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Thursday
October 28, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7244 of October 22, 1999

United Nations Day, 1999

By the President of the United States of America

A Proclamation

As the 20th century draws to a close, Americans are taking time to reflect on the institutions that have shaped our past and that hold great hope for our future. One of the most important of these institutions is the United Nations. A dream of peace rising from the ashes of World War II, the U.N. has made great strides toward fulfilling the goals of its founders by saving lives, enhancing the security of law-abiding nations, and improving living conditions across the globe. This year, in marking the 54th anniversary of the founding of the U.N., we celebrate not only the organization's many accomplishments, but also its potential to bring the family of nations together to work toward a more peaceful, democratic, just, and prosperous world.

Since the U.N.'s founding more than half a century ago, humankind has learned a great deal—how to produce enough food for growing populations, how human activity affects the environment, how telecommunications can link the countries of the world into a single global community. But one of the most important lessons humanity has learned is one that Americans have always known: open societies are more just and open markets create more wealth.

Through the United Nations, America has access to a powerful forum where we can join with the other peoples of the world to raise awareness of these truths and to advance common interests and shared values. During the past decade, U.N. conferences have brought together nearly 50,000 people in Beijing to advance the rights and well-being of women; 47,000 in Rio de Janeiro to discuss ways to promote development while protecting the environment; and 30,000 people in Istanbul to seek solutions to urban problems.

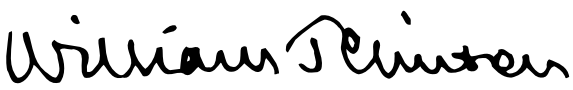
In the last year alone, we have seen abundant evidence of the ways in which the United Nations benefits America and the world. The United Nations is the primary multilateral forum to press for international human rights and lead governments to improve their relations with their neighbors and their own people. As we saw during the Kosovo conflict, and more recently with regard to East Timor, the perpetrators of ethnic cleansing and mass murder can find no refuge in the United Nations and no source of comfort in its charter. It is the institution the international community turns to in pursuit of solutions to armed conflict. It is the primary vehicle for broad international cooperation in addressing the needs of refugees and of the tens of millions of people around the world who remain mired in abject poverty. The United Nations and its affiliated agencies also provide a powerful voice for upholding and furthering the development of the rule of law and standards of international commerce—rules and standards that are crucial to global and economic stability and progress.

In acknowledging the far-reaching contributions of the United Nations to the international community, we must renew our commitment to work with our fellow U.N. members to advance international peace and prosperity and to champion human rights. In achieving these goals, the United Nations should make wise use of the international resources at its disposal; and the United States should meet its obligation to provide our share of these

resources. By doing so, we can ensure that the United Nations will be an integral player in making the next millennium an era of unprecedented global peace, security, and prosperity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1999, as United Nations Day. I encourage all Americans to acquaint themselves with the activities and accomplishments of the United Nations and to observe this day with appropriate ceremonies, programs, and activities furthering the goal of international cooperation.

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



[FR Doc. 99–28435
Filed 10–27–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–027–2]

Imported Fire Ant; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the imported fire ant regulations by adding the insecticide pyriproxyfen (Distance®) to the list of chemicals authorized for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas. This action will give the regulated community another choice with which to meet certification requirements. We are also updating the imported fire ant regulations by amending dosages and formulations for currently authorized insecticides in order to be consistent with product labeling and availability; by alphabetizing, for organizational purposes, the list of authorized chemicals; and by adding a brand name to the list of authorized chemicals, for consistency.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301)734–5255.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery.

The regulations in ''Subpart—Imported Fire Ant (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of certain articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to the subpart, which sets forth the treatment provisions of the ''Imported Fire Ant Program Manual.''

On June 7, 1999, we published in the **Federal Register** (64 FR 30250–30252, Docket No. 99–027–1) a proposal to amend the imported fire ant regulations by adding the insecticide pyriproxyfen (Distance®) to the list of chemicals authorized for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas. We also proposed to update the imported fire ant regulations by amending dosages and formulations for currently authorized insecticides, by alphabetizing the list of authorized chemicals, and by adding a brand name to the list of authorized chemicals.

We solicited comments concerning our proposal for 60 days ending August 6, 1999. We received four comments by that date. They were from a chemical producer, a crop health service company, and two State agriculture departments. Three comments supported our proposal and one comment, which is discussed below, called for two changes.

First, the commenter stated that flowable formulations of tefluthrin have been approved as a treatment for the imported fire ant and that this should be reflected in our rule. However, no flowable formulation of tefluthrin has been developed; we believe the commenter has confused flowable tefluthrin with flowable bifenthrin. Second, the commenter stated that the application rate for flowable bifenthrin should be 50 ppm, as listed on the Talstar Nursery Flowable label, not 25 ppm as stated in the proposed rule. The Talstar Nursery Flowable label does not list application rates in parts per million, but rather in pounds of chemical per volume of soil. According to our calculations, the application rate listed for flowable bifenthrin is equivalent to 25 ppm.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that approves the use of a new chemical pesticide that may be used as an alternative to other authorized chemicals. Immediate implementation of this rule will enable those persons wishing to sell or use pyriproxyfen (Distance®) to benefit from its availability for treatment of the imported fire ant during the fall planting season, which is about to begin. Therefore, pursuant to 5 U.S.C. 553, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

For our proposed rule, we performed an initial regulatory flexibility analysis in which we invited comments about the potential economic effects of this rule on small entities. We did not receive any comments addressing this issue. We have, therefore, prepared this final regulatory flexibility analysis using the data available to us. Based on the information that we have, there is no basis to conclude that this rule will result in any significant economic effects on a substantial number of small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

This rule amends the Appendix to the imported fire ant regulations by allowing the use of the bait insecticide

pyriproxyfen (Distance®) for the treatment of containerized nursery plants and field-grown woody ornamentals that are to be certified for interstate movement from quarantined areas.

There are approximately 13,266 nurseries in the quarantined areas. Approximately 82–99 percent of those nurseries would be considered small businesses with annual sales of less than $500,000. It is unknown how many of these nurseries move containerized nursery stock interstate from quarantined areas each year, but any that do would be likely to benefit from the availability of pyriproxyfen (Distance®) as an approved pesticide for treating the imported fire ant.

Prior to this final rule, for certification, containerized nursery plants and field-grown woody ornamentals had to be treated with a bait insecticide, either fenoxycarb (AWARD®) or hydramethylnon (AMDRO®), in conjunction with a contact insecticide, bifenthrin (Talstar®). This action allows pyriproxyfen (Distance®) to be used as an alternative to fenoxycarb (AWARD®) and hydramethylnon (AMDRO®) in order to give nurseries another option by which they can certify their products for interstate movement. All three bait insecticides fall within the same price range, $8–10 per pound, but competition between imported fire ant insecticide producers, which would be stimulated by the inclusion of pyriproxyfen (Distance®), could result in decreased prices, benefiting many nurseries.

The only significant alternative to this final rule that we considered was to not add pyriproxyfen (Distance®) to the list of authorized chemicals for the treatment of regulated materials. We have rejected this alternative because it would deny nurseries the benefit of having another authorized bait insecticide to choose from.

This final rule contains no reporting or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In part 301, Subpart—Imported Fire Ant (§§ 301.81—301.81–10), the Appendix to the subpart is amended as follows:

a. In paragraph III.B., under the heading ''INSECTICIDES,'' the list is revised to read as set forth below.

b. In paragraph III.C.3.d., under the heading ''Method C—Topical Application,'' a fourth paragraph is added to read as set forth below.

c. In paragraph III.C.4., under the heading ''Control,'' immediately following the word ''(AMDRO®)'', the word ''or'' is removed and a comma is added in its place, and immediately following the word ''(AWARD®)'', the words '', or pyriproxyfen (Distance®)'' are added.

d. In paragraph III.C.4., under the heading ''Exclusion,'' under ''Bifenthrin,'' first sentence, immediately following the word ''granular'', the word '', flowable,'' is added.

e. In paragraph III.C.4., under the heading ''Exclusion,'' under ''Bifenthrin,'' first paragraph, the last sentence is revised to read as set forth below.

f. In paragraph III.C.4., under the heading ''Exclusion,'' under ''Tefluthrin,'' first sentence, immediately following the word ''granular'', the word '', flowable,'' is added.

g. In paragraph III.C.5., the ''Material'' and ''Dosage'' paragraphs are revised to read as set forth below.

h. In paragraph III.C.5., in the ''Method'' paragraph, the phrase ''1.5 lb (0.68 kg)'' is removed and the phrase ''1.0–1.5 lb (0.45–0.68 kg)'' is added in its place.

i. In paragraph III.C.5., in the ''Method'' and ''Special Information'' paragraphs, the words ''fenoxycarb (AWARD®) or hydramethylnon (AMDRO®)'' are removed and the words ''fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®)'' are added in their place each time they appear.

Appendix to Subpart ''Imported Fire Ant''—Portion of ''Imported Fire Ant Program Manual'' [8]

III. Regulatory Procedures

* * * * *

B. * * *

INSECTICIDES

Bifenthrin (Talstar®)
Chlorpyrifos (Dursban®)
Diazinon
Fenoxycarb (AWARD®)
Hydramethylnon (AMDRO®)
Pyriproxyfen (Distance®)
Tefluthrin (FIREBAN®)

C. * * *

3. * * *

d. * * *

Method C—Topical Application

* * * * *

Manufacture of the 10WP (wettable powder) formulation was discontinued in 1998; however, the EPA will allow this product to be utilized until supplies are exhausted.

* * * * *

4. * * *

Exclusion

Bifenthrin

* * * The dosage rate for granular bifenthrin is variable and is determined by the certification period selected; for flowable bifenthrin it is 25 ppm; for wettable powder bifenthrin it is 50 ppm.

