance of a firm commitment the sponsor shall conduct a risk assessment in accordance with § 35.1320(b).

(b) *Interim controls.* (1) The sponsor shall conduct interim controls in accordance with § 35.1330 to treat the lead-based paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with § 35.1340.

(2) The sponsor shall complete interim controls before the issuance of the firm commitment or interim controls may be made a condition of the Federal Housing Administration (FHA) firm commitment, with sufficient repair or rehabilitation funds escrowed at initial endorsement of the FHA insured loan.

(c) *Ongoing lead-based paint maintenance activities.* Before the issuance of the firm commitment, the sponsor shall agree to incorporate ongoing lead-based paint maintenance into regular building operations and maintenance activities in accordance with § 35.1355(a).

§ 35.625 Multifamily insured property constructed after 1959 and before 1978.

Except as provided in § 35.630, before the issuance of the firm commitment,

the sponsor shall agree to incorporate ongoing lead-based paint maintenance practices into regular building operations, in accordance with § 35.1355(a).

§ 35.630 Conversions and major rehabilitations.

The procedures and requirements of this section apply when a nonresidential property constructed before 1978 is to be converted to residential use, or a residential property constructed before 1978 is to undergo rehabilitation that is estimated to cost more than 50 percent of the estimated replacement cost after rehabilitation.

(a) *Lead-based paint inspection.* Before issuance of a firm FHA commitment, the sponsor shall conduct a lead-based paint inspection in accordance with § 35.1320(a).

(b) *Abatement.* Prior to occupancy, the sponsor shall conduct abatement of all lead-based paint on the property in accordance with § 35.1325. Whenever practicable, abatement shall be achieved through the methods of paint removal or component replacement. If paint removal or component replacement are not practicable, that is if such methods would damage substrate material considered architecturally significant, permanent encapsulation or enclosure may be used as methods of abatement. Abatement is considered complete when clearance is achieved in accordance with § 35.1340. If encapsulation or enclosure is used, the sponsor shall incorporate ongoing lead-based paint maintenance into regular building operations maintenance activities in accordance with § 35.1355.

(c) *Historic properties.* Section 35.115(a)(13) applies to this section.

Subpart H—Project-Based Rental Assistance

§ 35.700 Purpose and applicability.

(a) This subpart H establishes procedures to eliminate as far as practicable lead-based paint hazards in residential properties receiving project-based assistance under a HUD program. The requirements of this subpart apply only to the assisted dwelling units in a covered property and any common areas servicing those dwelling units. This subpart does not apply to housing receiving rehabilitation assistance or to public housing, which are covered by subparts J and M of this part, respectively.

(b) For the purposes of competitively awarded grants under the Housing Opportunities for Persons with AIDS Program (HOPWA), the Supportive Housing Program (42 U.S.C. 11381–

11389) and the Shelter Plus Care Program project-based rental assistance and sponsor-based rental assistance components (42 U.S.C. 11402–11407), the requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after October 1, 1999. For the purposes of formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 *et seq.*), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

§ 35.705 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.710 Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, each owner shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.715 Multifamily properties receiving more than \$5,000 per unit.

The requirements of this section shall apply to a multifamily residential property that is receiving an average of more than \$5,000 per assisted dwelling unit annually in project-based assistance.

(a) *Risk assessment.* Each owner shall complete a risk assessment in accordance with § 35.1320(b). A risk assessment is considered complete when the owner receives the risk assessment report. Until the owner conducts a risk assessment as required by this section, the requirements of paragraph (d) of this section shall apply. After the risk assessment has been conducted the requirements of paragraphs (b) and (c) of this section shall apply. Each risk assessment shall be completed no later than the following schedule or a schedule otherwise determined by HUD:

(1) Risk assessments shall be completed on or before September 17, 2001, in a multifamily residential property constructed before 1960.

(2) Risk assessments shall be completed on or before September 15, 2003, in a multifamily residential property constructed after 1959 and before 1978.

(b) *Interim controls.* Each owner shall conduct interim controls in accordance with § 35.1330 to treat the lead-based

paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with § 35.1340. Interim controls shall be completed no later than the following schedule:

(1) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the completion of the risk assessment. In units in which a child of less than 6 years of age moves in after the completion of the risk assessment, interim controls shall be completed no later than 90 days after the move-in.

(2) In all other dwelling units, common areas, and the remaining portions of the residential property, interim controls shall be completed no later than 12 months after completion of the risk assessment for those units.

(c) *Ongoing lead-based paint maintenance and reevaluation activities.* Effective immediately after completion of the risk assessment required in § 35.715(a), the owner shall incorporate ongoing lead-based paint maintenance and reevaluation into the regular building operations in accordance with § 35.1355, unless all lead-based paint has been removed. If the reevaluation identifies new lead-based paint hazards, the owner shall conduct interim controls in accordance with § 35.1330.

(d) *Transitional requirements—(1) Effective date.* The requirements of this paragraph shall apply effective September 15, 2000, and continuing until the applicable date specified in § 35.715(a) (1) or (2) or until the owner conducts a risk assessment, whichever is first.

(2) Definitions and other general requirements that apply to this paragraph are found in subpart B of this part.

(3) *Ongoing lead-based paint maintenance.* The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a), except that clearance is not required.

(4) *Child with an environmental intervention blood lead level.* If a child of less than 6 years of age living in a dwelling unit covered by this paragraph has an environmental intervention blood lead level, the owner shall comply with the requirements of § 35.730.

§ 35.720 Multifamily properties receiving up to \$5,000 per unit, and single family properties.

Effective September 15, 2000, the requirements of this section shall apply to a multifamily residential property that is receiving an average of up to and including \$5,000 per assisted dwelling unit annually in project-based assistance and to a single family residential property that is receiving project-based assistance through the Section 8 Moderate Rehabilitation program, the Project-Based Certificate program, or any other HUD program providing project-based assistance.

(a) *Activities at initial and periodic inspection.*—(1) *Visual assessment.* During the initial and periodic inspections, an inspector trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint.

(2) *Paint stabilization.* The owner shall stabilize each deteriorated paint surface in accordance with § 35.1330(a) and § 35.1330(b) before occupancy of a vacant dwelling unit or, where a unit is occupied, within 30 days of notification of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with § 35.1340.

(3) *Notice.* The owner shall provide a notice to occupants in accordance with §§ 35.125(b) (1) and (c) describing the results of the clearance examination.

(b) *Ongoing lead-based paint maintenance activities.* The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with § 35.1355(a), unless all lead-based paint has been removed.

(c) *Child with an environmental intervention blood lead level.* If a child of less than 6 years of age living in a dwelling unit covered by this section has an environmental intervention blood lead level, the owner shall comply with the requirements of § 35.730.

§ 35.725 Section 8 Rent adjustments.

HUD may, subject to the availability of appropriations for Section 8 contract amendments, on a project by project basis for projects receiving Section 8 project-based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluation for and reduction of lead-based paint hazards, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

§ 35.730 Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit to which this subpart applies has been identified as having an environmental intervention blood lead level, the owner shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with § 35.1320(b) and is considered complete when the owner receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the owner receives the notification of the environmental intervention blood lead level. The requirements of this paragraph (a) shall not apply if the owner conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the owner received the notification of the environmental intervention blood lead level. If a public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a dwelling unit covered by this subpart may have an environmental intervention blood lead level, the owner shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and the owner shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the public health

department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the owner, between the date the child's blood was last sampled and the date the owner received the notification of the environmental intervention blood lead level, already conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Notice.* If evaluation or hazard reduction is undertaken, each owner shall provide a notice to occupants in accordance with § 35.125.

(e) *Reporting requirement.* The owner shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional.

Subpart I—HUD-Owned and Mortgagee-in-Possession Multifamily Property**§ 35.800 Purpose and applicability.**

The purpose of this subpart I is to establish procedures to eliminate as far as practicable lead-based paint hazards in a HUD-owned multifamily residential property or a multifamily residential property for which HUD is identified as mortgagee-in-possession. The requirements of this subpart apply to any such property that is offered for sale or held or managed on or after September 15, 2000.

§ 35.805 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.810 Notices and pamphlet.

(a) *Notices.* When evaluation or hazard reduction is undertaken, the Department shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* HUD shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.815 Evaluation.

HUD shall conduct a risk assessment and a lead-based paint inspection in accordance with § 35.1320(a) and (b). For properties to which this subpart applies on September 15, 2000, the lead-based paint inspection and risk assessment shall be conducted no later than December 15, 2000, or before publicly advertising the property for sale, whichever is sooner. For properties to which this subpart becomes

applicable after September 15, 2000, the lead-based paint inspection and risk assessment shall be conducted no later than 90 days after this subpart becomes applicable or before publicly advertising the property for sale, whichever is sooner.

§ 35.820 Interim controls.

HUD shall conduct interim controls in accordance with § 35.1330 to treat the lead-based paint hazards identified in the evaluation conducted in accordance with § 35.815. Interim controls are considered completed when clearance is achieved in accordance with § 35.1340. Interim controls of all lead-based paint hazards shall be completed no later than the following schedule:

(a) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the completion of the risk assessment. In units in which a child of less than 6 years of age moves in after the completion of the risk assessment, interim controls shall be completed no later than 90 days after the move-in.

(b) In all other dwelling units, common areas, and the remaining portions of the residential property, interim controls shall be completed no later than 12 months after completion of the risk assessment for those units.

(c) If conveyance of the title by HUD at a sale of a HUD-owned property or a foreclosure sale caused by HUD when HUD is mortgagee-in-possession occurs before the schedule in paragraphs (a) and (b) of this section, HUD shall complete interim controls before conveyance or foreclosure, or HUD shall be responsible for assuring that interim controls are carried out by the purchaser. If interim controls are made a condition of sale, such controls shall be completed according to the following schedule:

(1) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the date of the closing of the sale. In units in which a child of less than 6 years of age moves in after the closing of the sale, interim controls shall be completed no later than 90 days after the move-in.

(2) In all other dwelling units, in common areas servicing those units, and in the remaining portions of the residential property, interim controls shall be completed no later than 180 days after the closing of the sale.

§ 35.825 Ongoing lead-based paint maintenance and reevaluation.

HUD shall incorporate ongoing lead-based paint maintenance and reevaluation, in accordance with § 35.1355, into regular building operations if HUD retains ownership of the residential property for more than 12 months.

§ 35.830 Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a multifamily dwelling unit owned by HUD (or where HUD is mortgagee-in-possession) has been identified as having an environmental intervention blood lead level, HUD shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with § 35.1320(b) and is considered complete when HUD receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when HUD receives the notification of the environmental intervention blood lead level. The requirements of this paragraph do not apply if HUD conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when HUD received the notification of the environmental intervention blood lead level. If a public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a multifamily dwelling unit owned by HUD (or where HUD is mortgagee-in-possession) may have an environmental intervention blood lead level, HUD shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and HUD shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, HUD shall complete the

reduction of lead-based paint hazards identified in the risk assessment in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if HUD, between the date the child's blood was last sampled and the date HUD received the notification of the environmental intervention blood lead level, conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Reporting requirement.* HUD shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other health professional.

(e) *Closing.* If the closing of a sale is scheduled during the period when HUD is responding to a case of a child with an environmental intervention blood lead level, HUD may arrange for the completion of the procedures required by § 35.830(a)–(d) by the purchaser within a reasonable period of time.

(f) *Extensions.* The Assistant Secretary for Housing-Federal Housing Commissioner or designee may consider and approve a request for an extension of deadlines established by this section for a lead-based paint inspection, risk assessment, hazard reduction, and reporting. Such a request may be considered, however, only during the first six months during which HUD is owner or mortgagee-in-possession of a multifamily property.

Subpart J—Rehabilitation

§ 35.900 Purpose and applicability.

(a) *Purpose and applicability.* (1) The purpose of this subpart J is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal rehabilitation assistance under a program administered by HUD. Rehabilitation assistance does not include project-based rental assistance, rehabilitation mortgage insurance or assistance to public housing.

(2) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with § 92.2 of this title before September 15, 2000. Such

projects shall be subject to the requirements of § 92.355 of this title that were in effect at the time of project commitment or the requirements of this subpart.

(3) For the purposes of the Indian Housing Block Grant program and the CDBG Entitlement program, the requirements of this subpart shall apply to all residential rehabilitation activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371–11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481–11389), the requirements of this subpart shall apply to grants awarded under Notices of Funding Availability published on or after September 15, 2000.

(5) For the purposes of the Indian CDBG program (§ 1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

(b) The grantee or participating jurisdiction may assign to a subrecipient or other entity the responsibilities set forth in this subpart.