* * * * *

5. Field-Grown Woody Ornamentals (In-Field Treatment Prior to Harvest)

Material: Chlorpyrifos used in combination with fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) fire ant bait.

Dosage: Fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) at 1.0–1.5 lb (0.45–0.68 kg) bait/acre. Chlorpyrifos at 6.0 lb (2.7 kg) a.i./acre.

* * * * *

[8] A copy of the entire ''Imported Fire Ant Program Manual'' may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 135, Riverdale, Maryland 20737–1236.

Done in Washington, DC, this 22nd day of October 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–28181 Filed 10–27–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–07–AD; Amendment 39–11391; AD 99–22–13]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BHTC Model 407 helicopters, that requires visually inspecting the vertical fin (fin) for reduced skin thickness; repairing or replacing the fin, if necessary; and identifying fins that have been inspected or repaired. This amendment is prompted by a report of an inboard skin damaged during production. The actions specified by this AD are intended to detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin and could lead to failure of the fin and loss of control of the helicopter.

DATES: Effective December 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

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 BHTC Model 407 helicopters was published in the **Federal Register** on August 2, 1999 (64 FR 41841). That action proposed to require visually inspecting the fin for reduced skin thickness; repairing or replacing the fin, if necessary; and identifying fins that have been inspected or repaired.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 124 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3.0 work hours to accomplish the visual inspection; 4.0 work hours to accomplish the vertical fin replacement, and 0.5 work hour to mark the fin, and that the average labor rate is $60 per work hour. Required parts will cost approximately $18,770. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,220 per helicopter, or a total of $2,383,280 for the entire fleet, to accomplish all the actions including replacing the fin.

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 a new airworthiness directive to read as follows:

AD 99–22–13 Bell Helicopter Textron Canada: Amendment 39–11391. Docket No. 99–SW–07–AD.

Applicability: Model 407 helicopters, with vertical fin (fin) assembly, part number (P/N) 206–020–113–223A, –223B, or –223S, with a serial number with a prefix of ''BP'', up to and including 2266 (except BP2260, BP2262, and BP2265), installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 within 100 hours time-in-service, unless accomplished previously.

To detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin and could lead to failure of the vertical fin (fin) and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect the fin assembly for reduced skin thickness, indicated by notches, scratches, or grooves on the skin, in accordance with Part I of the Accomplishment Instructions contained in Bell Helicopter Textron Alert Service Bulletin No. 407–98–17, Revision A, dated June 26, 1998 (ASB). If notches, scratches, or grooves are found, repair or replace the fin assembly in accordance with Part II of the Accomplishment Instructions contained in the ASB.

(b) Identify any fin that has been inspected or repaired in accordance with Part III of the Accomplishment Instructions in the ASB.

(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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

(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 helicopter to a location where the requirements of this AD can be accomplished.

(e) The visual inspection, repair or replacement of the fin, if necessary, and the identification of fins that have been repaired or replaced shall be done in accordance with Parts I, II, or III, as applicable, of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–98–17, Revision A, dated June 26, 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 2, 1999.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–10R1, dated August 20, 1998.

Issued in Fort Worth, Texas, on October 18, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–27790 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–27–AD; Amendment 39–11389; AD 99–22–11]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, that requires installation of modified roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock. 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 roller sub-assemblies, which could result in failure of the MLG to retract and lock after takeoff, or to deploy properly for landing.

DATES: Effective December 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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 all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes was published in the **Federal Register** on July 7, 1999 (64 FR 36626). That action proposed to require installation of modified roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock.

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.

Request to Include Alternate Modification

One commenter, the manufacturer, requests that the proposed AD allow reference to an improved roller which will be approved in the near future. British Aerospace Service Bulletin SB.32–150–70656A, dated December 1, 1998, which is referenced in the proposed AD as the appropriate source of service information, introduces an interim standard roller for the main landing gear door lock and uplock (reference British Aerospace Modification HCM70656A). However, the commenter advises that an improved roller is to be introduced in the next two months as British Aerospace Modification HCM70656B. According to the commenter, this modification is being addressed with the Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, and is expected to be approved as an alternative method of compliance. The commenter requests that this alternative modification be referenced in the AD in order to allow operators to readily take advantage of either method of compliance.

The FAA concurs. The FAA has received additional information from the manufacturer regarding the acceptability of the improved roller described in British Aerospace Modification HCM70656B. This modification has now been approved by the CAA of the United Kingdom as an acceptable alternative method of compliance to installation of the standard roller described in Service Bulletin SB.32–150–70656A. Accordingly, the FAA has determined that Modification HCM70656B is an acceptable method of compliance for the requirements of this AD, and has added a ''NOTE'' to the final rule to provide such credit to operators. A reference to Modification HCM70656A has also been included in paragraph (a) of the AD to clarify the requirements of that paragraph.

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 described previously. 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

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $32,400, or $720 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:

99–22–11 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–11389. Docket 99–NM–27–AD.

Applicability: All Model BAe 146 and Avro 146–RJ 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 (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 roller sub-assemblies in both the main landing gear (MLG) door lock and the MLG uplock, which could result in failure of the MLG to retract and lock after takeoff, or to deploy properly for landing, accomplish the following:

Modification

(a) Install a modified roller sub-assembly in the MLG door lock unit and the MLG uplock unit (British Aerospace Modification HCM70656A), in accordance with British Aerospace Service Bulletin SB.32–150–70656A, dated December 1, 1998, at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD.

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

(2) For airplanes that have accumulated 26,000 or more, but fewer than 30,000 total flight cycles as of the effective date of this AD: Within 12 months after the effective date of this AD.

(3) For airplanes that have accumulated 22,000 or more, but fewer than 26,000 total flight cycles as of the effective date of this AD: Within 18 months after the effective date of this AD.

(4) For airplanes that have accumulated fewer than 22,000 total flight cycles as of the effective date of this AD: Within 18 months after the accumulation of 22,000 total flight cycles.

Note 2: Accomplishment of British Aerospace Modification HCM70656B (installation of improved rollers) is acceptable for compliance with the requirements of paragraph (a) of this AD.

(b) As of the effective date of this AD, no person shall install on any airplane a MLG door lock assembly, part number 200898001 or 200898002, or a MLG uplock assembly, part number 200885001 or 200885002.

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 3: 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 British Aerospace Service Bulletin SB.32–150–70656A, dated December 1, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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 4: The subject of this AD is addressed in British airworthiness directive 005–12–98.

(f) This amendment becomes effective on December 2, 1999.

Issued in Renton, Washington, on October 19, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27789 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 98C–0158]

Listing of Color Additives For Coloring Meniscal Tacks; D&C Violet No. 2; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 20, 1999, for the final rule that appeared in the **Federal Register** of June 18, 1999 (64 FR 32803), and that amended the color additive regulations to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid).

DATES: Effective date confirmed: July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 18, 1999 (64 FR 32803), FDA amended the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 to color absorbable meniscal tacks made from poly(L-lactic acid).

FDA gave interested persons until July 19, 1999, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of June 18, 1999, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the June 18, 1999, final rule. Accordingly, the amendments issued thereby became effective July 20, 1999.

Dated: October 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation

[FR Doc. 99–28108 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 84F–0050]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Polysorbate 60

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 polysorbate 60 as an emulsifier in ice cream, frozen custard, fruit sherbet, and nonstandardized frozen desserts. This action is in response to a petition filed by ICI Americas, Inc.

DATES: This regulation is effective October 28, 1999; written objections and requests for a hearing by November 29, 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: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 20, 1984 (49 FR 10364), FDA announced that a food additive petition (FAP 4A3774) had been filed by ICI Americas, Inc., Wilmington, DE 19897 (now, Wilmington, DE 19850–5391). The petition proposed to amend the food additive regulations to provide for the safe use of polysorbate 60 (polyoxyethylene (20) sorbitan monostearate) as an emulsifier in ice cream, frozen custard, ice milk, fruit sherbet, and nonstandardized frozen desserts when used alone or in combination with polysorbate 65 and/or polysorbate 80. The agency notes that the standard of identity for ice milk was removed from the Code of Federal Regulations in the final rule published in the **Federal Register** of September 14, 1994 (59 FR 47080). Therefore, the amendment to provide for the use of polysorbate 60 in ice milk will be included under the provisions for nonstandardized desserts in the regulation set forth below.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, which are carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants, and manufacturing aids, such as 1,4-dioxane and ethylene oxide are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive will result in an estimated mean daily intake of 39 milligrams per person per day (mg/p/d). The cumulative exposure to all ethoxylated direct additives from previously regulated uses is estimated to be 166 mg/p/d (Ref. 1).

The agency has reviewed the available toxicological data on the additive and concludes that the estimated dietary exposure resulting from the petitioned use of the additive is safe. The calculated cumulative intake of ethoxylated direct food additives (166 mg/p/d) when added to the estimated intake of polysorbate 60 for use in frozen dairy desserts (39 mg/p/d) (i.e., 205 mg/p/d) is much lower than the current estimated acceptable daily intake of 1,500 mg/p/d for all regulated polysorbates, thus supporting the safety of the petitioned use (Ref. 2).

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

A. 1,4-Dioxane

FDA has estimated that exposure to 1,4-dioxane from the petitioned uses of the additive in frozen dairy desserts would not exceed 19 nanograms (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane from the use of the additive in frozen dairy desserts will not exceed 19 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive in frozen dairy desserts is 6.7×10^{-10} or 6.7 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene oxide

FDA has estimated that exposure to ethylene oxide from the petitioned use of the additive in the manufacture of frozen dairy desserts would not exceed 7.7 ng/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on ethylene oxide demonstrated that ethylene oxide was carcinogenic for female rats under the conditions of the study. The author reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas *in situ* of the glandular stomach.