§ 35.905 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.910 Notices and pamphlet.

(a) *Notices.* In cases where evaluation or hazard reduction or both are undertaken as part of federally funded rehabilitation, the grantee, participating jurisdiction, or CILP recipient, shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The grantee, participating jurisdiction, or CILP recipient, shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.915 Calculating rehabilitation costs, except for the CILP Program.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance, except for CILP recipients, for which § 35.920 applies.

(b) *Rehabilitation assistance.* (1) Lead-based paint requirements for rehabilitation fall into three categories which depend on the amount of rehabilitation assistance provided. The three categories are:

- (i) Assistance of up to and including \$5,000 per unit;
- (ii) Assistance of more than \$5,000 per unit up to and including \$25,000 per unit; and
- (iii) Assistance of more than \$25,000 per unit.

(2) For purposes of implementing §§ 35.930–35.935, the amount of rehabilitation assistance is the average per unit amount of Federal funds for the hard costs of rehabilitation, excluding lead-based paint hazard evaluation and hazard reduction activities. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation.

(c) *Calculating rehabilitation assistance.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs of non-assisted units are not included in the calculation.

(1) The average cost of rehabilitation for the assisted units is calculated as follows:

Per Unit Rehabilitation \$ = (a/c) + (b/d)
Where:

- a= Federal Rehabilitation Assistance for all assisted units
- b= Federal Rehabilitation Assistance for common areas and exterior painted surfaces
- c= Number of federally assisted units
- d= Total number of units

(2) Eight out of 10 dwelling units in a residential property receive Federal rehabilitation assistance. The total amount of Federal rehabilitation assistance for the dwelling units is \$90,000, and the total amount of Federal rehabilitation assistance for the common areas and exterior surfaces is \$10,000. Based on the formula above, the average per unit amount of Federal rehabilitation assistance is \$12,250. This is illustrated as follows: \$12,250 = (\$90,000/8) + (\$10,000/10).

§ 35.920 Calculating rehabilitation costs for the Flexible Subsidy-CILP program.

All dwelling units and common areas in a residential property are considered to be assisted under the CILP program. The cost of rehabilitation is calculated as follows:

Per Unit Rehab \$ = Federal Rehab Assistance / Total Number of Units.

§ 35.925 Examples of determining applicable requirements.

The following examples illustrate how to determine whether the requirements of §§ 35.930(b), (c), or (d) apply to a dwelling unit receiving Federal rehabilitation assistance (dollar amounts are on a per unit basis):

(a) If the total amount of Federal assistance for a dwelling is \$2,000, and the hard costs of rehabilitation are \$10,000, the lead-based paint requirements would be those described in § 35.930(b), because Federal rehabilitation assistance is up to and including \$5,000.

(b) If the total amount of Federal assistance for a dwelling unit is \$6,000, and the hard costs of rehabilitation are \$2,000, the lead-based paint requirements would be those described in § 35.930(b). Although the total amount of Federal dollars is more than \$5,000, only the \$2,000 of that total can be applied to rehabilitation. Therefore, the Federal rehabilitation assistance is \$2,000 which is not more than \$5,000.

(c) If the total amount of Federal assistance for a unit is \$6,000, and the hard costs of rehabilitation are \$6,000, the lead-based paint requirements are those described in § 35.930(c), because the amount of Federal rehabilitation assistance is more than \$5,000 but not more than \$25,000.

§ 35.930 Evaluation and hazard reduction requirements.

(a) *Paint testing.* The grantee, participating jurisdiction, or CILP recipient shall either perform paint testing on the painted surfaces to be disturbed or replaced during rehabilitation activities, or presume that all these painted surfaces are coated with lead-based paint.

(b) *Residential property receiving an average of up to and including \$5,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient shall:

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section. If paint testing indicates that the painted surfaces are not coated with lead-based paint, safe work practices and clearance are not required.

(2) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed.

(3) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with § 35.1340. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in § 35.1350(b).

(c) *Residential property receiving an average of more than \$5,000 and up to and including \$25,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient shall:

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance, in common areas servicing those units, and exterior painted surfaces, in accordance with § 35.1320(b), before rehabilitation begins.

(3) Perform interim controls in accordance with § 35.1330 of all lead-based paint hazards identified pursuant to paragraphs (c)(1) and (c)(2) of this section and any lead-based paint hazards created as a result of the rehabilitation work.

(d) *Residential property receiving an average of more than \$25,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient shall:

(1) Conduct paint testing or presume the presence of lead-based paint in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with § 35.1320(b) before rehabilitation begins.

(3) Abate all lead-based paint hazards identified by the paint testing or risk assessment conducted pursuant to paragraphs (d)(1) and (d)(2) of this section, and any lead-based paint hazards created as a result of the rehabilitation work, in accordance with § 35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

§ 35.935 Ongoing lead-based paint maintenance activities.

In the case of a rental property receiving Federal rehabilitation assistance under the HOME program or the Flexible Subsidy-CILP program, the grantee, participating jurisdiction or

CILP recipient shall require the property owner to incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a).

§ 35.940 Special requirements for insular areas.

If a dwelling unit receiving Federal assistance under a program covered by this subpart is located in an insular area, the requirements of this section shall apply and the requirements of § 35.930 shall not apply. All other sections of this subpart J shall apply. The insular area shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

(a) *Residential property receiving an average of up to and including \$5,000 per unit in Federal rehabilitation assistance.* (1) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed by rehabilitation.

(2) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with § 35.1340. Clearance shall be achieved before residents are allowed to occupy the worksite(s). Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in § 35.1350(b).

(b) *Residential property receiving an average of more than \$5,000 per unit in Federal rehabilitation assistance.* (1) Before beginning rehabilitation, perform a visual assessment of all painted surfaces in order to identify deteriorated paint.

(2) Perform paint stabilization of each deteriorated paint surface and each painted surface being disturbed by rehabilitation, in accordance with §§ 35.1330(a) and (b).

(3) After completion of all paint stabilization, perform a clearance examination of the affected dwelling units and common areas in accordance with § 35.1340. Clearance shall be achieved before residents are allowed to occupy rooms or spaces in which paint stabilization has been performed.

Subpart K—Acquisition, Leasing, Support Services, or Operation.

§ 35.1000 Purpose and applicability.

(a) The purpose of this subpart K is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal assistance under certain HUD

programs for acquisition, leasing, support services, or operation. Acquisition, leasing, support services, and operation do not include mortgage insurance, sale of federally-owned housing, project-based or tenant-based rental assistance, rehabilitation assistance, or assistance to public housing. For requirements pertaining to those activities or types of assistance, see the applicable subpart of this part.

(b) The grantee or participating jurisdiction may assign to a subrecipient or other entity the responsibilities set forth in this subpart.

(c)(1) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with § 92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of § 92.355 of this title that were in effect at the time of project commitment, or the requirements of this subpart.

(2) For the purposes of the CDBG Entitlement program and the Indian Housing Block Grant program, the requirements of this subpart shall apply to all residential rehabilitation activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371–11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

(3) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481–11389), the requirements of this subpart shall apply to grants awarded under Notices of Funding Availability published on or after September 15, 2000.

(4) For the purposes of the Indian CDBG program (§ 1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

§ 35.1005 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1010 Notices and pamphlet

(a) *Notice.* In cases where evaluation or hazard reduction, including paint stabilization, is undertaken, each grantee or participating jurisdiction shall provide a notice to residents in accordance with § 35.125. A visual assessment is not considered an evaluation for purposes of this part.

(b) *Lead hazard information pamphlet.* The grantee or participating jurisdiction shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.1015 Visual assessment, paint stabilization, and maintenance.

If a dwelling unit receives Federal assistance under a program covered by this subpart, each grantee or participating jurisdiction shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

(a) A visual assessment of all painted surfaces in order to identify deteriorated paint;

(b) Paint stabilization of each deteriorated paint surface, and clearance, in accordance with §§ 35.1330(a) and (b), before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance; and

(c) The grantee or participating jurisdiction shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a).

(d) The grantee or participating jurisdiction shall provide a notice to occupants in accordance with §§ 35.125(b)(1) and (c), describing the results of the clearance examination.

§ 35.1020 Funding for evaluation and hazard reduction.

The grantee or participating jurisdiction shall determine whether the cost of evaluation and hazard reduction is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee, based on program requirements and local program design.

Subpart L—Public Housing Programs**§ 35.1100 Purpose and applicability.**

The purpose of this subpart L is to establish procedures to eliminate as far as practicable lead-based paint hazards

in residential property assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) but not including housing assisted under section 8 of the 1937 Act.

§ 35.1105 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1110 Notices and pamphlet.

(a) *Notice.* In cases where evaluation or hazard reduction is undertaken, each public housing agency (PHA) shall provide a notice to residents in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The PHA shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.1115 Evaluation.

(a) A lead-based paint inspection shall be conducted in all public housing unless a lead-based paint inspection that meets the conditions of § 35.165(a) has already been completed. If a lead-based paint inspection was conducted by a lead-based paint inspector who was not certified, the PHA shall review the quality of the inspection, in accordance with quality control procedures established by HUD, to determine whether the lead-based paint inspection has been properly performed and the results are reliable. Lead-based paint inspections of all housing to which this subpart applies shall be completed no later than September 15, 2000. Revisions or augmentations of prior inspections found to be of insufficient quality shall be completed no later than September 17, 2001.

(b) If a lead-based paint inspection has found the presence of lead-based paint, or if no lead-based paint inspection has been conducted, the PHA shall conduct a risk assessment according to the following schedule, unless a risk assessment that meets the conditions of § 35.165(b) has already been completed:

(1) Risk assessments shall be completed on or before March 15, 2001, in a multifamily residential property constructed before 1960.

(2) Risk assessments shall be completed on or before March 15, 2002, in a multifamily residential property constructed after 1959 and before 1978.

(c) A PHA that advertises a construction contract (including architecture/engineering contracts) for bid or award or plans to start force account work shall not execute such contract until a lead-based paint inspection and, if required, a risk assessment, has taken place and any

necessary abatement is included in the modernization budget, except for contracts solely for emergency work in accordance with § 35.115(a)(9).

(d) The five-year funding request plan for CIAP and CGP shall be amended to include the schedule and funding for lead-based paint activities.

§ 35.1120 Hazard reduction.

(a) Each PHA shall, in accordance with § 35.1325, abate all lead-based paint and lead-based paint hazards identified in the evaluations conducted pursuant to § 35.1115. The PHA shall abate lead-based paint and lead-based paint hazards in accordance with § 35.1325 during the course of physical improvements conducted under the modernization.

(b) In all housing where abatement of all lead-based paint and lead-based paint hazards required in paragraph (a) of this section has not yet occurred, each PHA shall conduct interim controls, in accordance with § 35.1330, of the lead-based paint hazards identified in the most recent risk assessment.

(1) Interim controls of dwelling units in which any child who is less than 6 years of age resides and common areas servicing those dwelling units shall be completed within 90 days of the evaluation under § 35.1330. If a unit becomes newly occupied by a family with a child of less than 6 years of age or such child moves into a unit, interim controls shall be completed within 90 days after the new occupancy or move-in if they have not already been completed.

(2) Interim controls in dwelling units not occupied by families with one or more children of less than 6 years of age, common areas servicing those units, and the remaining portions of the residential property shall be completed no later than 12 months after completion of the evaluation conducted under § 35.1115.

(c) The PHA shall incorporate ongoing lead-based paint maintenance and reevaluation activities into regular building operations in accordance with § 35.1355. In accordance with § 35.115(a) (6) and (7), this requirement does not apply to a development or part thereof if it is to be demolished or disposed of in accordance with disposition requirements in part 970 of this title, provided the dwelling unit will remain unoccupied until demolition, or if it is not used and will not be used for human habitation.

§ 35.1125 Evaluation and hazard reduction before acquisition and development.

(a) For each residential property constructed before 1978 and proposed to be acquired for a family project (whether or not it will need rehabilitation) a lead-based paint inspection and risk assessment for lead-based paint hazards shall be conducted in accordance with § 35.1320.

(b) If lead-based paint is found in a residential property to be acquired, the cost of evaluation and abatement shall be considered when making the cost comparison to justify new construction, as well as when meeting maximum total development cost limitations.

(c) If lead-based paint is found, compliance with this subpart is required, and abatement of lead-based paint and lead-based paint hazards shall be completed in accordance with § 35.1325 before occupancy.

§ 35.1130 Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a public housing development has been identified as having an environmental intervention blood lead level, the PHA shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit, the provisions of § 35.1115(b) notwithstanding. The risk assessment shall be conducted in accordance with § 35.1320(b) and is considered complete when the PHA receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the PHA receives the notification of the environmental intervention blood lead level. The requirements of this paragraph shall not apply if the PHA conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the PHA received the notification of the environmental intervention blood lead level. If the public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a public housing development may have an environmental intervention blood lead level, the PHA shall immediately verify the information with

the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and the housing agency shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the PHA shall complete the reduction of lead-based paint hazards identified in the risk assessment in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the local or State health department certifies that lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the PHA, between the date the child's blood was last sampled and the date the owner received the notification of the environmental intervention blood lead level, already conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Notice of evaluation and hazard reduction.* The PHA shall notify building residents of any evaluation or hazard reduction activities in accordance with § 35.125.

(e) *Reporting requirement.* The PHA shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional. The PHA shall also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

(f) *Other units in building.* If the risk assessment conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards and previous evaluations of the building conducted pursuant to § 35.1320 did not identify lead-based paint or lead-based paint hazards, the PHA shall conduct a risk assessment of other units of the building in accordance with § 35.1320(b) and shall conduct interim controls of identified hazards in accordance with the schedule provided in § 35.1120(c).

§ 35.1135 Eligible costs.

A PHA may use financial assistance received under the modernization program (CIAP or CGP) for the notice, evaluation and reduction of lead-based paint hazards in accordance with § 968.112 of this title. Eligible costs include:

(a) *Evaluation and insurance costs.* Evaluation and hazard reduction activities, and costs for insurance coverage associated with these activities.

(b) *Planning costs.* Planning costs are costs that are incurred before HUD approval of the CGP or CIAP application and that are related to developing the CIAP application or carrying out eligible modernization planning, such as planning for abatement, detailed design work, preparation of solicitations, and evaluation. Planning costs may be funded as a single work item. Planning costs shall not exceed 5 percent of the CIAP funds available to a HUD Field Office in a particular fiscal year.

(c) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, evaluation, planning and design for abatement, and inspection of work in progress.

(d) *Environmental intervention blood lead level response costs.* The PHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds to cover the costs of evaluation and hazard reduction.

§ 35.1140 Insurance coverage.

For the requirements concerning the obligation of a PHA to obtain reasonable insurance coverage with respect to the hazards associated with evaluation and hazard reduction activities, see § 965.215 of this title.

Subpart M—Tenant-Based Rental Assistance**§ 35.1200 Purpose and applicability.**

(a) *Purpose.* The purpose of this subpart M is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance. Such assistance includes tenant-based rental assistance under the Section 8 certificate program, the Section 8 voucher program, the HOME program, the Shelter Plus Care program, the Housing Opportunities for Persons With AIDS (HOPWA) program,

and the Indian Housing Block Grant program. *Tenant-based rental assistance* means rental assistance that is not attached to the structure.

(b) *Applicability.* (1) This subpart applies only to dwelling units occupied or to be occupied by families or households that have one or more children of less than 6 years of age, common areas servicing such dwelling units, and exterior painted surfaces associated with such dwelling units or common areas. Common areas servicing a dwelling unit include those areas through which residents pass to gain access to the unit and other areas frequented by resident children of less than 6 years of age, including on-site play areas and child care facilities.

(2) For the purposes of the Section 8 tenant-based certificate program and the Section 8 voucher program:

(i) The requirements of this subpart are applicable where an initial or periodic inspection occurs on or after September 15, 2000; and

(ii) The PHA shall be the designated party.

(3) For the purposes of formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 *et seq.*):

(i) The requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000; and

(ii) The grantee shall be the designated party.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Shelter Plus Care program (42 U.S.C. 11402–11407) tenant-based rental assistance component:

(i) The requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after October 1, 1999; and

(ii) The grantee shall be the designated party.

(5) For the purposes of the HOME program:

(i) The requirements of this subpart shall not apply to funds which are committed in accordance with § 92.2 of this title before September 15, 2000; and

(ii) The participating jurisdiction shall be the designated party.

(6) For the purposes of the Indian Housing Block Grant program:

(i) The requirements of this subpart shall apply to activities for which funds are first obligated on or after September 15, 2000; and

(ii) The IHBG recipient shall be the designated party.

(7) The housing agency, grantee, participating jurisdiction, or IHBG

recipient may assign to a subrecipient or other entity the responsibilities of the designated party in this subpart.

§ 35.1205 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1210 Notices and pamphlet.

(a) *Notice.* In cases where evaluation or paint stabilization is undertaken, the owner shall provide a notice to residents in accordance with § 35.125. A visual assessment is not an evaluation.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.1215 Activities at initial and periodic inspection.

(a) (1) During the initial and periodic inspections, an inspector acting on behalf of the designated party and trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint.

(2) For tenant-based rental assistance provided under the HOME program, visual assessment shall be conducted as part of the initial and periodic inspections required under § 92.209(i) of this title.

(b) The owner shall stabilize each deteriorated paint surface in accordance with § 35.1330(a) and (b) before commencement of assisted occupancy. If assisted occupancy has commenced prior to a periodic inspection, such paint stabilization must be completed within 30 days of notification of the owner of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with § 35.1340.

(c) The owner shall provide a notice to occupants in accordance with § 35.125(b)(1) and (c) describing the results of the clearance examination.

§ 35.1220 Ongoing lead-based paint maintenance activities.

The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with § 35.1355(a).

§ 35.1225 Child with an environmental intervention blood lead level.

(a) Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in an assisted dwelling unit has been identified as having an environmental

intervention blood lead level, the designated party shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of the common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with § 35.1320(b). When the risk assessment is complete, the designated party shall immediately provide the report of the risk assessment to the owner of the dwelling unit. If the child identified as having an environmental intervention blood lead level is no longer living in the unit when the designated party receives notification from the public health department or other medical health care provider, but another household receiving tenant-based rental assistance is living in the unit or is planning to live there, the requirements of this section apply just as they do if the child still lives in the unit. If a public health department has already conducted an evaluation of the dwelling unit, or the designated party conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the designated party received the notification of the environmental intervention blood lead level, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a source other than a public health department or other medical health care provider that a child of less than 6 years of age living in an assisted dwelling unit may have an environmental intervention blood lead level, the designated party shall immediately verify the information with a public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification to the designated party as provided in paragraph (a) of this section, and the designated party shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the risk assessment report from the designated party or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or

abatement or when the public health department certifies that the lead-based paint hazard reduction is complete. If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of Housing Quality Standards (HQS).

(d) *Notice of evaluation and hazard reduction.* The owner shall notify building residents of any evaluation or hazard reduction activities in accordance with § 35.125.

(e) *Reporting requirement.* The designated party shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional.

(f) *Data collection and record keeping responsibilities.* At least quarterly, the designated party shall attempt to obtain from the public health department(s) with area(s) of jurisdiction similar to that of the designated party the names and/or addresses of children of less than 6 years of age with an identified environmental intervention blood lead level. At least quarterly, the designated party shall also report an updated list of the addresses of units receiving assistance under a tenant-based rental assistance program to the same public health department(s), except that the report(s) to the public health department(s) is not required if the health department states that it does not wish to receive such report. If it obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the designated party shall match information on cases of environmental intervention blood lead levels with the

names and addresses of families receiving tenant-based rental assistance, unless the public health department performs such a matching procedure. If a match occurs, the designated party shall carry out the requirements of this section.

Subparts N–Q—[Reserved]

Subpart R—Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities

§ 35.1300 Purpose and applicability.

The purpose of this subpart R is to provide standards and methods for evaluation and hazard reduction activities required in subparts B, C, D, and F through M of this part.

§ 35.1305 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1310 References.

Further guidance information regarding evaluation and hazard reduction activities described in this subpart is found in the following:

(a) The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (Guidelines);

(b) The EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil;

(c) Guidance, methods or protocols issued by States and Indian tribes that have been authorized by EPA under 40 CFR 745.324 to administer and enforce lead-based paint programs.

§ 35.1315 Collection and laboratory analysis of samples.

All paint chip, dust, or soil samples shall be collected and analyzed in accordance with standards established either by a State or Indian tribe under a program authorized by EPA in accordance with 40 CFR part 745, subpart Q, or by the EPA in accordance with 40 CFR 745.227, and as further provided in this subpart.

§ 35.1320 Lead-based paint inspections and risk assessments.

(a) *Lead-based paint inspections.* Lead-based paint inspections shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(b), except that the definition of lead-based paint shall not include a loading (area concentration) or mass concentration greater than that in the definition at § 35.110 of this part.

(b) *Risk assessments.* (1) Risk assessments shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(d), and paragraph (b)(2) of this section.

(2) Risk assessors shall use levels defining dust-lead hazards and soil-lead hazards that are no greater than those promulgated by EPA pursuant to section 403 of the Toxic Substances Control Act (15 U.S.C. 2683), or, if such levels are not in effect, the following for dust or soil:

(i) *Dust.* A dust-lead hazard shall be a dust-lead level equal to or greater than the applicable loading (area concentration), based on wipe samples, in the following table:

INTERIM DUST LEAD STANDARDS

Evaluation method	Surface	Interior window sills, µg/ft ² (mg/m ²)	Window troughs, µg/ft ² (mg/m ²)
	Floors, µg/ft ² (mg/m ²)		
Lead Hazard Screen	25 (0.27)	125 (1.4)	Not Applicable.
Risk Assessment	40 (0.43)	250 (2.7)	Not Applicable.
Reevaluation	40 (0.43)	250 (2.7)	Not Applicable.
Clearance	40 (0.43)	250 (2.7)	800 (8.6).

Note: "Floors" includes carpeted and uncarpeted interior floors.

(ii) *Soil.* (A) A soil-lead hazard for play areas frequented by children under 6 years of age shall be bare soil with lead equal to or exceeding 400 micrograms per gram.

(B) For other areas, soil-lead hazards shall be bare soil that totals more than 9 square feet (0.8 square meters) per

property with lead equal to or exceeding 2,000 micrograms per gram.

(3) Lead hazard screens shall be performed in accordance with the methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(c), and paragraph (b)(2) of this section. If the lead hazard

screen indicates the need for a follow-up risk assessment (e.g., if dust-lead measurements exceed the levels established for lead hazard screens in this section), a risk assessment shall be conducted in accordance with paragraphs (b)(1) and (b)(2) of this section. Dust, soil, and paint samples collected for the lead hazard screen may

be used in the risk assessment. If the lead hazard screen does not indicate the need for a follow-up risk assessment, no further risk-assessment is required.

(c) It is strongly recommended, but not required, that lead-based paint inspectors and risk assessors provide a summary of the results suitable for posting or distribution to occupants in compliance with § 35.125.

§ 35.1325 Abatement.

Abatement shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(e), and shall be completed by achieving clearance in accordance with § 35.1340. If encapsulation or enclosure is used as a method of abatement, ongoing lead-based paint maintenance activities shall be performed as required by the applicable subpart of this part in accordance with § 35.1355. Abatement of an intact, factory-applied prime coating on metal surfaces is not required unless the surface is a friction surface.

§ 35.1330 Interim controls.

Interim controls of lead-based paint hazards identified in a risk assessment shall be conducted in accordance with the provisions of this section. Interim control measures include paint stabilization of deteriorated paint, treatments for friction and impact surfaces where levels of lead dust are above the levels specified in § 35.1320, dust control, and lead-contaminated soil control. As provided by § 35.155, interim controls may be performed in combination with, or be replaced by, abatement methods.

(a) *General requirements.* (1) Only those interim control methods identified as acceptable methods in a current risk assessment report shall be used to control identified hazards, except that, if only paint stabilization is required in accordance with subparts F, H, K or M of this part, it shall not be necessary to have conducted a risk assessment.

(2) Occupants of dwelling units where interim controls are being performed shall be protected during the course of the work in accordance with § 35.1345.

(3) Clearance testing shall be performed at the conclusion of interim control activities in accordance with § 35.1340.

(4) A person performing interim controls must be trained in accordance with 29 CFR 1926.59 and either be supervised by an individual certified as a lead-based paint abatement supervisor or have successfully completed one of the following courses:

(i) A lead-based paint abatement supervisor course accredited in accordance with 40 CFR 745.225;

(ii) A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225;

(iii) The Lead-Based Paint Maintenance Training Program, "Work Smart, Work Wet, and Work Clean to Work Lead Safe," prepared by the National Environmental Training Association for EPA and HUD;

(iv) "The Remodeler's and Renovator's Lead-Based Paint Training Program," prepared by HUD and the National Association of the Remodeling Industry; or

(v) Another course approved by HUD for this purpose after consultation with EPA.