Based on the agency's estimate that the exposure to ethylene oxide will not exceed 7.7 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive in frozen dairy desserts is 1.5×10^{-8} or 1.5 in 100 million (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in polysorbate 60 for use in frozen dairy desserts (Ref. 6). The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime human risk from exposure to 1,4-dioxane and ethylene oxide are very low, 6.7 in 10 billion and 1.5 in 100 million, respectively.

III. Conclusion

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, and that the additive will achieve its intended technical effect as an emulsifier in frozen dairy desserts. Therefore, the agency concludes that the regulations in 21 CFR 172.836 should be amended as set forth below.

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

IV. Environmental Impact

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.

V. Paperwork Reduction Act of 1995

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

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 29, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for

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

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from CFSAN's Chemistry Review Branch (HFS–247) to CFSAN's Direct Additives Branch (HFS–217) concerning ''FAP 4A3774 & FAP 4A3824: Ethylene Oxide and 1,4-dioxane Residues in Polysorbate 60, Direct Additives Branch Request of 9/3/93,'' dated September 28, 1993.

2. Memorandum from CFSAN's Additives Evaluation Branch No. 1 (HFS–226) to CFSAN's Direct Additives Branch (HFS-217) concerning ''Chemistry Review Branch (HFS–247) Memorandum of March 1, 1996, EDI's for Polyoxyethylene (20) Sorbitan Monostearate (Polysorbate 60) in Frozen Dairy Desserts and Coconut Milk Drinks, and Risks Estimates for Residual Ethylene Oxide and 1,4-dioxane,'' dated March 13, 1996.

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

4. Memorandum from CFSAN's Division of Petition Control (HFS–215) to the Executive Secretary, Quantitative Risk Assessment Committee (HFS–308) concerning ''Estimation of Upper-bound Lifetime Risk from Ethylene Oxide (EO) and 1,4-dioxane (DX) Residues in Polysorbate 60: Subject of Food Additive Petition 4A3774 (ICI Americas, Inc.),'' dated December 14, 1998.

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

6. Memorandum to the Record from CFSAN's Division of Petition Control (HFS–215) concerning ''FAP 4A3774—Consideration of a Need for Specification for 1,4-dioxane in a Regulation for Polysorbate 60 use in Frozen Dairy Desserts,'' dated December 14, 1998.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.836 is amended by adding new paragraph (c)(16) to read as follows:

§ 172.836 Polysorbate 60.

* * * * *

(c) * * *

(16) As an emulsifier in ice cream, frozen custard, fruit sherbet, and nonstandardized frozen desserts when used alone or in combination with polysorbate 65 and/or polysorbate 80, whereby the maximum amount of the additives, alone or in combination, does not exceed 0.1 percent of the finished frozen dessert.

* * * * *

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28113 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 99F–0345]

Indirect Food Additives: Polymers

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 mono- and bis-(octadecyldiethylene oxide)phosphates as components of coatings on cellophane intended for use in contact with food. This action is in response to a petition filed by UCB Films PLC.

DATES: The regulation is effective October 28, 1999; written objections and requests for a hearing by November 29, 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: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 18, 1999 (64 FR 13431), FDA announced that a food additive petition (FAP 9B4642) had been filed by UCB Films PLC, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 177.1200 *Cellophane* (21 CFR 177.1200) to provide for the safe use of mono- and bis-(octadecyldiethylene oxide)phosphates as component of coatings on cellophane intended for use in contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment

procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive, *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984).

II. Safety of Petitioned Use of The Additive

FDA estimates that the petitioned use of the additive, mono- and bis-(octadecyldiethylene oxide)phosphates as a component of coatings (as a release agent) on cellophane will result in exposure to no greater than 43.5 parts per billion of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake of 0.13 milligram per person per day (mg/p/d) (Ref. 1).

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

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

A. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive in the coating on cellophane to be 0.22 part per trillion of the daily diet (3 kg) or 0.66 nanogram (ng)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.66 ng/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 2.3×10^{-11} (or 2.3 in 100 billion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive in coatings on cellophane to be 22 parts per quadrillion in the daily diet (3 kg) or 66 picograms (pg)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the petitioned use of the additive. The authors reported that the test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach in female rats.

Based on the agency's estimate exposure that to ethylene oxide of 66 pg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additive is 1.2×10^{-10} (or 1.2 in 10 billion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additives, the agency would not expect the impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to 1,4-dioxane and ethylene oxide is very low, 2.3 in 100 billion and 1.2 in 10 billion, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 177.1200 should be amended as set forth below.

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

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4642 (64 FR 13431). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

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

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 29, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a

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

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Team, FDA, to the file concerning ''FAP 9B4642 (MATS #1025, M2.0 & 2.1): UCB Films PLC, dated March 30, 1999. Use of Mono- and Bis-(octadecyldiethylene oxide)phosphates as a Release Agent in Food-contact Coatings Applied to Cellophane.''

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

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

4. Memorandum from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning ''Estimation of Upper-bound Lifetime Risk from Ethylene Oxide and 1,4-dioxane in Mono- and Bis-(octadecyldiethylene oxide)phosphates as a Release Agent in Food-contact Coating Applied to Cellophane: Food Additive Petition No. 9B4642 (UCB Films PLC),'' dated June 10, 1999.

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

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

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

2. Section 177.1200 is amended in the table in paragraph (c) by alphabetically adding an entry under the headings ''List of substances'' and ''Limitations'' to read as follows:

§ 177.1200 Cellophane.

* * * * *

(c) * * *

List of substances	Limitations (residue and limits of addition expressed as percent by weight of finished packaging cellophane)
* * * *	* * *
Mono- and bis-(octadecyldiethylene oxide) phosphates (CAS Reg. No. 62362–49–6).	For use only as a release agent at a level not to exceed 0.6 percent by weight of coatings for cellophane.
* * * *	* * *

* * * * *

Dated: October 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28112 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–035–FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Missouri proposed normal husbandry practices that the permittee may use without causing the Phase III liability period or the five-year responsibility period to be extended. The practices include applying pesticides and soil amendments; subsoiling; repairing rills and gullies; burning; overseeding; and planting and pruning trees. Missouri intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. You can find general background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions on the Missouri program at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of the Proposed Amendment

By letter dated October 10, 1990, Missouri sent us an amendment to its program under SMCRA (Administrative Record No. MO–519). We announced receipt of the amendment in the November 1, 1990, **Federal Register** (55 FR 46076) and invited public comment on its adequacy. The public comment period closed December 3, 1990. In the September 29, 1992, **Federal Register** (57 FR 44660), we approved the amendment with exceptions. The exceptions included revisions to

Missouri's rule at 10 CSR 40–7.021(1)(B)2 concerning normal husbandry practices. We did not approve this rule because Missouri had not provided evidence to substantiate the use of each proposed practice as a normal husbandry practice. As codified at 30 CFR 925.16(p)(15), we required Missouri to provide such evidence for the administrative record or to delete the rule at 10 CSR 40–7.021(1)(B)2.

By letter dated June 4, 1999, Missouri submitted agricultural publications and guidelines as supporting documentation for the normal husbandry practices proposed in its rule at 10 CSR 40–7.021(1)(B)2. We announced receipt of the supporting documentation for Missouri's proposed normal husbandry practices in the June 17, 1999, **Federal Register** (64 FR 32449). In the same document, we opened the public comment period. The public comment period closed on July 19, 1999.

We are also taking this opportunity to remove the required amendments codified at 30 CFR 925.16(p)(7) and 925.16(p)(8). Missouri satisfied these required amendments in a previous submittal dated December 14, 1995 (Administrative Record No. MO–633).

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning Missouri's amendment.

A. Required Amendment at 30 CFR 925.16(p)(15): 10 CSR 40–7.021(1)(B)2. Normal Husbandry Practices

1. Missouri's rule at 10 CSR 40–7.021(1)(B)2 would allow the permittee to use specified normal husbandry practices. Using these practices will not cause the Phase III liability period or the five-year responsibility period to be extended if the permittee can demonstrate that: (1) discontinuance of these measures after the liability period expires will not reduce the probability of permanent revegetation success; (2) the practices are normal husbandry practices within the region on unmined lands having land uses similar to the approved postmining land use of the areas; and (3) the practices are necessary to prevent exploitation, destruction or neglect of the resource and to maintain the prescribed level of use or productivity.

The Federal regulations at 30 CFR 816.116(c)(4) for surface mining operations and 817.116(c)(4) for underground mining operations allow the regulatory authority to approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, under specified conditions. The regulatory authority must obtain prior approval from OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices that can be expected to continue as part of the postmining land use, or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. We find that Missouri's requirements at 10 CSR 40–7.021(1)(B)2. are no less effective than the requirements of the counterpart Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

2. Missouri specified mowing, applying pesticides, applying soil amendments, subsoiling, burning, overseeding, and planting and pruning trees as normal husbandry practices. The application of soil amendments must be equal to or less than that recommended by the high management yield goal of the NRCS. Subsoiling must not remove the revegetation from the surface and is limited to less than two feet below the surface. Overseeding must only be done to maintain the approved composition of the vegetation stand. Missouri submitted agricultural publications and guidelines developed by the University of Missouri—Columbia Extension Division (UMC); other cooperative extension services in cooperation with the U.S. Department of Agriculture (DOA); the Missouri Department of Conservation (MDOC); and the U.S. Natural Resources Conservation Service (NRCS) as supporting documentation for these practices.

We determined that the agricultural publications and guidelines provided by Missouri demonstrate that the listed practices are normal husbandry practices within the region for unmined lands. We find that Missouri's proposed normal husbandry practices in 10 CSR 40–7.021(1)(B)2. meet the requirements of the counterpart Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

3. Missouri also proposed the repair of rills and gullies as a normal husbandry practice under specified conditions. Repairing rills and gullies will not cause the Phase III liability period to be extended when rills and gullies develop after the initiation of the Phase III liability period and when the repair is restricted to the filling, grading, and reseeding of the eroded portion of the area. Missouri submitted guidelines from the NRCS to support this practice.

We determined that the documents submitted by Missouri for this provision represent normal husbandry practices in the State for repair of rills and gullies. We believe that by restricting the size of areas that may be repaired, requiring the eroded portion of the areas to be filled, and demonstrating that such practices are supported as normal husbandry practices, Missouri has ensured that the probability of revegetation success will not be reduced. Therefore, we find that Missouri's proposed guidelines for repair of rills and gullies are no less effective than the Federal regulation requirements at 30 CFR 816.116(c)(4) and 817.116(c)(4).

B. Required Amendment at 30 CFR 925.16(p)(7): 10 CSR 40–3.120(6)(B)2.A., D., and G. and 3.270(6)(B)2.A., D., and G. Revegetation Standards for Success for Woodland, Wildlife Habitat, and Recreational Postmining Land Uses

On October 10, 1990, Missouri proposed to amend its rules at 10 CSR 40–3.120(6)(B) 2.A., D., and G and 3.270(6)(B)2.A., D., and G. (Administrative Record No. MO–519). Missouri proposed a ground cover success standard of 70 percent for areas to be developed for woodland, wildlife habitat, and recreation land use. In the September 29, 1992, **Federal Register** (57 FR 44660), we did not approve the rule changes because Missouri did not demonstrate that a vegetative ground cover standard of 70 percent would achieve the approved post mining land use as required by the Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii). At 30 CFR 925.16(p)(7) we required Missouri to provide statistical proof that a vegetative ground cover of 70 percent will in all cases achieve the approved woodland, wildlife habitat, and recreational postmining land uses or otherwise amend its program to be no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.117(b)(3)(iii).

By letter dated December 14, 1995 (Administrative Record No. MO–633), Missouri submitted a proposed amendment that contained the statistical proof that we required. Based on this proof, we approved Missouri's rules at 10 CSR 40–3.120(6)(B)2.A., D., G. and 3.270(6)(B)2.A., D., and G. in the May 28, 1996, **Federal Register** (61 FR 26454). Therefore, we are removing the required amendment at 30 CFR 925.16(p)(7).

C. Required Amendment at 30 CFR 925.16(p)(8): 10 CSR 40–3.120(6)(B)2.E. and 3.270(6)(B)2.E. Revegetation Standards for Success for Pasture Land Use

On October 10, 1990, Missouri proposed to amend its rules at 10 CSR 40–3.120(6)(B) 2.E. and 3.270(6)(B)2.E. (Administrative Record No. MO–519). Missouri proposed a ground cover success standard of 90 percent for areas to be developed for pasture land use. In the September 29, 1992, **Federal Register** (57 FR 44660), we did not approve this provision because Missouri did not demonstrate that a vegetative ground cover standard of 90 percent would achieve the approved post mining land use as required by the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). At 30 CFR 925.16(p)(8) we required Missouri to provide statistical proof that a vegetative ground cover of 90 percent will in all cases achieve the approved pasture postmining land use, or otherwise amend its program to be no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2).

By letter dated December 14, 1995 (Administrative Record No. MO–633), Missouri submitted a proposed amendment that contained the statistical proof that we required. Based on this proof, we approved Missouri's provisions at 10 CSR 40–3.120(6)(B)2.E. and 3.270(6)(B)2.E. in the May 28, 1996, **Federal Register** (61 FR 26454). Therefore, we are removing the required amendment at 30 CFR 925.16(p)(8).

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record No. MO–656.1). We did not receive any comments on the amendment.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA with respect to those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. 656.1). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 9, 1999, we requested comments on Missouri's amendment (Administrative Record No. MO–656.1), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Missouri on June 4, 1999.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 925, which codify decisions concerning the Missouri program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Missouri to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. 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 such 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 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 13, 1999.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
June 4, 1999	10–28–99	10 CSR 40–7.021(1)(B)2.....

§ 925.16 [Amended]

3. Section 925.16 is amended by removing and reserving paragraphs (p)(7), (p)(8), and (p)(15).

[FR Doc. 99–28230 Filed 10–27–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP New Orleans, LA Regulation 99–027]

Safety Zone; Mile 94.0 to Mile 96.0, Lower Mississippi River, Above Head of Passes

RIN 2115—AA97

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from mile 94.0 to mile 96.0, Lower Mississippi River, extending the entire width of the river. The safety zone will protect vessels transiting the area from a hazardous condition associated with a fireworks display in the vicinity of Algiers Point. Entry into this zone is prohibited to all vessels unless authorized by the Captain of the Port. Vessels desiring authorization to enter this safety zone must request permission from the Coast Guard Traffic Light Operator at the Governor Nicholls Traffic Light VHF–FM Channel 67. Authorization to enter this safety zone will only be granted during emergency situations that affect the safety of the vessel or the safety of the port. The safety zone will ensure the safety of human life and property.

EFFECTIVE DATES: This temporary rule is effective on October 28, 1999, from 9:45 p.m. until October 28, 1999, ending at 10:30 p.m.

FOR FURTHER INFORMATION CONTACT: COTP New Orleans representative, LT(jg) Kevin Lynn at (504) 589–4221.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to the potential hazards to local marine traffic involved.

Background and Purpose

The hazardous condition requiring this regulation is a result of a fireworks display on the Mississippi River between mile 94.0 and mile 96.0. A safety zone is needed to protect vessels transiting the area. Entry into this zone is prohibited to all tankships and tankbarges unless authorized by the Captain of the Port. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165.

Regulatory Evaluation

This temporary rule is not a significant regulatory evaluation under Executive Order 12866 and is not significant under the ''Department of Transportation Regulatory Policies and Procedures'' (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will only be in effect for several hours and the impacts on small entities are expected to be minimal.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart F of part 165 of Chapter 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 1605; 49 CFR 1.46

2. A new § 165.T08–041 is added to read as follows:

§ 165.T08–041 Safety Zone

(a) *Location.* The following area is a safety zone: The waters of the Lower Mississippi River from mile 94.0 to mile 96.0, in the vicinity of Algiers Point, extending the entire width of the river.

(b) *Effective date.* This section will become effective on October 28, 1999 at 9:45 p.m. It will terminate on October

28, 1999, at 10:30 p.m., unless sooner terminated by the Captain of the Port. The Captain of the Port will notify the public of changes in the status of this zone by Marine Radio Safety Broadcasts on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

(c) *Regulations.*

In accordance with the general regulations in § 165.23, entry into this zone by any vessel is prohibited unless authorized by the Captain of the Port New Orleans.

Dated: October 7, 1999.

S.W. Rochon,

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

[FR Doc. 99–28237 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–15–U

POSTAL RATE COMMISSION

39 CFR Part 3003

[Order No. 1269; Docket No. RM99–4]

Privacy Act; Implementation

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting previously-proposed revisions to its rules of practice implementing the Privacy Act of 1974. The substantive changes conform the rules to prevailing law. Editorial changes improve clarity.

DATES: Effective November 29, 1999.

ADDRESSES: Send correspondence 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., Suite 300, Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: In Order No. 1256 (published at 64 FR 49120 on September 10, 1999), the Commission proposed revisions to its rules implementing the Privacy Act of 1974 (39 CFR part 3003). The proposed revisions clarified application of the rules and shortened and simplified the text. The Commission invited comments on its proposal, but no comments were received.

The Commission has reviewed its initial proposal, and has determined that adoption of the revisions as previously published is appropriate. Part I explains the changes. Part II summarizes the effect of the changes on organization of the rules. Part III sets out the final rules.

Part I—Background

The Commission's rules implementing the Privacy Act have been amended only in minor respects since their original adoption shortly after the passage of the Act in 1974. The current rules have operated adequately, but it is apparent on review that they are capable of both substantive and editorial improvement. Accordingly, the Commission adopts a redrafted set of rules to replace those currently contained in part 3003.

The substantive changes in the final rule conform them more closely to prevailing standards of Privacy Act administration without altering the rights of individuals or the obligations of the Commission under the Act. The special procedure for access to medical records contained in current § 3003.6, under which access to such records is contingent on the judgment of the Commission's chief administrative officer, is eliminated in favor of the general access provision in § 3003.4. Section 3003.2 eliminates some unnecessary definitions, links others to the text of the Privacy Act, and rewords other definitions slightly for the sake of clarity. Also for clarification, § 3003.1 adds a statement indicating that the Commission's Privacy Act rules are not intended either to broaden or narrow the scope of an individual's rights afforded by the Act.

The final rules alter the substance of the current rules pertaining to requests for individual records and appeals of denials only in minor ways, but they appreciably shorten and simplify the provisions. Language that does not relate directly to the exercise of rights by individuals under the Privacy Act, and thus is unnecessary, is not included in the final rules. Additionally, the language of the current rules is generally simplified and shortened without affecting individuals' exercise of their rights or the Commission's performance of its obligations under the Privacy Act.

Part II—Effect on Organization of the Commission's Rules

The set of revisions adopted here operate as a complete replacement for the existing rules.

Part III—Final Rule

The text of the final rule appears below.

Dated: October 22, 1999.

Margaret P. Crenshaw,

Secretary.

List of Subjects in 39 CFR Part 3003

Administrative practice and procedure; Archives and records; Privacy; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 39 CFR part 3003 is revised as follows:

PART 3003—PRIVACY ACT RULES

Authority: Privacy Act of 1974 (Pub. L. 93–579), 5 U.S.C. 552a.

§ 3003.1 Purpose and scope.

This part implements the Privacy Act of 1974 (5 U.S.C. 552a) by establishing Commission policies and procedures that permit individuals to obtain access to and request amendment of information about themselves that is maintained in systems of records. This part does not expand or restrict any rights granted under the Privacy Act of 1974.

§ 3003.2 Definitions.

For purposes of this part:

(a) *Commission* means the Postal Rate Commission.

(b) *Individual, record,* and *system of records* have the meanings specified in 5 U.S.C. 552a(a).