(b) *Paint stabilization.* (1) Interim control treatments used to stabilize deteriorated lead-based paint shall be performed in accordance with the requirements of this section. Interim control treatments of intact, factory applied prime coatings on metal surfaces are not required. Finish coatings on such surfaces shall be treated by interim controls if those coatings contain lead-based paint.

(2) Any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened.

(3) Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for preparing the surface to be treated include wet scraping, wet sanding, and power sanding performed in conjunction with a HEPA filtered local exhaust attachment operated according to the manufacturer's instructions.

(4) Dry sanding or dry scraping is permitted only in accordance with § 35.140(e) (i.e., for electrical safety reasons or for specified minor amounts of work).

(5) Paint stabilization shall include the application of a new protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new protective coating or paint. All protective coatings and paints shall be applied in accordance with the manufacturer's recommendations.

(6) Paint stabilization shall incorporate the use of safe work practices in accordance with § 35.1350.

(c) *Friction and impact surfaces.* (1) Friction surfaces are required to be treated only if:

(i) Lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, window trough, or floor) are equal to or greater than the standards specified in 35.1320(b);

(ii) There is evidence that the paint surface is subject to abrasion; and

(iii) Lead-based paint is known or presumed to be present on the friction surface.

(2) Impact surfaces are required to be treated only if:

(i) Paint on an impact surface is damaged or otherwise deteriorated;

(ii) The damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and

(iii) Lead-based paint is known or presumed to be present on the impact surface.

(3) Examples of building components that may contain friction or impact surfaces include the following:

(i) Window systems;

(ii) Doors;

(iii) Stair treads and risers;

(iv) Baseboards;

(v) Drawers and cabinets; and

(vi) Porches, decks, interior floors, and any other painted surfaces that are abraded, rubbed, or impacted.

(4) Interim control treatments for friction surfaces shall eliminate friction points or treat the friction surface so that paint is not subject to abrasion. Examples of acceptable treatments include rehanging and/or planing doors so that the door does not rub against the door frame, and installing window channel guides that reduce or eliminate abrasion of painted surfaces. Paint on stair treads and floors shall be protected with a durable cover or coating that will prevent abrasion of the painted surfaces. Examples of acceptable materials include carpeting, tile, and sheet flooring.

(5) Interim control treatments for impact surfaces shall protect the paint from impact. Examples of acceptable treatments include treatments that eliminate impact with the paint surface, such as a door stop to prevent a door from striking a wall or baseboard.

(6) Interim control for impact or friction surfaces does not include covering such a surface with a coating or other treatment, such as painting over the surface, that does not protect lead-based paint from impact or abrasion.

(d) *Chewable surfaces.* (1) Chewable surfaces are required to be treated only if there is evidence that a child of less than 6 years of age has chewed on the painted surface, and lead-based paint is known or presumed to be present on the surface.

(2) Interim control treatments for chewable surfaces shall make the lead-based paint inaccessible for chewing by children of less than 6 years of age. Examples include enclosures or coatings that cannot be penetrated by the teeth of such children.

(e) *Dust-lead hazard control.* (1) Interim control treatments used to control dust-lead hazards shall be performed in accordance with the requirements of this section. Additional information on dust removal is found in the HUD Guidelines, particularly Chapter 11 (see § 35.1310).

(2) Dust control shall involve a thorough cleaning of all horizontal surfaces, such as interior window sills, window troughs, floors, and stairs, but excluding ceilings. All horizontal surfaces, such as floors, stairs, window sills and window troughs, that are rough, pitted, or porous shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(3) Surfaces covered by a rug or carpeting shall be cleaned as follows:

(i) The floor surface under a rug or carpeting shall be cleaned where feasible, including upon removal of the rug or carpeting, with a HEPA vacuum or other method of equivalent efficacy.

(ii) An unattached rug or an attached carpet that is to be removed, and padding associated with such rug or carpet, located in an area of the dwelling unit with dust-lead hazards on the floor, shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy. Protective measures shall be used to prevent the spread of dust during removal of a rug, carpet or padding from the dwelling. For example, it shall be misted to reduce dust generation during removal. The item(s) being removed shall be wrapped or otherwise sealed before removal from the worksite.

(iii) An attached carpet located in an area of the dwelling unit with dust-lead hazards on the floor shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy if it is not to be removed.

(f) *Soil-lead hazards.* (1) Interim control treatments used to control soil-lead hazards shall be performed in accordance with this section.

(2) Soil with a lead concentration equal to or greater than 5,000 µg/g of

lead shall be abated in accordance with 40 CFR 745.227(e).

(3) Acceptable interim control methods for soil lead are impermanent surface coverings and land use controls.

(i) Impermanent surface coverings may be used to treat lead-contaminated soil if applied in accordance with the following requirements. Examples of acceptable impermanent coverings include gravel, bark, sod, and artificial turf.

(A) Impermanent surface coverings selected shall be designed to withstand the reasonably-expected traffic. For example, if the area to be treated is heavily traveled, neither grass or sod shall be used.

(B) When loose impermanent surface coverings such as bark or gravel are used, they shall be applied in a thickness not less than six inches deep.

(C) The impermanent surface covering material shall not contain more than 200 µg/g of lead.

(D) Adequate controls to prevent erosion shall be used in conjunction with impermanent surface coverings.

(ii) Land use controls may be used to reduce exposure to soil-lead hazards only if they effectively control access to areas with soil-lead hazards. Examples of land use controls include: fencing, warning signs, and landscaping.

(A) Land use controls shall be implemented only if residents have reasonable alternatives to using the area to be controlled.

(B) If land use controls are used for a soil area that is subject to erosion, measures shall be taken to contain the soil and control dispersion of lead.

§ 35.1335 Standard treatments.

Standard treatments shall be conducted in accordance with this section.

(a) *Paint stabilization.* All deteriorated paint on exterior and interior surfaces located on the residential property shall be stabilized in accordance with § 35.1330(a)(b), or abated in accordance with § 35.1325.

(b) *Smooth and cleanable horizontal surfaces.* All horizontal surfaces, such as uncarpeted floors, stairs, interior window sills and window troughs, that are rough, pitted, or porous, shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(c) *Correcting dust-generating conditions.* Conditions causing friction or impact of painted surfaces shall be corrected in accordance with § 35.1330(c)(4)–(6).

(d) *Bare residential soil.* Bare soil shall be treated in accordance with the

requirements of § 35.1330, unless it is found not to be a soil-lead hazard in accordance with § 35.1320(b).

(e) *Safe work practices.* All standard treatments described in paragraphs (a) through (d) of this section shall incorporate the use of safe work practices in accordance with § 35.1350.

(f) *Clearance.* A clearance examination shall be performed in accordance with § 35.1340 at the conclusion of any lead hazard reduction activities.

(g) *Qualifications.* An individual performing standard treatments must meet the training and/or supervision requirements of § 35.1330(a)(4).

§ 35.1340 Clearance.

Clearance examinations required under subparts B, C, D, F through M, and R, of this part shall be performed in accordance with the provisions of this section.

(a) *Clearance following abatement.* Clearance examinations performed following abatement of lead-based paint or lead-based paint hazards shall be performed in accordance with 40 CFR 745.227(e) and paragraphs (c)–(f) of this section. Such clearances shall be performed by a person certified to perform risk assessments or lead-based paint inspections.

(b) *Clearance following activities other than abatement.* Clearance examinations performed following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation shall be performed in accordance with the requirements of this paragraph (b) and paragraphs (c)–(g) of this section.

(1) *Qualified personnel.* Clearance examinations shall be performed by:

(i) A certified risk assessor;

(ii) A certified lead-based paint inspector;

(iii) A person who has successfully completed a training course for clearance technicians (or a discipline of similar purpose and title) that is developed or accepted by EPA or a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q, and that is given by a training provider accredited by EPA or a State or Indian tribe for training in lead-based paint inspection or risk assessment, *provided* a certified risk assessor or a certified lead-based paint inspector approves the work of the clearance technician and signs the report of the clearance examination; or

(iv) A technician licensed or certified by EPA or a State or Indian tribe to perform clearance examinations without the approval of a certified risk assessor or certified lead-based paint inspector,

provided that a clearance examination by such a licensed or certified technician shall be performed only for a single-family property or individual dwelling units and associated common areas in a multi-unit property, and provided further that a clearance examination by a such a licensed or certified clearance technician shall not be performed using random sampling of dwelling units or common areas in multifamily properties, except that a clearance examination performed by such a licensed or certified clearance technician is acceptable for any residential property if the clearance examination is approved and the report signed by a certified risk assessor or a certified lead-based paint inspector.

(2) *Required activities.* (i) Clearance examinations shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Clearance examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8). If clearance is being performed for more than 10 dwelling units of similar construction and maintenance, as in a multifamily property, random sampling for the purposes of clearance may be conducted in accordance with 40 CFR 745.227(e)(9).

(ii) The visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are still present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint or visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination, except elimination of deteriorated paint is not required if it has been determined, through paint testing or a lead-based paint inspection, that the deteriorated paint is not lead-based paint. If exterior painted surfaces have been disturbed by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an assessment of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in living areas shall be cleaned up and visible paint chips on the ground shall be removed.

(iii) Dust samples shall be wipe samples and shall be taken on floors and, where practicable, interior window sills and window troughs. Dust samples

shall be collected and analyzed in accordance with § 35.1315 of this part.

(iv) Clearance reports shall be prepared in accordance with paragraph (c) of this section.

(c) *Clearance report.* When clearance is required, the designated party shall ensure that a clearance report is prepared that provides documentation of the hazard reduction or maintenance activity as well as the clearance examination. When abatement is performed, the report shall be an abatement report in accordance with 40 CFR 745.227(e)(10). When another hazard reduction or maintenance activity requiring a clearance report is performed, the report shall include the following information:

(1) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected.

(2) The following information on the clearance examination:

(i) The date(s) of the clearance examination;

(ii) The name, address, and signature of each person performing the clearance examination, including certification number;

(iii) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;

(iv) The results of the analysis of dust samples, in $\mu\text{g}/\text{sq. ft.}$, by location of sample; and

(v) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(3) The following information on the hazard reduction or maintenance activity for which clearance was performed:

(i) The start and completion dates of the hazard reduction or maintenance activity;

(ii) The name and address of each firm or organization conducting the hazard reduction or maintenance activity and the name of each supervisor assigned;

(iii) A detailed written description of the hazard reduction or maintenance activity, including the methods used, locations of exterior surfaces, interior rooms, common areas, and/or components where the hazard reduction activity occurred, and any suggested monitoring of encapsulants or enclosures; and

(iv) If soil hazards were reduced, a detailed description of the location(s) of

the hazard reduction activity and the method(s) used.

(d) *Standards.* The clearance standards in § 35.1320(b)(2) shall apply. If test results equal or exceed the standards, the dwelling unit, worksite, or common area represented by the sample fails the clearance examination.

(e) *Clearance failure.* All surfaces represented by a failed clearance sample shall be recleaned or treated by hazard reduction, and retested, until the applicable clearance level in § 35.1320(b)(2) is met.

(f) *Independence.* Clearance examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities, unless the designated party uses qualified in-house employees to conduct clearance. An in-house employee shall not conduct both a hazard reduction or maintenance activity and its clearance examination.

(g) *Worksite clearance.* When clearance is of an interior worksite, not an entire dwelling unit or residential property, dust samples taken for paragraph (b) of this section shall be taken from the floor and window (if available) to represent the area within the dust containment area. Clearance is not required if maintenance or hazard reduction activities in the worksite do not disturb painted surfaces of a total area more than that set forth in § 35.1350(d).

§ 35.1345 Occupant protection and worksite preparation.

This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during hazard reduction activities.

(a) *Occupant protection.* (1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite), until after hazard reduction work has been completed and clearance, if required, has been achieved.

(2) Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:

(i) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;

(ii) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned

afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;

(iii) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or

(iv) Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

(3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(b) *Worksite preparation.* (1) The worksite shall be prepared to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

(2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated; or, for an exterior hazard reduction activity, where it is easily read 20 feet (6 meters) from the edge of the hazard reduction activity worksite. Each warning sign shall be as described in 29 CFR 1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

§ 35.1350 Safe work practices.

(a) *Prohibited methods.* Methods of paint removal listed in § 35.140 shall not be used.

(b) *Occupant protection and worksite preparation.* Occupants and their belongings shall be protected, and the worksite prepared, in accordance with § 35.1345.

(c) *Specialized cleaning.* After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

(d) *De minimis levels.* Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

(1) 20 square feet (2 square meters) on exterior surfaces;

(2) 2 square feet (0.2 square meters) in any one interior room or space; or

(3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

§ 35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

(a) *Maintenance.* Maintenance activities shall be conducted in accordance with paragraphs (a)(2)–(6) of this section, except as provided in paragraph (a)(1) of this section.

(1) Maintenance activities need not be conducted in accordance with this section if both of the following conditions are met, as applicable:

(i) Either a lead-based paint inspection indicates that no lead-based paint is present in the dwelling units, common areas, and on exterior surfaces, or a clearance report prepared in accordance with § 35.1340(a) indicates that all lead-based paint has been removed; and

(ii) If a risk assessment is required by the applicable subpart of this part, a current risk assessment indicates that no soil-lead hazards and no dust-lead hazards are present.

(2) A visual assessment for deteriorated paint, bare soil, and the failure of any hazard reduction measures shall be performed at unit turnover and every twelve months.

(3) (i) *Deteriorated paint.* All deteriorated paint on interior and exterior surfaces located on the residential property shall be stabilized in accordance with § 35.1330(a)(b), except for any paint that an evaluation has found is not lead-based paint.

(ii) *Bare soil.* All bare soil shall be treated with standard treatments in accordance with § 35.1335(d) through (g), or interim controls in accordance with § 35.1330(a) and (f); except for any bare soil that a current evaluation has found is not a soil-lead hazard.

(4) Safe work practices, in accordance with sec. 35.1350, shall be used when performing any maintenance or renovation work that disturbs paint that may be lead-based paint.

(5) Any encapsulation or enclosure of lead-based paint or lead-based paint hazards which has failed to maintain its effectiveness shall be repaired, or abatement or interim controls shall be performed in accordance with §§ 35.1325 or 35.1330, respectively.

(6) Clearance testing of the worksite shall be performed at the conclusion of repair, abatement or interim controls in accordance with § 35.1340.

(7) Each dwelling unit shall be provided with written notice asking occupants to report deteriorated paint and, if applicable, failure of encapsulation or enclosure, along with the name, address and telephone number of the person whom occupants should contact. The language of the notice shall be in accordance with § 35.125(c)(3). The designated party shall respond to such report and stabilize the deteriorated paint or repair the encapsulation or enclosure within 30 days.

(b) *Reevaluation.* Reevaluation shall be conducted in accordance with this paragraph (b), and the designated party shall conduct interim controls of lead-based paint hazards found in the reevaluation.

(1) Reevaluation shall be conducted if hazard reduction has been conducted to reduce lead-based paint hazards found in a risk assessment or if standard treatments have been conducted, except that reevaluation is not required if any of the following cases are met:

(i) An initial risk assessment found no lead-based paint hazards;

(ii) A lead-based paint inspection found no lead-based paint; or

(iii) All lead-based paint was abated in accordance with § 35.1325, provided that no failures of encapsulations or enclosures have been found during visual assessments conducted in accordance with § 35.1355(a)(2) or during other observations by maintenance and repair workers in accordance with § 35.1355(a)(5) since the encapsulations or enclosures were performed.

(2) Reevaluation shall be conducted to identify:

(i) Deteriorated paint surfaces with known or suspected lead-based paint;

(ii) Deteriorated or failed interim controls of lead-based paint hazards or encapsulation or enclosure treatments;

(iii) Dust-lead hazards; and

(iv) Soil that is newly bare with lead levels equal to or above the standards in § 35.1320(b)(2).

(3) Each reevaluation shall be performed by a certified risk assessor.

(4) Each reevaluation shall be conducted in accordance with the following schedule if a risk assessment or other evaluation has found deteriorated lead-based paint in the residential property, a soil-lead hazard, or a dust-lead hazard on a floor or interior window sill. (Window troughs are not sampled during reevaluation). The first reevaluation shall be conducted no later than two years from completion of hazard reduction. Subsequent reevaluation shall be conducted at intervals of two years, plus or minus 60 days. To be exempt from additional reevaluation, at least two consecutive reevaluations conducted at such two-year intervals must be conducted without finding lead-based paint hazards or a failure of an encapsulation or enclosure. If, however, a reevaluation finds lead-based paint hazards or a failure, at least two more consecutive reevaluations conducted at such two year intervals must be conducted without finding lead-based paint hazards or a failure.

(5) Each reevaluation shall be performed as follows:

(i) Dwelling units and common areas shall be selected and reevaluated in accordance with § 35.1320(b).

(ii) The worksites of previous hazard reduction activities that are similar on the basis of their original lead-based paint hazard and type of treatment shall be grouped. Worksites within such groups shall be selected and reevaluated in accordance with § 35.1320(b).

(6) Each reevaluation shall include reviewing available information, conducting selected visual assessment, recommending responses to hazard reduction omissions or failures, performing selected evaluation of paint, soil and dust, and recommending response to newly-found lead-based paint hazards.

(i) *Review of available information.* The risk assessor shall review any available past evaluation, hazard reduction and clearance reports, and any other available information describing hazard reduction measures, ongoing maintenance activities, and relevant building operations.

(ii) *Visual assessment.* The risk assessor shall:

(A) Visually evaluate all lead-based paint hazard reduction treatments, any

known or suspected lead-based paint, any deteriorated paint, and each exterior site, and shall identify any new areas of bare soil;

(B) Determine acceptable options for controlling the hazard; and

(C) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iii) *Reaction to hazard reduction omission or failure.* If any hazard reduction control has not been implemented or is failing (e.g., an encapsulant is peeling away from the wall, a paint-stabilized surface is no longer intact, or gravel covering an area of bare soil has worn away), or deteriorated lead-based paint is present, the risk assessor shall:

(A) Determine acceptable options for controlling the hazard; and

(B) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iv) *Selected paint, soil and dust evaluation.* (A) The risk assessor shall sample deteriorated paint surfaces identified during the visual assessment and have the samples analyzed, in accordance with 40 CFR 745.227(b)(3)(4), but only if reliable information about lead content is unavailable.

(B) The risk assessor shall evaluate new areas of bare soil identified during the visual assessment. Soil samples shall be collected and analyzed in accordance with 40 CFR 745.227(d)(8)–(11), but only if the soil lead levels have not been previously measured.

(C) The risk assessor shall take selected dust samples and have them analyzed. Dust samples shall be collected and analyzed in accordance with § 35.1320(b). At least two composite samples, one from floors and the other from interior window sills, shall be taken in each dwelling unit and common area selected. Each composite sample shall consist of four individual samples, each collected from a different room or area. If the dwelling unit contains both carpeted and uncarpeted living areas, separate floor samples are required from the carpeted and uncarpeted areas. Equivalent single-surface sampling may be used instead of composite sampling.

(7) The risk assessor shall provide the designated party with a written report documenting the presence or absence of

lead-based paint hazards, the current status of any hazard reduction and standard treatment measures used previously and any newly-conducted evaluation and hazard reduction activities. The report shall include the information in 40 CFR 745.227(d)(11), and shall:

(i) Identify any lead-based paint hazards previously detected and discuss the effectiveness of any hazard reduction or standard treatment measures used, and list those for which no measures have been used.

(ii) Describe any new hazards found and present the owner with acceptable control options and their accompanying reevaluation schedules.

(iii) Identify when the next reevaluation, if any, must occur, in accordance with the requirements of paragraph (b)(4) of this section.

(c) *Response to the reevaluation.* (1) *Hazard reduction omission or failure found by a reevaluation.* The designated party shall respond in accordance with paragraph (b)(6)(iii)(A) of this section to a report by the risk assessor of a hazard reduction control that has not been implemented or is failing, or that deteriorated lead-based paint is present.

(2) *Newly-identified lead-based paint hazard found by a reevaluation.* The designated party shall treat each:

(i) Dust-lead hazard or paint lead hazard by cleaning or hazard reduction measures, which are considered completed when clearance is achieved in accordance with § 35.1340.

(ii) Soil-lead hazard by hazard reduction measures, which are considered completed when clearance is achieved in accordance with § 35.1340.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

4. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, 12901–12912.

5. Revise § 91.2(b)(15) to read as follows:

§ 91.2 Applicability.

* * * * *

(b) * * *

(15) The “Lead-Based Paint Hazard Reduction Program (see 42 U.S.C. 4852(o));”

* * * * *

6. In § 91.5, revise the definition of “Lead-based paint hazards” to read as follows:

§ 91.5 Definitions.

* * * * *

Lead-based paint hazards means lead-based paint hazards as defined in part 35, subpart B of this title.

7. Revise § 91.225(b)(7) to read as follows:

§ 91.225 Certifications.

* * * * *

(b) * * *

(7) *Compliance with lead-based paint procedures.* The jurisdiction must submit a certification that its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

8. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

9. Revise § 92.206(a)(2)(ii) to read as follows:

§ 92.206 Eligible project costs.

* * * * *

(a) * * *

(2) * * *

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and lead-based paint activities, as required by part 35 of this title.

* * * * *

10. Revise § 92.355 to read as follows:

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

11. Revise § 92.504(c)(3)(iv) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

* * * * *

(c) * * *

(3) * * *

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in part 35, subparts A, B, J, K, M and R of this title, upon project completion. The agreement must also require owners of rental housing assisted with HOME

funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

* * * * *

12. Revise § 92.508(a)(7)(vi) to read as follows:

§ 92.508 Recordkeeping.

* * * * *

(a) * * *

(7) * * *

(vi) Records demonstrating compliance with the lead-based paint requirements of part 35, subparts A, B, J, K, M and R of this title.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

13. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

14. Revise subpart O to read as follows:

Subpart O—Lead-Based Paint Poisoning Prevention

Sec.

200.800 Lead-based paint.

200.805 Definitions.

200.810 Single family insurance and coinsurance.

Subpart O—Lead-Based Paint Prevention

§ 200.800 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, G, I, and R of this title, apply to activities under these programs, except for single family mortgage insurance and guarantee programs. Sections 200.805 and 200.810 apply to single family mortgage insurance and guarantee programs administered by HUD.

§ 200.805 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

§ 200.810 Single family insurance and coinsurance.

(a) *General.* (1) The requirements of this section apply to any one-to four-family dwelling which was constructed

before 1978 and is the subject of an application for mortgage insurance under section 203(b) or other sections of the National Housing Act relating to the insurance or coinsurance of mortgages on one-to-four-family dwellings. Such other sections include:

(i) Section 244 (coinsurance);

(ii) Section 213 (cooperative housing insurance);

(iii) Section 220 (rehabilitation and neighborhood conservation housing insurance);

(iv) Section 221 (housing for moderate income and displaced families);

(v) Section 222 (mortgagor insurance for servicemen);

(vi) Section 809 (armed services housing for civilian employees);

(vii) Section 810 (armed services housing in impacted areas);

(viii) Section 234 (mortgage insurance for condominiums);

(ix) Section 235 (mortgage assistance payments for home ownership and project rehabilitation);

(x) Section 237 (special mortgage insurance for low and moderate income families); and

(xi) Section 240 (mortgage insurance on loans for purchase of fee simple title from lessors).

(2) This section is also applicable to single family mortgage insurance on Indian reservations (12 U.S.C. 1715z–13) and loan guarantees for Indian housing (25 U.S.C. 4191).

(3) Applications for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by the Commissioner are excluded from the coverage of this section. Any housing assisted under the programs set out in this section for which no new activity is applied for or required is not covered by this section.

(b) *Appraisal.* The appraiser shall, when appraising a dwelling constructed prior to 1978, inspect the dwelling for defective paint surfaces.

(c) *Treatment of defective paint surfaces.* For defective paint surfaces, treatment shall be provided to defective areas. Treatment of hazards shall consist of covering or removing defective paint surfaces. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface.

Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or

gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment. Treatment of a defective paint surface is not required if such a surface is found to not be a lead-based paint surface by a lead-based paint inspector certified pursuant to procedures of the U.S. Environmental Protection Agency at 40 CFR part 745.

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion insurance) unless the mortgagor provides the certification described in § 206.45(d) of this title. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this title

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

15. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

16. In § 203.673, revise paragraphs (a) and (c) to read as follows:

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is habitable if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more than five percent of the fair market value of the property. The cost of hazard reduction or abatement of lead-based paint hazards in the property, as required by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in part 35 of this title, is excluded from these repair cost limitations.

* * * * *

(c) If repairs, including lead-based paint hazard reduction or abatement, are to be made while the property is occupied, the occupant must hold the Secretary and the Department harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary

relocation of the occupant is necessary during repairs, no reimbursement for relocation expenses will be provided to the occupant.