(c) *Day* means a calendar day and does not include Saturdays, Sundays, and legal holidays.

§ 3003.3 Procedures for requesting inspection, copying, or correction.

(a) An individual who—

(1) Wishes to know whether a Commission system of records contains a record about him or her,

(2) Seeks access to a Commission record about him or her that is maintained in a system of records (including the accounting of disclosures), or

(3) Seeks to amend a record about him or her that is maintained in a system of records, may file a written request with the chief administrative officer of the Commission at the Commission's current address (1333 H Street NW., Suite 300, Washington, DC 20268–0001). The request should state on the outside of the envelope and in the request that it is a Privacy Act request.

(b) A request for amendment must describe the information sought to be amended and the specific reasons for the amendment.

(c) A requester—

(1) May request an appointment to inspect records at the Commission's offices between the hours of 8 a.m. and 4:30 p.m. on any day;

(2) Must present suitable identification, such as a driver's license, employee identification card, or Medicare card;

(3) If accompanied by another individual, must sign a statement, if requested by the chief administrative officer, authorizing discussion of his or her record in the presence of that individual;

(4) Who files a request by mail must include his or her date of birth, dates of employment at the Commission (if applicable), and suitable proof of identity, such as a facsimile of a driver's license, employee identification card, or Medicare card; and

(5) Must, if requested by the chief administrative officer, provide additional proof of identification.

§ 3003.4 Response to a request.

(a) In the case of a request for notice of the existence of a record, the chief administrative officer shall respond within 10 days of receipt of a request and shall inform the individual whether a system of records maintained by the Commission contains such a record.

(b) In the case of a request for access to a record or for a copy of a record, the chief administrative officer shall acknowledge the request within 10 days and shall promptly thereafter—

(1) Fulfill the request by mail or arrange for an inspection by the requester in the Commission's offices; or

(2) If the request is denied, notify the requester of the denial, the reasons for the denial, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

(c) In the case of a request for amendment, the chief administrative officer shall

(1) Acknowledge the request in writing within 10 days;

(2) Promptly review the record; and

(3)(i) Make any requested amendment of a record found to be not accurate, relevant, timely, or complete; notify the requester of the change and provide a copy of the corrected record; and notify any previous recipient of the record (excluding Commission staff who obtained the record in the performance of their duties and recipients under the Freedom of Information Act) of any change; or

(ii) Inform the requester of a refusal to amend the record, the reasons for the refusal, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

§ 3003.5 Appeals of denials of access or amendment.

(a) If a request for access to or amendment of a record is denied, the requester may file a written appeal with the Chairman of the Commission. The Chairman will decide each appeal within 30 days of receipt unless the Chairman has, for good cause, extended the period for another 30 days.

(b) If an appeal is denied, the requester will be notified of the decision, the reasons for the denial, the right to file a concise statement of disagreement, the procedures for filing a statement of disagreement, the subsequent uses of a statement of disagreement, and of the right to seek judicial review in accordance with subsection (g) of the Privacy Act.

§ 3003.6 Fees.

The first copy of any record furnished under the Privacy Act of 1974 will be provided without charge. Additional copies will be charged at the cost of reproduction.

§ 3003.7 Exemptions.

The Postal Rate Commission has not established any exempt system of records.

[FR Doc. 99–28125 Filed 10–27–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–79–1–7328a, FRL–6459–8]

Approval and Promulgation of Implementation Plans; Texas; Repeal of Board Seal Rule and Revisions to Particulate Matter Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving revisions to the Texas Natural Resource Conservation Commission (TNRCC) regulations in the Texas State Implementation Plan (SIP). These revisions remove the Texas Air Control Board (TACB) Seal rule from the Texas SIP and revise and recodify regulations for control of particulate matter in the Texas SIP. Removal of the Board Seal rule eliminates a rule that no longer applies to TNRCC. These revisions to the particulate matter regulations update the SIP-approved regulations and make the SIP citations consistent with the current State citations.

DATES: This rule is effective on December 27, 1999 without further notice, unless EPA receives adverse comment by November 29, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'' is used, we mean EPA. Texas Regulation I in the SIP and revisions to Regulation I being approved in this action have undesignated headings. In this document, references to these undesignated heading are preceded by the word ''concerning.'' This document makes many references to subsections of 40 CFR 52.2270. Section 40 CFR 52.2270 was moved to 40 CFR 52.2299 in a **Federal Register** action published July 7, 1999 (64 FR 36586).

On September 1, 1993, the TACB merged with the former Texas Department of Water Resources to become the Office of Air Quality in the new TNRCC. The TACB air regulations were transferred from Title 31 of the Texas Administrative Code (31 TAC) to Title 30 of the Texas Administrative Code (30 TAC). The designation for the General Rules changed from 31 TAC Chapter 101 to 30 TAC Chapter 101. The designation for Regulation I changed from 31 TAC Chapter 111 to 30 TAC Chapter 111. References to TNRCC replaced references to TACB in the regulations.

I. What Is EPA Approving in This Action?

Below is a brief discussion of the State submittals being approved in this **Federal Register** action.

A. Adopted by TACB on June 16, 1989, and Submitted to EPA on August 21, 1989

The TACB adopted the repeal of the existing Regulation I and adopted a new Regulation I. The primary purpose of the new rules was to address EPA's new national ambient air quality standards in the El Paso County PM_{10} nonattainment area. While in most cases the purpose of the new rule provisions remained the same, the regulations were reorganized and the rules renumbered and stylistically changed.

We acted upon sections of this submittal concerning Outdoor Burning and concerning Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots on January 18, 1994 (59 FR 2534), at 52.2270(c)(79), in a **Federal Register** action approving the PM_{10} SIP for the El Paso County PM_{10} nonattainment area.

We acted upon sections of this submittal concerning Visibility on May 8, 1996 (61 FR 20732), at 52.2270(c)(94).

The purpose of this **Federal Register** action is to approve the remaining sections of the submittal concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of § 111.92 relating to Compliance Dates. We are approving these revisions to Regulation I as 30 TAC Chapter 111 even though they were submitted as 31 TAC Chapter 111.

B. Adopted by TNRCC March 29, 1995 and Submitted to EPA on July 12, 1995

The TNRCC adopted the repeal of § 101.12, Board Seal, from the TNRCC General Rules because the rule no longer applies to TNRCC. The TNRCC also revised Regulation I, § 111.103, Exemptions to Prohibitions to Outdoor Burning, by deleting Subsection § 111.103(b)(8). The municipal solid waste provisions contained in this Subsection have been superseded by the Federal Resource Conservation and Recovery Act (RCRA).

C. Adopted by TNRCC August 21, 1996, and Submitted to EPA on August 30, 1996

The TNRCC revised Regulation I to clarify the requirements for allowable outdoor burning and to clarify exceptions to prohibition of outdoor burning. The rules were structured to more adequately relate to current outdoor burning needs. This revision repealed §§ 101.101 to 101.107 concerning Outdoor Burning and replaced them with new §§ 101.201 to 101.221 under new Subchapter B, Outdoor Burning. All other sections in Regulation I became Subchapter A, Visible Emissions and Particulate Matter. The TNRCC also replaced all references to TACB in Regulation I with references to TNRCC.

II. Why Is the TACB Board Seal Rule Being Removed From the SIP?

Section 101.12, Board Seal, of the TNRCC General Rules was approved as Rule 13 in the TACB General Rules approved by EPA May 31, 1972, with the original Texas SIP. The purpose of the Board Seal rule was to provide for a seal bearing the words ''Texas Air Control Board,'' and the oak and olive branches common to other official State seals. The TNRCC adopted the repeal of § 101.12, on March 29, 1995, because the TACB no longer exists and the rule no longer applies to TNRCC.

III. Background of Texas Regulation I in the Texas SIP?

We approved Texas Regulation I on May 31, 1972 (37 FR 10895), with the original Texas SIP. It was adopted by TACB on January 26, 1972, and consisted of: Rule 101, Outdoor Burning; Rule 102, Incineration; Rule 103, Visible Emissions; Rule 104, Particulate Matter From Materials Handling, Construction, and Roads; Rule 105, Particulate Matter; Rule 106, Transient Operations; Rule 107, Agricultural Process; and untitled Rule 108 for compliance dates.

We approved revisions to Regulation I on: March 25, 1980 (45 FR 19244); July 26, 1982 (47 FR 32126); February 25, 1983 (48 FR 08073); January 18, 1994 (59 FR 02538); and May 8, 1996 (61 FR 20732).

The current SIP-approved Regulation I is available for public inspection by selecting ''Texas'' and then ''TX Chap 111 (Reg 1)'' at the following web site: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm

IV. Outline of Regulation I in the Texas SIP as a Result of This Federal Register Action

Below is an outline of Regulation I as being approved by this action. Sections with titles followed by an ''*'' have already been approved by EPA, but are being placed in Subchapter A in this action as requested by the August 30, 1996, submittal. The rest of the sections in Regulation I are being revised and recodified in this action.