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

17. The authority citation for part 280 continues to read as follows:

Authority: 12 U.S.C. 1715l note; 42 U.S.C. 3535(d).

18. Revise § 280.25(e) to read as follows:

§ 280.25 Other Federal requirements.

* * * * *

(e) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, K, and R, of this title apply to the program.

* * * * *

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

19. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, and 3535(d).

20. Revise § 291.100(g) to read as follows:

§ 291.100 General policy.

* * * * *

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R, of this title.

* * * * *

21. Revise § 291.430 to read as follows:

§ 291.430 Elimination of lead-based paint hazards.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R of this title, apply activities covered by this subpart.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

22. The authority citation for 24 CFR part 511 continues to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

23. Revise § 511.10(f)(1)(ii) to read as follows:

§ 511.10 General requirements.

* * * * *

(f) * * *

(1) * * *

(ii) Make essential improvements, as reasonably defined by the grantee or State recipient in its rehabilitation standards adopted under § 511.10(e), including energy-related repairs, improvements necessary to permit the use of rehabilitated projects by handicapped persons, and activities of lead based paint hazards, as required by part 35 of this title;

* * * * *

24. Revise § 511.15 to read as follows:

§ 511.15 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under these programs.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

25. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

26. Revise § 570.202(f) to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

* * * * *

(f) *Lead-based paint activities.* Lead-based paint activities as set forth in part 35 of this title.

27. Revise § 570.461 to read as follows:

§ 570.461 Post-preliminary approval requirements; lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of lead-based paint activities conducted pursuant to part 35, subparts A, B, J, K, and R of this title, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

28. Revise § 570.487(c) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with

respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

29. Revise § 570.608 to read as follows:

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

30. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

31. Revise § 572.100(d)(1) to read as follows:

§ 572.100 Acquisition and rehabilitation of eligible properties; rehabilitation standards.

* * * * *

(d) * * *

(1) The recipient is responsible to assure that rehabilitation of eligible property meets local codes applicable to rehabilitation of work in the jurisdiction (but not less than the housing quality standards established under the Section 8 rental voucher program, described in § 982.401 of this title). Rehabilitation must also include work necessary to meet applicable federal requirements, including lead-based paint requirements set forth at part 35, subparts A, B, J, K, and R of this title.

* * * * *

32. Revise § 572.215(e) to read as follows:

§ 572.215 Implementation grants-eligible activities.

* * * * *

(e) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections, including lead-based paint evaluation.

* * * * *

33. Revise § 572.420(h) to read as follows:

§ 572.420 Miscellaneous requirements.

* * * * *

(h) *Lead-based paint activities.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K and R of this title apply to activities under these programs.

PART 573—LOAN GUARANTEE RECOVERY FUND

34. The authority citation for part 573 continues to read as follows:

Authority: Pub. L. 104–155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

35. Revise § 573.9(c) to read as follows:

§ 573.9 Other requirements.

* * * * *

(c) *Lead-based paint.* Housing assisted under this part is subject to the lead-based paint requirements described in part 35, subparts A, B, E, G, and R of this title.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS

36. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

37. Revise § 574.635 to read as follows:

§ 574.635 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to activities under this program.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

38. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

39. Revise § 576.57(c) to read as follows:

§ 576.57 Other Federal Requirements.

* * * * *

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–

4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 582—SHELTER PLUS CARE

40. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

41. Revise the first sentence of § 582.305(a) to read as follows:

§ 582.305 Housing quality standards; rent reasonableness.

(a) *Housing quality standards.* Housing assisted under this part must meet the applicable housing quality standards (HQS) under § 982.401 of this title—except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, K and R of this title apply—and, for SRO under § 882.803(b) of this title. * * *

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

42. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

43. Revise § 583.330(d) to read as follows:

§ 583.330 Applicability of other Federal requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 585—YOUTHBUILD PROGRAM

44. The authority citation for part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

45. Revise § 585.305(d) to read as follows:

§ 585.305 Eligible activities.

* * * * *

(d) Rehabilitation of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families, including lead-based paint

activities; in accordance with part 35 of this title;

* * * * *

46. Revise § 585.502(h) to read as follows:

§ 585.502 Certifications.

* * * * *

(h) *Lead-based paint.* A certification that the applicant will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 761—DRUG ELIMINATION PROGRAMS

47. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

48. Revise § 761.40(c) to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(c) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

49. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

50. Revise § 881.207(e) to read as follows:

§ 881.207 Property standards.

* * * * *

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title; and

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

51. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

52. Revise § 882.404(d) to read as follows:

§ 882.404 Physical condition standards; physical inspection requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 8 moderate rehabilitation program.

53. Revise § 882.507(b)(2)(iv) to read as follows:

§ 882.507 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The unit(s) are in compliance with part 35, subparts A, B, H, and R of this title.

* * * * *

54. Revise § 882.514(d)(1)(vi) to read as follows:

§ 882.514 Family participation.

* * * * *

(d) * * *

(1) * * *

(vi) The advisability and availability of blood lead level screening for children under 6 years of age and HUD's lead-based paint requirements in part 35, subparts A, B, H, and R of this title.

* * * * *

55. Revise § 882.803(b)(1) to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(b)(1) *Physical condition standards.* Section 882.404 applies to this program.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

56. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

57. Revise § 883.310(b)(5) to read as follows:

§ 883.310 Property standards.

* * * * *

(b) * * *

(5) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at

part 35, subparts A, B, H, and R of this title.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

58. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d) and 13611–13619.

59. Revise § 886.113(i) to read as follows:

§ 886.113 Physical condition standard; physical inspection requirements.

* * * * *

(i) *Lead based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

60. Revise § 886.307(i) to read as follows:

§ 886.307 Physical condition standards; physical inspection requirement.

* * * * *

(i) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

61. Revise § 886.333(b)(2)(iv) to read as follows:

§ 886.333 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The project was in compliance with applicable HUD lead-based paint regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 891—SECTION 8—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

62. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d) and 8013.

63. Revise § 891.155(g) to read as follows:

§ 891.155 Other Federal requirements.

* * * * *

(g) *Lead-based paint.* The requirements of the Lead-Based Paint

Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to these programs.

64. Revise § 891.325 to read as follows:

§ 891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 811 program and to projects funded under §§ 891.655 through 891.790.

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

65. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

66. In § 901.5, revise the definition of “HQS” to read as follows:

§ 901.5 Definitions.

* * * * *

HQS means Housing Quality Standards as set forth at § 982.401 of this title, except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, L, and R of this title apply.

* * * * *

PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

67. The authority citation for part 906 continues to read as follows:

Authority: 42 U.S.C. 1437c, 1437d and 3535(d).

68. Revise the first sentence of § 906.6(b) to read as follows:

§ 906.6 Property that may be sold.

* * * * *

(b) *Physical condition of property.* The property must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under part 882 of this title) and the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations

part 35, subparts A, B, L, and R of this title. * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

69. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g and 3535(d).

70. Revise § 941.208(b) to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(b) *Lead-based paint.* The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to the program.

71. Revise the second sentence of § 941.606(m) to read as follows:

§ 941.606 Proposal.

* * * * *

(m) *New construction.* * * * This may be accomplished by the PHA’s submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint activities).

* * *

* * * * *

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

72. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

73. Amend § 965.215 as follows:

- a. Revise paragraph (a);
- b. Revise the introductory text of paragraph (b); and
- c. Revise paragraphs (b)(1), (c), and (d).

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with lead-based paint activities that the PHA undertakes, in accordance with the PHA’s ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint activities, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA must obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or obtain such insurance directly. Insurance must remain in effect during the entire period of lead-based paint activity and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA’s contract pertaining to lead-based paint activities. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the PHA’s contract related to lead-based paint activities. (The duties of the RMC are similar to those of a real estate management firm.)

* * * * *

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and enforced on the day this section is effective which provides coverage for lead-based paint activities shall be considered as meeting the requirements of this section until the expiration of the policy. This section is not applicable to architects, engineers or consultants who do not physically perform lead-based paint activities.

(d) *Insurance for the existence of lead-based paint hazards.* A PHA may also purchase special liability insurance against the existence of lead-based paint hazards, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA’s requirements, the premium is reasonable and the policy is obtained in accordance with applicable procurement standards. (See part 85 of this title and § 965.205 of this title.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

74. Revise subpart H, consisting of § 965.701, to read as follows:

Subpart H—Lead-based Paint Poisoning Prevention

§ 965.701 Lead-based paint poisoning prevention.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to this program.

PART 968—PUBLIC HOUSING MODERNIZATION

75. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437l, and 3535(d).

76. Revise the first sentence of § 968.102(c) to read as follows:

§ 968.102 Special requirements for Turnkey III developments.

(c) *Other.* The homebuyer family must be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for non-emergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for persons with disabilities and lead-based paint activities) and the correction of development deficiencies. * * *

77. Revise § 968.110(k) to read as follows:

§ 968.110 Other program requirements.

(k) *Lead-based paint poisoning prevention.* The PHA shall comply with the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title. * * *

78. Revise § 968.112(i) to read as follows:

§ 968.112 Eligible costs.

(i) *Lead-based paint costs.* Eligible costs include lead-based paint activities, such as insurance coverage and cleanup and disposal, in accordance with part 35 of this title. * * *

79. In § 968.205, revise the definition of the term “*Other modernization*” to read as follows:

§ 968.205 Definitions.

* * * * *

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint activities. * * * * *

80. Revise § 968.210(e)(2)(ii) to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

* * * * *

(e) * * *

(2) * * *

(ii) *Lead-based paint inspection compliance.* Where a PHA has not complied with the statutory requirement to complete lead-based paint inspection of all pre-1978 family units, the PHA is eligible for processing only for Emergency Modernization or work needed to complete the lead-based paint inspection. * * * * *

81. Revise the first sentence of § 968.315(e)(2)(i) to read as follows:

§ 968.315 Comprehensive Plan (including five-year action plan).

* * * * *

(e) * * *

(2) * * *

(i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with the lead-based paint requirements in part 35, subparts A, B, L, and R of this title, and to comply with other program requirements under § 968.110. * * * * *

82. Revise § 968.435(b) to read as follows:

§ 968.435 Other program requirements.

(b) Certify that activities undertaken within vacant units will bring the affected units into compliance with the Housing Quality Standards, as set forth in § 982.401 of this title, except that § 982.401(j) of this title shall not apply; the applicable lead-based paint requirements in part 35 subparts A, B, L and R, of this title shall apply. * * * * *

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

83. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

84. Revise § 970.13(d)(1)(i) to read as follows:

§ 970.13 Resident organization opportunity to purchase.

* * * * *

(d) * * *

(1) * * *

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead-based paint evaluation results), and occupancy status (e.g., percent occupancy). * * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

85. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

86. Revise § 982.158(f)(5) to read as follows:

§ 982.158 Program accounts and records.

* * * * *

(f) * * *

(5) Lead-based paint records as required by part 35, subpart B of this title. * * * * *

§ 982.301 [Amended]

87. In § 982.301, remove paragraph (b)(10) and redesignate paragraphs (b)(11) through (b)(16) as paragraphs (b)(10) through (b)(15), respectively.

88. Revise § 982.305(b)(3) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(3) The lease is approvable and includes the lease addendum and the lead-based paint disclosure information as required in § 35.92(b) of this title. * * * * *

89. Revise § 982.401(j) to read as follows:

Final Report

Wednesday
September 15, 1999

Part III

**Department of
Housing and Urban
Development**

Statutorily Mandated Designation of
Difficult Development Areas, and
Supplemental Designation of Qualified
Census Tracts, for Section 42 of the
Internal Revenue Code of 1986; Notice

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****[Docket No. FR-4401-N-03]****Statutorily Mandated Designation of
Difficult Development Areas, and
Supplemental Designation of Qualified
Census Tracts, for Section 42 of the
Internal Revenue Code of 1986****AGENCY:** Office of the Secretary, HUD.**ACTION:** Notice.

SUMMARY: This document designates "Difficult Development Areas" and supplemental "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986 ("the Code"). The United States Department of Housing and Urban Development ("HUD") makes new Difficult Development Area designations annually and makes supplemental designations of Qualified Census Tracts at this time because of changes in metropolitan area definitions.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-0426, e-mail Kurt_G_Usowski@hud.gov.

For specific legal questions pertaining to section 42 and this notice: Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-3260, e-mail JERRY_GROSS@hud.gov.

For questions about the "HUBZones" program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW, Washington, DC 20416, telephone (202) 205-6731, fax (202) 205-7324, e-mail michael.mchale@sba.gov.