Regulation I (30 TAC Chapter 111)—Control of Air Pollution from Visible Emissions and Particulate Matter

Subchapter A. Visible Emissions and Particulate Matter Visible Emissions*

Section 111.111 Requirements for Specified Sources*
Section 111.113 Alternative Opacity Limitations*

Incineration

Section 111.121 Single-Chamber Incinerators

Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots*

Section 111.141 Geographic Areas of Application and Date of Compliance*
Section 111.143 Materials Handling*
Section 111.145 Construction and Demolition*
Section 111.147 Roads, Streets, and Alleys*
Section 111.149 Parking Lots*

Emission Limits on Nonagricultural Processes

Section 111.151 Allowable Emissions Limits
Section 111.153 Emission Limits for Steam Generators
Section 111.155 Ground Level Concentrations

Emission Limits on Agricultural Processes

Section 111.171 Emission Limits Based on Process Weight Method
Section 111.173 Emissions Limits Based on Alternate Method
Section 111.175 Exemptions

Exemptions for Portable or Transient Operations

Section 111.181 Exemption Policy
Section 111.183 Requirements for Exemptions

Subchapter B. Outdoor Burning

Section 111.201 General Prohibitions
Section 111.203 Definitions
Section 111.205 Exceptions for Fire Training
Section 111.207 Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth
Section 111.209 Exception for Disposal Fires
Section 111.211 Exception for Prescribed Burn
Section 111.213 Exception for Hydrocarbon Burning
Section 111.215 Executive Director Approval of Otherwise Prohibited Outdoor Burning
Section 111.219 General Requirements for Allowable Outdoor Burning
Section 111.221 Responsibility for Consequences of Outdoor Burning

V. How Are Sections of Regulation I Being Revised by This Action?

The revisions to Regulation I adopted by TNRCC August 21, 1996, and submitted to EPA on August 30, 1996, placed all sections concerning outdoor burning in new Subchapter B, Outdoor Burning. All other sections in Regulation I were placed in Subchapter

A, Visible Emissions and Particulate Matter.

A. Subchapter A, Visible Emissions and Particulate Matter.

We are approving revisions to Regulation I adopted by TACB on June 16, 1989, concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of Section 111.92 in the SIP relating to Compliance Dates.

Below is a brief discussion of each section of Subchapter A.

1. Sections 111.111 and 111.113 Concerning Visible Emissions

We approved sections 111.111 and 111.113 on January 18, 1994 (59 FR 2534), at 52.2270(c)(79), and on May 8, 1996 (61 FR 20732), at 52.2270(c)(94). These revisions included amendments adopted by TACB on June 16, 1989; October 12, 1990; October 25, 1991; September 18, 1992; and June 18, 1993.

2. Section 111.121 Concerning Incineration

Section 111.121, Single-Chamber Incinerators, as adopted by TACB on June 16, 1989, replaces Section 111.11, Incineration, and Section 111.12, Approval of Incinerators, approved by EPA on July 26, 1982 (47 FR 32126), at 52.2270(c)(44). Section 111.121 makes minor revision to the limitations on the burning of garbage or rubbish in residential, publicly-owned, commercial, or hospital/pathological waste incinerators.

3. Sections 111.141 to 111.151 Concerning Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots

Sections 111.141, 111.143, 111.145, 111.147, and 111.149, as adopted by the TACB on June 16, 1989, and October 25, 1991, were approved by EPA January 18, 1994 (59 FR 2534), at 52.2270(c)(79).

4. Sections 111.151 to 111.155 Concerning Emission Limits on Nonagricultural Processes

Sections 111.151, 111.153, and 111.155, adopted by TACB on June 16, 1989, replace Rule 105, Particulate Matter, approved by EPA May 31, 1972, with the original Texas SIP.

Section 111.151 reformats and makes slight revisions to Rule 105.1. An equation in Subsection 111.151(b) replaces Figure 1, a log-log graph entitled Allowable Particulate Emission Rates for Specific Flow Rates. An equation in Subsection 111.151(c) replaces Figure 2, a graph entitled Standard Effective Stack Height Based on Specific Flow Rates. Table 1, Allowable Particulate Emission Rates for Specific Flow Rates, and Table 2, Standard Effective Stack Height Based on Specific Flow Rates, are identical to Tables 1 and 2 approved with the original Texas SIP except that Table 1 now clarifies that the rate of emissions is for total suspended particulate (TSP).

Section 111.153, Emissions Limits for Steam Generators, replaces Rule 105.3. Subsection 111.153(a) provides that Section 111.151 does not apply to, or set limits to, any oil or gas fuel-fired steam generator with a heat input greater than 2500 million British thermal units (Btu) per hour or any solid fossil fuel-fired steam generator. Subsection 111.153(b) sets limits to any solid fossil fuel-fired steam generator at 0.3 pounds of TSP per million Btu heat input, averaged over a two-hour period. Subsection 111.153(c) limits any oil or gas fuel-fired steam generator with a heat input greater than 2500 million Btu per hour to 0.1 pounds of TSP per million Btu input averaged over a two-hour period.

Section 111.155, Ground Level Concentrations, which replaces Rule 105.2, sets limits for particulate matter resulting from any ground level source.

5. Sections 111.171 to 111.175 Concerning Emission Limits on Agricultural Processes

Sections 111.171, 111.173, and 111.175, adopted by TACB on June 16, 1989, replace Sections 111.71, 111.72, 111.73, 111.74, 111.75, and 111.76, concerning Particulate Matter from Agricultural Processes, approved by EPA July 26, 1982 (47 FR 32126), at 52.2270(c)(44), and February 25, 1983 (48 FR 8073), at 52.2270(c)(50).

Section 111.171, Emission Limits Based on Process Weight Method, establishes that all sources affected by Section 3.10(e) the Texas Clean Air Act (TCAA), shall have allowable particulate emissions levels determined by the process weight method unless a request for an alternate method is submitted and approved.

Section 111.173, Emission Limits Based on Alternate Method, allows for a source affected by Section 3.10(e) of the TCAA to request an approved alternate method.

Section 111.175, Exemptions, enumerates the sections of Regulation I from which agricultural processes are exempt.

Table 3, Allowable Rate of Emission Based on Process Weight Rate, cited in Section 111.171, is identical to Tables 3 approved with the original Texas SIP. Figure 3, a log-log graph entitled Allowable Emissions Levels Based on Process Weight Rate, has been deleted.

6. Sections 111.181 and 111.183 Concerning Exemptions for Portable or Transient Operations

Sections 111.181 and 111.183, adopted by TACB on June 16, 1989, replace Sections 111.81, 111.82, and 111.83 concerning Exemptions approved by EPA February 25, 1983 (48 FR 8073), at 52.2270(c)(50).

Section 111.181, Exemption Policy, exempts most portable facilities and transient operations, except those in the inhalable particulate matter Group I and Group II areas in Dallas, El Paso, and Harris counties, from the requirements of certain sections of Chapter 111.

Section 111.183, Requirements for Exemption, stipulates conditions which have to be met in order to qualify for the exemption in section 111.181.

7. Repeal of Section 111.92, Compliance Dates

Section 111.92 was approved by EPA February 25, 1983 (48 FR 8073), at 52.2270(c)(50). No replacement for Section 111.92 was included in the new Regulation I adopted by TACB on June 16, 1989, because the section was outdated and referred to sections of Regulation I that have been revised or have their own compliance dates. The dates in Section 111.92 have passed.

B. Subchapter B, Outdoor Burning

Sections 111.101, 111.103, 111.105, and 111.107 concerning Outdoor Burning in the current Texas SIP were adopted by the TACB on June 16, 1989, and October 25, 1991, and approved by EPA on January 18, 1994 (59 FR 2534) at 52.2270(c)(79).

On July 12, 1995, the Governor submitted a revision to Regulation I adopted by TNRCC on March 29, 1995, which revised Section 111.103, Exemptions to Prohibitions to Outdoor Burning, by deleting Subsection 111.103(b)(8). The municipal solid waste provisions contained in this Subsection have been superseded by RCRA.

On August 30, 1996, the Governor submitted to EPA revisions to Regulation I adopted by TNRCC on August 21, 1996, which repealed Sections 111.101, 111.103, 111.105, and 111.107 concerning Outdoor Burning and replaced them with new Subchapter B, Outdoor Burning, consisting of Sections 111.201, 111.203; 111.205; 111.207; 111.209; 111.211; 111.213; 111.215; 111.219; and 111.221. This was done in order to clarify requirements and, where appropriate, add flexibility to existing requirements. Subsections of

old Section 111.103, Exceptions to Prohibition of Outdoor Burning, have been placed in five separate sections in Subchapter B. Below is a brief discussion of each of the sections being approved in this action.

1. Section 111.201, General Prohibitions

Section 111.201 replaces Section 111.101 of the same title. The definition of the term ''Executive Director'' has been revised to include TNRCC staff representatives. This section prohibits outdoor burning unless authorized by statute, order, or permit.

2. Section 111.203, Definitions

Section 111.203 is a new section which adds definitions of the following terms: Extinguished, Landclearing operation, Practical alternative, Prescribed burn, Structure containing sensitive receptor(s), Sunrise/Sunset, and Wildland. These definitions clarify terms and concepts previously considered ambiguous or undefined.

3. Section 111.205, Exceptions for Fire Training

Section 111.205 replaces Subsection 111.103(b)(1). The revisions simplify the notification procedures by eliminating some of the repetitive and nonessential notification requirements for fire training managers.

4. Section 111.207, Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth

Section 111.207, replaces and makes minor editorial changes to Subsection 111.103(b)(3). Section 111.207 permits fires used solely for recreational or ceremonial purposes, for the noncommercial preparation of food, or for the exclusive purpose of supplying warmth during cold weather.

5. Section 111.209, Exception for Disposal Fires

Section 111.209 replaces Subsections 111.103(b)(2), (4), and (5). Section 111.209 differentiates between fires used solely for the disposal of wastes and other forms of outdoor burning and regulates them in relation to practical alternatives. In regard to domestic waste burning, the rule clarifies allowable burning both in terms of waste collection criteria and types of wastes. The rule permits the burning of diseased animal carcasses when burning is the most effective means of controlling the spread of disease. This section now addresses off-site impacts in burns for land clearing and right-of-way maintenance. New additions specifically address the regulation of crop residue burning and brush burning by counties and municipalities for detrimental public health and safety considerations.

6. Section 111.211, Exception for Prescribed Burn

Section 111.211, replaces Subsection 111.103(b)(6) relating to exceptions for prescribed burn. Section 111.211 recognizes the use of fire as a positive forest, range, and wildland/wildlife management tool under certain circumstances for which there is no practical alternative. In the case of the burning of coastal salt-marsh, the notification criteria and procedures have been simplified.

7. Section 111.213, Exception for Hydrocarbon Burning

Section 111.213 replaces Subsection 111.103(b)(7). Section 111.213 has been revised to include a sampling and monitoring requirement. Section 111.213 permits hydrocarbon burning for pipeline breaks and spills if the Executive Director determines that the burning is necessary to protect public welfare.

8. Section 111.215, Executive Director Approval of Otherwise Prohibited Outdoor Burning

Section 111.215, relating to Executive Director approval of otherwise prohibited outdoor burning where there is no practical alternative, replaces Subsection 103(a). Section 111.215 now recognizes that authorization is contingent upon not causing a condition of nuisance or traffic hazard.

9. Section 111.219, General Requirements for Allowable Outdoor Burning

Section 111.219, which replaces Section 111.105, clarifies points which have previously been unclear or ill-defined. Section 111.219(1) requires notification of the Texas Forest Service prior to a prescribed or controlled burn. Section 111.219(2) is modified to recognize local government burning ordinance authority stipulated in the TCAA. Section 111.219(3) has been changed to avoid potential off-site impacts to sensitive receptor(s). Section 111.219(4) requires the person initiating a burn to post a flag-person where smoke may blow across a road. Section 111.219(5) adds flexibility to the previously inflexible 300 foot prohibition by setting wind direction and distance from sensitive receptors as the regulatory criteria for determining the extent of the burn. Section 111.219(6) establishes the allowable burn hours to one hour after sunrise to one hour before sunset. This provision allows more flexibility but is also intended to ensure meteorological conditions are properly evaluated. Section 111.219(7) is modified to provide more specificity to prohibited burn fuels.

10. Section 111.221, Responsibility for Consequences of Outdoor Burning

Section 111.221 replaces Section 111.107 of the same title. There are no changes from the existing rule. This provision states that the authority to burn does not excuse compliance with other applicable laws and does not exempt the person responsible from any consequences, damages, or injuries even though the burning is otherwise conducted in compliance with this regulation.

VI. Final Action

We are approving revisions to Regulation I in the Texas SIP adopted by TACB June 16, 1989, and submitted to EPA on August 21, 1989, concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of Section 111.92, Compliance Dates. We are also approving revisions, adopted by TNRCC March 29, 1995, and August 21, 1996, and submitted to EPA on July 12, 1995, and August 30, 1996, respectively. These revisions remove Section 101.12, Board Seal, from the TNRCC General Rules. These revisions also revise the Outdoor Burning sections in TNRCC Regulation I and places them in new Subchapter B and places the rest of the sections in Regulation I in new Subchapter A, Visible Emissions and Particulate Matter.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on December 27, 1999 without further notice unless we receive adverse comment by November 29, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB 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, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in Federal Clean Air Act (the Act).

C. Executive Order 13045

Executive Order 13045, entitled ''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.

The 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 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, 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, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective December 27, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Hydrocarbons, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. In § 52.2270(c) the first table is amended by revising the entry for Chapter 111 and by removing the entry for ''Section 101.12, Board Seal'' to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State adoption date	EPA approval date	Explanation
*	*	*	*	*
Chapter 111 (Reg 1)—Control of Air Pollution from Visible Emissions and Particulate Matter				
Subchapter A—Visible Emissions and Particulate Matter				
Visible Emissions				
Section 111.111(a), (b)	Requirements for Specified Sources.	06/18/93	05/08/96, 61 FR 20732, 01/18/94, 59 FR 2532.	Ref. 52.2299(c)(94) 52.2299(c)(79)
Section 111.113	Alternative Opacity Limitations	06/16/89	05/08/96, 61 FR 20732	Ref. 52.2299(c)(94)
Incineration				
Section 111.121	Single-Chamber Incineration	06/16/89	October 28, 1999.	
Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots				
Section 111.141	Geographic Areas of Application and Date of Compliance.	10/25/91	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.143	Materials Handling	06/16/89	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.145	Construction and Demolition	10/25/91	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.147	Roads, Streets, and Alleys	10/25/91	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Section 111.149	Parking Lots	06/16/89	01/18/94, 59 FR 02534	Ref. 52.2299(c)(79)
Emission Limits on Nonagricultural Processes				
Section 111.151	Allowable Emissions Limits	06/16/89	October 28, 1999.	
Section 111.153	Emission Limits for Steam Generators.	06/16/89	October 28, 1999.	
Section 111.155	Ground Level Concentrations	06/16/89	October 28, 1999.	
Emission Limits on Agricultural Processes				
Section 111.171	Emission Limits Based on Process Weight Method.	06/16/89	October 28, 1999.	
Section 111.173	Emissions Limits Based on Alternate Method.	06/16/89	October 28, 1999.	
Section 111.175	Exemptions	06/16/89	October 28, 1999.	
Exemptions for Portable or Transient Operations				
Section 111.181	Exemption Policy	06/16/89	October 28, 1999.	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State adoption date	EPA approval date	Explanation
Section 111.183	Requirements for Exemptions	06/16/89	October 28, 1999.	
Subchapter B—Outdoor Burning				
Section 111.201	General Prohibitions	08/21/96	October 28, 1999.	
Section 111.203	Definitions	08/21/96	October 28, 1999.	
Section 111.205	Exceptions for Fire Training	08/21/96	October 28, 1999.	
Section 111.207	Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth.	08/21/96	October 28, 1999.	
Section 111.209	Exception for Disposal Fires	08/21/96	October 28, 1999.	
Section 111.211	Exception for Prescribed Burn	08/21/96	October 28, 1999.	
Section 111.213	Exception for Hydrocarbon Burning.	08/21/96	October 28, 1999.	
Section 111.215	Executive Director Approval of Otherwise Prohibited Outdoor Burning.	08/21/96	October 28, 1999.	
Section 111.219	General Requirements for Allowable Outdoor Burning.	08/21/96	October 28, 1999.	
Section 111.221	Responsibility for Consequences of Outdoor Burning.	08/21/96	October 28, 1999.	
* *	*	*	* *	*

[FR Doc. 99–27136 Filed 10–27–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD093–3040; FRL–6460–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOCs from Paint, Resin and Adhesive Manufacturing and Adhesive Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on two revisions to the Maryland State Implementation Plan (SIP). The revisions consist of amendments to Maryland's regulation to control volatile organic compounds (VOC) from Paint, Resin & Adhesive manufacturing and Adhesive Application. The first revision amends Maryland's definition of ''honeycomb core installation'' to include additional substrates. The second revision clarifies the general emission standard for VOCs from adhesive applications. EPA is approving these revisions to in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 13, 1999 without further notice, unless EPA receives adverse written comment by November 29, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, or by e-mail at Lewis.Janice@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the SIP Revisions

On April 12, 1999, the Maryland Department of the Environment (MDE) submitted two revisions to its State Implementation Plan (SIP). The first SIP revision amends the definition of ''Honeycomb core installation'' found at COMAR 26.11.19.15A(2) so that it includes other substrates in addition to metal foil. This revision was adopted by Maryland on March 2, 1999 and has been effective in the State as of March 22, 1999. The second SIP revision clarifies the applicability of the General Emission Standard for adhesive applications found at COMAR 26.11.19.15C(4). The intent of this regulation is to require the VOC content of the adhesives to be limited to 3.8 pounds per gallon if the total plantwide VOC emissions from all adhesive applications exceeds 50 pounds per day.

B. EPA's Evaluation of the SIP Revisions

The EPA has determined that these amendments to COMAR 26.11.19.15: Paint, Resin, and Adhesive Manufacturing and Adhesive Application meet all federal criteria for approval.

II. Final Action

EPA is approving the amendments to COMAR 26.11.19.15 submitted by the MDE on April 12, 1999 as revisions to the Maryland SIP.

EPA is publishing this rule without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 13, 1999 without further notice unless EPA receives

adverse comment by November 29, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all 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.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)] which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, [52 FR 41685 (October 30, 1987),] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 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. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal

governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule approving two revisions to Maryland's regulations for controlling VOCs from adhesives applications does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(145) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(145) Revisions to the Maryland State Implementation Plan submitted on April 12, 1999, by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 12, 1999, from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan, pertaining to Regulation .15 under Code of Maryland Administrative Regulations (COMAR) 26.11.19 Volatile Organic Compounds from Specific Processes.

(B) Revision to COMAR 26.11.19.15: Paint, Resin, and Adhesive Manufacturing and Adhesive Application amending the definition found at COMAR 26.11.19.15 A(2) of the term ''honeycomb core installation'' to include other substrates. This revision was adopted on March 2, 1999 and effective on March 22, 1999.

(C) Revision to COMAR 26.11.19.15: Paint, Resin, and Adhesive Manufacturing and Adhesive Application clarifying the applicability of COMAR 26.11.19.15.C(4) General Emission Standard. This revision was adopted on April 9, 1998 and effective on May 4, 1998.

(ii) *Additional Material*—Remainder of April 12, 1999 submittal pertaining to COMAR 26.11.19.15 Paint, Resin, and Adhesive Manufacturing and Adhesive Application.

[FR Doc. 99–27201 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA71–168a ; FRL –6452–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern Kern County Air Pollution Control District (KCAPCD), Rule 424 and Yolo-Solano Air Quality Management District, Rule 2.37. The revisions include rescission and removal of an obsolete rule from the SIP and the incorporation of two rules into the Federally approved SIP.

The rule to be removed regulated sulfur compound emissions from oil field steam generators. No units covered by this rule remain or are in operation within KCAPCD's jurisdictional area.

The rules to be incorporated control emissions of oxides of nitrogen (NO_X) from natural gas-fired residential water heaters.