A text telephone is available for persons with hearing or speech impairments at (202) 708-9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245-2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice is available electronically on the Internet (World Wide Web) at <http://www.huduser.org/> under the heading "Data Available from HUD User."

SUPPLEMENTARY INFORMATION:**This Document**

The designations of Difficult Development Areas in this document are based on FY 1999 Fair Market Rents ("FMRs"), FY 1999 income limits, and 1990 census population counts as explained below. The designations of Qualified Census Tracts in newly designated metropolitan areas and the nonmetropolitan parts of States affected by the most recent metropolitan area designation are made necessary by the recently enacted "HUBZones" provisions of the Small Business Reauthorization Act of 1997, which incorporate section 42 Qualified Census Tracts by reference. These designations are made based on 1990 Census data. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246, as amended by the supplemental designations of Qualified Census tracts published June 25, 1998, at 63 FR 34748, and December 9, 1998 at 63 FR 68115, are not affected by this Notice.

Background

The U.S. Treasury Department and the Internal Revenue Service ("IRS") thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code (26 U.S.C. 42) as amended. The Secretary of HUD is required to designate Difficult Development Areas and Qualified Census Tracts by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each State is allocated credit based on \$1.25 per resident.

States may carry forward unused or returned credit derived from the credit ceiling for one year; if not used by then, credit goes into a national pool to be allocated to States as additional credit. State and local housing agencies allocate the State's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides Section 42 credits derived from the credit ceiling, States may also provide Section 42 credits to owners of buildings based upon the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credit available from the credit ceiling.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income ("AMGI"), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of \$25,000. This equals \$9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They

cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the "applicable fraction" of the building and the "eligible basis" of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the number of Qualified Census Tracts in any Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a State are treated as if they constituted a single metropolitan area.

Section 42 of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the

aggregate population of all non-metropolitan counties.

The following changes in MSA/PMSA definitions were made after HUD's last designation of Qualified Census Tracts:

New MSA (MSA No.)	Component counties
Auburn-Opelika, AL MSA (580). Corvallis, OR MSA (1890).	Lee County, AL Benton County, OR

Since these counties are no longer part of the nonmetropolitan areas of their respective States, the 20 percent population cap (see below) is applied to the populations of these counties individually. This results in the loss of 2 qualified census tracts in Lee County, AL (402.00 and 407.00), and 1 qualified census tract in Benton County, OR (11.00).

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this revised list of LIHTC Qualified Census Tracts, HUD used 1990 Census data and the MSA/PMSA definitions established by the Office of Management and Budget ("OMB") in OMB Bulletin No. 99-04 on June 30, 1999. Beginning with the 1990 census, tract-level data are available for the entire country. Generally, in metropolitan areas these geographic divisions are called census tracts, while in most non-metropolitan areas the equivalent nomenclature is Block Numbering Area ("BNA"). BNAs are treated as census tracts for the purposes of this Notice.

The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50 percent of its households with incomes below 60 percent of the AMGI to be eligible. HUD has defined 60 percent of AMGI as 120 percent of HUD's Very Low Income Limits (VLILs), which are based on 50 percent of area median family income, adjusted for high cost and low income areas. The 1999 income estimates were then deflated to 1989 dollars, so they would match the 1990 Census income data.

2. For each census tract, the percentage of households below the 60 percent income standard was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. Qualified Census Tracts are those in which 50 percent or more of the households are income eligible and the population of all census tracts that satisfy this criterion does not exceed 20 percent of the total population of the respective area.

4. In areas where more than 20 percent of the population qualifies, census tracts are ordered from the highest percentage of eligible households to the lowest. Starting with the highest percentage, census tracts are included until the 20 percent limit is exceeded. If a census tract is excluded because it raises the percentage above 20 percent, then subsequent census tracts are considered to determine if one or more census tract(s) with smaller population(s) could be included without exceeding the 20 percent limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 99-04 on June 30, 1999, with the exceptions described in section D., below. The basis for these comparisons was the fiscal year ("FY") 1999 HUD income limits for Very Low Income households and Fair Market Rents ("FMRs") used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1999 two-bedroom FMR and the FY 1999 four-person VLIL. The numerator of the ratio was the area's FY 1999 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as $\frac{1}{12}$ of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest \$50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

For Qualified Census Tracts, section 42(d)(5)(C)(ii)(II) of the Code specifies that the population of designated census tracts within a metropolitan area cannot exceed 20 percent of the population of that metropolitan area. Similarly, for census tracts/block numbering areas (BNAs) located outside metropolitan areas, the population of designated census tracts/BNAs cannot exceed 20 percent of the population of the non-metropolitan counties in a State or equivalent area.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there are minimal overruns of the caps.

HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a

strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99-04 defining metropolitan areas:

OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions* * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties.

Cincinnati—Hamilton, OH—KY—IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.

Dallas, TX: Henderson County. Flagstaff, AZ—UT: Kane County, Utah. New Orleans, LA: St. James Parish. Washington, DC—MD—VA—WV:

Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator "(part)" in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions ("MCDs") rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected

counties are assigned the indicator "(part)" in the list of Nonmetropolitan Difficult Development Areas.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until data from the 2000 census become available unless changes in MSA/PMSA definitions are made by OMB in the interim.

Effective Date

The list of Difficult Development Areas and the supplemental list of Qualified Census Tracts is effective for allocations of credit made after December 31, 1999. In the case of a building described in section 42(h)(4)(B) of the Code, the list is effective if the bonds are issued and the building is placed in service after December 31, 1999. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246, as amended by the supplemental designations of Qualified Census tracts published June 25, 1998, at 63 FR 34748, and December 9, 1998 at 63 FR 68115, are not affected by this Notice.

Interpretive Examples for Effective Date

For the convenience of readers of this Notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in section 42(h)(4)(B) of the Code. The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project "A" is located in a newly-designated 2000 Difficult Development Area. Bonds are issued for Project "A" on November 1, 1999, and Project "A" is placed in service March 1, 2000. Project "A" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued BEFORE January 1, 2000.

(Case B) Project "B" is located in a newly-designated 2000 Difficult Development Area. Project "B" is placed in service November 15, 1999. The bonds that will support the permanent financing of Project "B" are issued January 15, 2000. Project "B" IS

NOT eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service BEFORE January 1, 2000.

(Case C) Project "C" is located in an area that is a Difficult Development Area in 1999, but IS NOT a Difficult Development Area in 2000. Bonds are issued for Project "C" on October 30, 1999, but Project "C" is not placed in service until March 30, 2000. Project "C" is eligible for the increase in basis available to projects located in 1999 Difficult Development Areas because the first of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on October 30, 1999, a time when project "C" was located in a Difficult Development Area.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in

this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" and "Qualified Census Tracts" as required by section 42 of the Code, as amended, for use by political subdivisions of the States in allocating the LIHTC. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates "Difficult Development Areas" as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Dated: September 9, 1999.

Andrew Cuomo,
Secretary.

BILLING CODE 4210-32-P

2000 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
AZ	YUMA, AZ Yuma County			
CA	CHICO-PARADISE, CA Butte County	LOS ANGELES-LONG BEACH, CA Los Angeles County	MERCED, CA Merced County	SALINAS, CA Monterey County
	SAN DIEGO, CA San Diego County	SAN FRANCISCO, CA San Francisco County Marin County	SAN LUIS OBISPO-ATASCADERO- PASO ROBLES, CA San Luis Obispo County	SANTA BARBARA-SANTA MARIA- LOMPOC, CA Santa Barbara County
	SANTA CRUZ-WATSONVILLE, CA Santa Cruz County	SANTA ROSA, CA Sonoma County	VALLEJO-FAIRFIELD-NAPA, CA Napa County Solano County	
FL	DAYTONA BEACH, FL Flagler County Volusia County	MIAMI, FL Dade County	ORLANDO, FL Lake County Orange County	PUNTA GORDA, FL Charlotte County
	SARASOTA-BRADENTON, FL Manatee County Sarasota County			
MA	BARNSTABLE-YARMOUTH, MA Barnstable city Harwich town Brewster town Mashpee town Chatham town Orleans town Dennis town Sandwich town Eastham town	BOSTON, MA-NH Berkley town Dighton town Mansfield town Norton town Taunton city Amesbury town Beverly city Danvers town Essex town Gloucester city Hamilton town Ipswich town Lynn city Lynnfield town Manchester-by-the-Sea Marblehead town Middleton town Nahant town Newbury town Newburyport city Peabody city Rockport town Rowley town Salem city Salisbury town Saugus town Swampscott town Topsfield town Wenham town Acton town Arlington town Ashland town Ayer town	Waltham city Watertown city Wayland town Weston town Wilmington town Winchester town Woburn city Bellingham town Braintree town Brookline town Canton town Cohasset town Dedham town Dover town Foxborough town Franklin city Hollbrook town Medfield town Medway town Millis town Milton town Needham town Norfolk town Norwood town Plainville town Quincy city Randolph town Sharon town Stoughton town Walpole town Wellesley town Westwood town	SPRINGFIELD, MA Sunderland town Agawam city Chicopee city East Longmeadow town Hampden town Holyoke city Longmeadow town Ludlow town Monson town Montgomery town Palmer town Russell town Southwick town Springfield city Westfield city West Springfield town Wilbraham town Amherst town Belchertown town Easthampton town Granby town Hadley town Hatfield town Huntington town Northampton city Southampton town South Hadley town Ware town Williamsburg town

2000 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
ME	BANGOR, ME Bangor city Brewer city	Eddington town Glenburn town	Holden town Kenduskeag town	Orono town Ornington town Penobscot Indian Island Indian Reservation Vearie town Winterport town
NH	PORTSMOUTH-ROCHESTER, NH-ME Brentwood town East Kingston town Epping town Exeter town	New Castle town Newfields town Newington town Newmarket town	North Hampton town Portsmouth city Rye town Stratham town	Lee town Madbury town Million town Rochester city Rollinsford town Somersworth city Berwick town, ME York town, ME Kittery town, ME
NJ	ATLANTIC-CAPE MAY, NJ Atlantic County Cape May County	JERSEY CITY, NJ Hudson County	MONMOUTH-OCEAN, NJ Monmouth County	VINELAND-MILLVILLE-BRIDGETON, NJ Cumberland County
NY	DUTCHESS COUNTY, NY Dutchess County	NASSAU-SUFFOLK, NY Nassau County Suffolk County	NEW YORK, NY Bronx County Kings County	Queens County Richmond County Rockland County Westchester County
OR	EUGENE-SPRINGFIELD, OR Lane County	MEDFORD-ASHLAND, OR Jackson County		
PA	STATE COLLEGE, PA Centre County			
PR	AGUADILLA, PR Aguada Municipio Moca Municipio	CAGUAS, PR Caguas Municipio Cayey Municipio Cidra Municipio	MAYAGUEZ, PR Anasco Municipio Cabo Rojo Mun. Hormigueros Mun.	SAN JUAN-BAYAMON, PR Aguas Buenas Mu. Barceloneta Mun. Bayamon Mun. Canovanas Mun. Carolina Municipio San Juan Mun. Toa Alta Municipio Toa Baja Mun. Trujillo Alto Mun. Vega Alta Mun. Vega Baja Mun. Yabucoa Municipio Cataño Municipio Ceiba Municipio Comerio Municipio Corozal Municipio Dorado Municipio Fajardo Municipio Florida Municipio Guaynabo Municipio Humacao Municipio Juncos Municipio Las Piedras Mun. Loiza Municipio Luquillo Municipio Manati Municipio Morovis Municipio Naguabo Municipio Naranjito Municipio
TX	BROWNSVILLE-HARLINGEN-SAN BENITO, TX Cameron County		EL PASO, TX El Paso County	LAREDO, TX Webb County
WA	BELLINGHAM, WA Whatcom County	RICHLAND-KENNEWICK-PASCO, WA Benton County	YAKAMA, WA Yakima County	

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
PI	PACIFIC ISLANDS			
AK	ALEUTIANS EAST BOROUGH	BETHEL CENSUS AREA	DILLINGHAM CENSUS AREA	FAIRBANKS NORTH STAR BOROUGH
	HAINES BOROUGH	JUNEAU BOROUGH	KENAI PENINSULA BOROUGH	KETCHIKAN GATEWAY BOROUGH
	KODIAK ISLAND BOROUGH	LAKE AND PENINSULA BOROUGH	MATANUSKA-SUSITNA BOROUGH	NOME CENSUS AREA
	NORTH SLOPE BOROUGH	NORTHWEST ARCTIC BOROUGH	PRINCE OF WALES-OUTER KETCHIKAN CENSUS AREA	SITKA BOROUGH
AZ	VALDEZ-CORDOVA CENSUS AREA	WADE HAMPTON CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
	APACHE COUNTY	COCHISE COUNTY	GILA COUNTY	GRAHAM COUNTY
	LA PAZ COUNTY	NAVAJO COUNTY	SANTA CRUZ COUNTY	YAVAPAI COUNTY
AR	BAXTER COUNTY	DREW COUNTY		
CA	ALPINE COUNTY	AMADOR COUNTY	CALAVERAS COUNTY	COLUSA COUNTY
	DEL NORTE COUNTY	GLENN COUNTY	HUMBOLDT COUNTY	IMPERIAL COUNTY
	INYO COUNTY	KINGS COUNTY	LAKE COUNTY	LASSEN COUNTY
	MARIPOSA COUNTY	MENDOCINO COUNTY	MODOC COUNTY	MONO COUNTY
	NEVADA COUNTY	PLUMAS COUNTY	SAN BENITO COUNTY	SIERRA COUNTY
	SISKIYOU COUNTY	TEHAMA COUNTY	TRINITY COUNTY	TUOLUMNE COUNTY
	ALAMOSA COUNTY	ARCHULETA COUNTY	BACA COUNTY	BENT COUNTY
	CHAFFEE COUNTY	CONEJOS COUNTY	COSTILLA COUNTY	CROWLEY COUNTY
CO	CUSTER COUNTY	DELTA COUNTY	DOLORES COUNTY	FREMONT COUNTY
	GARFIELD COUNTY	GRAND COUNTY	HINSDALE COUNTY	HUERFANO COUNTY
	JACKSON COUNTY	KIT CARSON COUNTY	LA PLATA COUNTY	LAKE COUNTY
	LAS ANIMAS COUNTY	LINCOLN COUNTY	LOGAN COUNTY	MINERAL COUNTY
	MONTEZUMA COUNTY	MONTROSE COUNTY	OTERO COUNTY	PARK COUNTY
	PHILLIPS COUNTY	PITKIN COUNTY	PROWERS COUNTY	RIO GRANDE COUNTY
	SAGUACHE COUNTY	SAN JUAN COUNTY	SAN MIGUEL COUNTY	SEDGWICK COUNTY
	SUMMIT COUNTY	WASHINGTON COUNTY	YUMA COUNTY	
CT	LITCHFIELD COUNTY (part)	Canaan town	Kent town	NEW LONDON COUNTY (part)
	Colebrook town	Litchfield town	Morris town	Lyme town
	Cornwall town	Goshen town		Voluntown town
	TOLLAND COUNTY (part)	Brooklyn town	Killingly town	
	Eastford town	Pomfret town		
	Hampton town			
DE	SUSSEX COUNTY			

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
FL	BAKER COUNTY	CALHOUN COUNTY	CITRUS COUNTY	COLUMBIA COUNTY
	DESDOTO COUNTY	DIXIE COUNTY	FRANKLIN COUNTY	GILCHRIST COUNTY
	GLADES COUNTY	GULF COUNTY	HAMILTON COUNTY	HARDEE COUNTY
	HENDRY COUNTY	HIGHLANDS COUNTY	HOLMES COUNTY	INDIAN RIVER COUNTY
	JACKSON COUNTY	JEFFERSON COUNTY	LAFAYETTE COUNTY	LEVY COUNTY
	LIBERTY COUNTY	MADISON COUNTY	MONROE COUNTY	OKEECHOBEE COUNTY
	PUTNAM COUNTY	SUMTER COUNTY	SUWANNEE COUNTY	TAYLOR COUNTY
	UNION COUNTY	WAKULLA COUNTY	WALTON COUNTY	WASHINGTON COUNTY
	BUTTS COUNTY			
GA				
HI	HAWAII COUNTY	KAUAI COUNTY	MAUI COUNTY	
ID	BONNER COUNTY	KOOTENAI COUNTY		
KY	HARLAN COUNTY	KNOX COUNTY	LAUREL COUNTY	
LA	NATCHITOCHE PARISH	WEST FELICIANA PARISH		
ME	ANDROSCOGGIN COUNTY (part)	AROOSTOOK COUNTY	CUMBERLAND COUNTY (part)	FRANKLIN COUNTY
	Durham town		Baldwin town	
	Livemore Falls town		Bridgton town	Naples town
	Leeds town		Brunswick town	New Gloucester town
	Livemore town		Harperswell town	Pownal town
			Harrison town	Sebago town
	HANCOCK COUNTY	KENNEBEC COUNTY	KNOX COUNTY	LINCOLN COUNTY
	OXFORD COUNTY	PISCATAQUIS COUNTY	SAGADAHOE COUNTY	SOMERSET COUNTY
	PENOBSCOT COUNTY (part)		WALDO COUNTY (part)	YORK COUNTY (part)
	Alton town	Drew plantation	Belfast city	Acton town
	Argyle unorg.	East Central Penobscot unorg.	Belmont town	Lyman town
	Bradford town	East Millinocket town	Brooks town	Newfield town
	Bradley town	Levant town	Burnham town	North Berwick town
	Burlington town	Lincoln town	Frankfort town	Ogunquit town
	Carmel town	Lowell town	Freedom town	Parsonsfield town
	Carroll plantation	Eltha town	Islesboro town	Saco city
	Charleston town	Exeter town	Jackson town	Sanford town
	Chester town	Garland town	Knox town	Shapleightown
	Clifton town	Greenbush town	Liberty town	Waterboro town
	Corinna town	Greenfield town	Lincolnville town	Wells town
	Corinth town	Howland town	Monroe town	
	Dexter town	Hudson town	Montville town	
	Dixmont town	Kingman unorg.	Woodville town	
	WASHINGTON COUNTY			

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
MA	BARNSTABLE COUNTY (part) Bourne town Falmouth town Provincetown town	DUKES COUNTY	FRANKLIN COUNTY (part) Ashfield town Bernardston town Buckland town Charlemont town Colrain town Conway town Deerfield town	Leyden town Monroe town Montague town New Salem town Northfield town Orange town Whately town
	HAMPDEN COUNTY (part) Blandford town Brimfield town Chester town	HAMPSHIRE COUNTY (part) Chesterfield town Cummington town Goshen town Middlefield town Pelham town Plainfield town Westhampton town Worthington town	NANTUCKET COUNTY	WORCESTER COUNTY (part) Athol town Hardwick town Hubbardston town Petersham town Royalston town Warren town
MS	ISSAQUEUNA COUNTY	LAFAYETTE COUNTY	WASHINGTON COUNTY	
MT	BEAVERHEAD COUNTY	BIG HORN COUNTY	BLAINE COUNTY	BROADWATER COUNTY
	CARBON COUNTY	CARTER COUNTY	CHOUTEAU COUNTY	CUSTER COUNTY
	DANIELS COUNTY	FALLON COUNTY	FERGUS COUNTY	GALLATIN COUNTY
	GARFIELD COUNTY	GLACIER COUNTY	GOLDEN VALLEY COUNTY	GRANITE COUNTY
	JUDITH BASIN COUNTY	LAKE COUNTY	LINCOLN COUNTY	MADISON COUNTY
	MCCONE COUNTY	MEAGHER COUNTY	MINERAL COUNTY	MUSSELSHELL COUNTY
	PARK COUNTY	PETROLEUM COUNTY	PHILLIPS COUNTY	POWDER RIVER COUNTY
	POWELL COUNTY	PRAIRIE COUNTY	RAVALLI COUNTY	RICHLAND COUNTY
	ROOSEVELT COUNTY	SANDERS COUNTY	SHERIDAN COUNTY	TETON COUNTY
	TREASURE COUNTY	VALLEY COUNTY	WHEATLAND COUNTY	WIBAUX COUNTY
NC	WATAUGA COUNTY			
NH	BELKNAP COUNTY	CARROLL COUNTY	CHESHIRE COUNTY	GRAFTON COUNTY
	HILLSBOROUGH COUNTY (part) Antrim town Bennington town Deering town Francesstown town Greenfield town Hancock town Hillsborough town Lyndeborough town New Boston town Peterborough town Sharon town Temple town Windsor town	MERRIMACK COUNTY (part) Andover town Boscawen town Bow town Bradford town Canterbury town Chichester town Concord city Danbury town Dunbarton town Epsom town Franklin city Henniker town Hill town	Hopkinton town Loudon town Newbury town New London town Northfield town Pembroke town Pittsfield town Salisbury town Sutton town Warner town Webster town Wilnot town	ROCKINGHAM COUNTY (part) Deerfield town Northwood town Nottingham town
	STRAFFORD COUNTY (part) Middleton town New Durham town	SULLIVAN COUNTY		
NV	DOUGLAS COUNTY			
NM	CATRON COUNTY	CHAVES COUNTY	CIBOLA COUNTY	CURRY COUNTY
	DEBACA COUNTY	GRANT COUNTY	GUADALUPE COUNTY	HARDING COUNTY
	LINCOLN COUNTY	LUNA COUNTY	MCKINLEY COUNTY	MORA COUNTY
	QUAY COUNTY	RIO ARriba COUNTY	ROOSEVELT COUNTY	SAN JUAN COUNTY
	SAN MIGUEL COUNTY	SIERRA COUNTY	TAOS COUNTY	UNION COUNTY

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
NY	CLINTON COUNTY	COLUMBIA COUNTY	CORTLAND COUNTY	ESSEX COUNTY
	GREENE COUNTY	HAMILTON COUNTY	JEFFERSON COUNTY	SCHUYLER COUNTY
	SULLIVAN COUNTY	TOMPKINS COUNTY	ULSTER COUNTY	
OR	BAKER COUNTY	CLATSOP COUNTY	COOS COUNTY	CROOK COUNTY
	CURRY COUNTY	DESCHUTES COUNTY	DOUGLAS COUNTY	GILLIAM COUNTY
	GRANT COUNTY	HARNEY COUNTY	HOOD RIVER COUNTY	JEFFERSON COUNTY
	JOSEPHINE COUNTY	KLAMATH COUNTY	LAKE COUNTY	LINCOLN COUNTY
	LINN COUNTY	MALHEUR COUNTY	MORROW COUNTY	SHERMAN COUNTY
	TILLAMOOK COUNTY	UMATILLA COUNTY	UNION COUNTY	WALLOWA COUNTY
	WASCO COUNTY	WHEELER COUNTY		
PA	MONROE COUNTY	NORTHUMBERLAND COUNTY	UNION COUNTY	WAYNE COUNTY
PR	All			
RI	NEWPORT COUNTY (part) Middleton town Newport city	WASHINGTON COUNTY (part) New Shoreham town		
SD	BUTTE COUNTY	LAWRENCE COUNTY	MEADE COUNTY	
TX	ARANSAS COUNTY	CAMP COUNTY	HUDSPETH COUNTY	KIMBLE COUNTY
	LLANO COUNTY	REAGAN COUNTY	VAL VERDE COUNTY	WALKER COUNTY
UT	DAGGETT COUNTY	IRON COUNTY	WASHINGTON COUNTY	
VA	CAROLINE COUNTY	WESTMORELAND COUNTY		
VI	ST. CROIX	ST. JOHN'S/ST. THOMAS		
VT	ADDISON COUNTY	BENNINGTON COUNTY	CALEDONIA COUNTY	ESSEX COUNTY
	CHITTENDEN COUNTY (part) Bolton town Buel's gore Huntington town	FRANKLIN COUNTY (part) Bakersfield town Berkshire town Enosburg town	Highgate town Montgomery town Richford town Sheldon town	GRAND ISLE COUNTY (part) Alburg town Isle La Motte town North Hero town
	LAMOILLE COUNTY	ORANGE COUNTY	ORLEANS COUNTY	RUTLAND COUNTY
	WASHINGTON COUNTY	WINDHAM COUNTY	WINDSOR COUNTY	
	ADAMS COUNTY	ASOTIN COUNTY	CHELAN COUNTY	CLALLAM COUNTY
	COLUMBIA COUNTY	FERRY COUNTY	GARFIELD COUNTY	GRANT COUNTY
	GRAYS HARBOR COUNTY	JEFFERSON COUNTY	KITTITAS COUNTY	KLICKITAT COUNTY
	LEWIS COUNTY	LINCOLN COUNTY	MASON COUNTY	OKANOGAN COUNTY
	PACIFIC COUNTY	PEND OREILLE COUNTY	SAN JUAN COUNTY	SKAGIT COUNTY
WV	SKAMANIA COUNTY	STEVENS COUNTY	WAHIAKUM COUNTY	
	RALEIGH COUNTY			

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

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)

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