This approval action will incorporate the two rules into the Federally approved SIP. The intended effect of approving the rules is to regulate NO_X emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

DATES: These rules are effective on December 27, 1999 without further notice, unless EPA receives adverse comments by November 29, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted respective rules are also available for inspection at the following locations:

Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370

Yolo-Solano Air Quality Management District 1947 Galileo Court, Suite 103, Davis, CA 95616–4882

FOR FURTHER INFORMATION CONTACT: Sam Agpawa, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1228.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being rescinded and removed is KAPCD Rule 424. The rule was adopted by KAPCD on July 18, 1983; approved into the SIP on May 3, 1984; and rescinded by KAPCD's Board on April 19, 1993. The rule was submitted to EPA for rescission on November 18, 1993. The rule number was reassigned to a subsequent rule which was adopted by KAPCD's Board on the date of rescission.

The rule being approved for rescission and removal from the SIP is the old KAPCD rule 424. The rule applied to sulfur compounds from oilfield steam generators. The rules being approved into the California SIP are:

(1) The new KCAPCD Rule 424 and (2) YSAQMD Rule 2.37. The rules apply to natural gas-fired residential water heaters. The rules were submitted by the State of California to EPA on: (1) KCAPCD Rule 424—November 18, 1993; and (2) YSAQMD Rule 2.37—February 24, 1995.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA.

On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. KCAPCD and YSAQMD are designated and classified as non-attainment-serious for ozone [1]; therefore, the jurisdictional areas of KCAPCD and YSAQMD are subject to the RACT requirements of section 182(b)(2) cited below and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There are no major stationary sources covered by KCAPCD Rule 424 and YSAQMD Rule 2.37 and RACT requirements do not apply; however, the rules are expected to achieve substantial reductions of NO_X because they apply to a large number of small sources.

This document addresses EPA's direct final action for KCAPCD Rule 424 and YSAQMD Rule 2.37, applying to natural gas-fired residential water heaters. The rules were adopted on: (1) KCAPCD Rule 424—April 19, 1993 and (2) YSAQMD 2.37—November 9, 1994.

The State of California submitted the rules to EPA for incorporation into its SIP on: (1) KCAPCD Rule 424—November 18, 1993; and (2) YSAQMD Rule 2.37—February 24, 1995. KCAPCD Rule 424 was found complete on December 27, 1993; YSAQMD Rule 2.37 was found complete on March 10, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.[2] The rules are being finalized for approval into the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. Both rules specify exhaust emission standards for NO_X from residential water heaters. The rules were originally adopted as part of each applicable district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

KCAPCD Rule 424 and YSAMQD Rule 2.37 prohibit the sale and installation of units within Kern County and the Yolo-Solano Air Quality Management District that exceed the Rules' specified emission rates. Rule 424 replaces a rescinded rule which controlled sulfur compound emissions from oil fields. The rescinded rule is no longer applicable. The new rule was assigned the same number (424). KCAPCD Rule 424 and YSAQMD Rule 2.37 are similar to South Coast Air Quality Management District (SCAQMD) Rule 1121 which prohibits units that do not meet the SCAQMD rule requirements from being sold or installed in Los Angeles Basin.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, KCAPCD Rule 424; and YSAQMD Rule 2.37, Natural Gas-fired Residential Water Heaters; are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 27, 1999 without further notice unless the Agency receives adverse comments by November 29, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the

[1] Kern County and the Yolo-Solano Air Quality Management District retained their designation(s) of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 27, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, 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 rules do not create a mandate on State, local or tribal governments. The rules do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to these rules.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These rules are not subject to E.O. 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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 rules do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to these rules.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. These rules are not ''major'' rules as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1999. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rules or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 9, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(140)(ii)(C), (194)(i)(B)(*4*), (215)(i)(D) introductory text, and (215)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(140) * * *

(ii) * * *

(C) Previously approved on May 3, 1984 and now deleted without replacement for implementation in the Southeast Desert Air Basin Rule 424.

* * * * *

(194) * * *

(i) * * *

(B) * * *

(*4*) Rule 424 adopted on April 19, 1993.

* * * * *

(215) * * *

(i) * * *

(D) Yolo-Solano Air Pollution Control District.

* * * * *

(*2*) Rule 2.37 adopted on November 9, 1994.

* * * * *

[FR Doc 99–27199 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 98–170; FCC 99–72]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On June 25, 1999 the Federal Communications Commission published rules in the **Federal Register** concerning Truth-in-Billing principles and guidelines for telecommunications common carriers. This document makes a correction to that rule.

DATES: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: David Konuch, Enforcement Division, Common Carrier Bureau (202) 418–0960.

SUPPLEMENTARY INFORMATION: On April 15, 1999, the Commission adopted an order establishing billing principles to ensure that consumers are provided with basic information they need to make informed choices among telecommunications services and providers, to protect themselves against inaccurate and unfair billing practices, and to enhance their ability to detect cramming and slamming. A summary of this order was published in the **Federal Register**. *See* 64 FR 34488, June 25, 1999. On October 18, 1999, a notice was published in the **Federal Register** correcting this summary. See 64 FR 56177, October 18, 1999. This document corrects a typographical error contained in the October 18, 1999 notice. In that notice, ''Subpart U'' was revised to read ''Subpart W''. This document corrects the October 18, 1999 notice. In this document, ''Subpart W'' is corrected to read ''Subpart Y''.

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–27873 Filed 10–27–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 208
Thursday, October 28, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–20]

Proposed Amendment to Class D Airspace; Jacksonville NAS Cecil Field, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the name of the Jacksonville NAS Cecil Field, FL Airport to Cecil Field Airport and amend Class D airspace and hours of operation. The U.S. Navy has discontinued operations at NAS Cecil Field, including decommissioning the Cecil Nondirectional Radio Beacon (NDB) and the Cecil Tactical Air Navigation (TACAN) navigation aids; thereby, eliminating airspace extensions. The Jacksonville, FL, Port Authority has opened a contract airport traffic control tower at the airport. The control tower at Cecil Field is scheduled to be open 0800–1800, daily, Monday through Friday. Therefore, the Class D airspace hours of operation would be amended from continuous to part time.

DATES; Comments must be received on or before November 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–20, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

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:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–20.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by changing the name of Jacksonville NAS Cecil Field, FL to Cecil Field and amending the Class D airspace and hours of operation for the airport traffic control tower. The U.S. Navy is discontinuing operations at NAS Cecil Field, including decommissioning the Cecil Nondirectional Radio Beacon (NDB) and the Cecil Tactical Air Navigation (TACAN) navigation aids; thereby, eliminating airspace extensions. The Jacksonville, FL, Port Authority is opening a contract airport traffic control tower at the NAS Cecil Field airport. The control tower at Cecil Field is scheduled to be open 0800–1800 daily. Therefore, the Class D airspace would be amended from continuous to part time. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Jacksonville Cecil Field, FL [Revised]

Cecil Field, FL
(Lat. 30°12′59″N, long. 81°52′29″W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.5-mile radius of Cecil Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on October 18, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–28236 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–42037; File No. S7–24–99]

RIN 3235–AH84

Short Sales

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; Request for comments.

SUMMARY: The Securities and Exchange Commission is seeking public comment on the regulation of short sales of securities. In this release, we seek comment on, among other things: lifting the limits on short sales of exchange listed securities under advancing market conditions; providing an exception for actively traded securities; focusing short sale restrictions on certain market events and trading strategies; removing short sale restrictions on hedging transactions; revising short sale regulation in response to certain market developments; revising the definition of ''short sale''; extending short sale regulation to non-exchange listed securities; and eliminating short sale regulation altogether.

DATES: Comments must be received on or before December 27, 1999.

ADDRESSES: Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–24–99. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, at (202) 942–0772: James Brigagliano, Alan Reed, or Michael Trocchio.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission (Commission) adopted Rule 10a–1[1] (short sale rule or Rule) under the Securities Exchange Act of 1934 (Exchange Act)[2] at a time when the securities markets had less trading volume and simpler trading strategies than current markets. Since the adoption of the short sale rule, securities trading has increased drastically in volume, velocity, and complexity. There have also been substantial improvements in market transparency and surveillance mechanisms. Short sale regulation, however, has remained fundamentally unchanged. This separation between Rule 10a–1 and the markets has resulted in frequent requests for relief from the short sale rule and suggestions for modification of it. Our goal is to examine ways to modernize our approach to provide the most appropriate regulatory structure for short sales.

Among other things, we propose to assess whether the restrictions of Rule 10a–1 produce benefits to the markets that are proportionate to the costs associated with those restrictions. We believe that a comprehensive assessment of Rule 10a–1 is necessary to achieve this goal. Therefore, we are seeking public comment on the regulation of short selling. In particular, we solicit comment on eight concepts related to the regulation of short sales of securities:

- Suspending the short sale rule when the security or market is above a threshold price;
- Providing an exception for actively traded securities;
- Focusing short sale restrictions on certain market events and trading strategies;
- Excepting hedging transactions from short sale regulation;
- Revising short sale regulation in response to certain market developments;
- Revising the definition of ''short sale'';
- Extending the short sale rule to non-exchange listed securities; and
- Eliminating Rule 10a–1.

The comments we receive will assist us in determining whether to propose changes to the short sale rule and in tailoring the scope of any such changes.

A. Background

A short sale[3] is the sale of a security that the seller does not own or that the seller owns but does not deliver. In order to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by returning the security to the lender, typically by purchasing equivalent securities on the open market. In general, short selling is utilized to profit from an expected downward price movement, or to hedge the risk of a long

[1] 17 CFR 240.10a–1.

[2] 15 U.S.C. 78a *et seq.*

[3] Rule 3b–3 under the Exchange Act, 17 CFR 240.3b–3, defines a short sale as ''any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.'' Pursuant to Rule 3b–3, a seller of an equity security subject to Rule 10a–1 must aggregate all positions in that security in order to determine whether the seller has a ''net long position.'' Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119. *See also Letter regarding Rule 10a–1—Aggregation Units* (November 23, 1998) (permitting broker-dealers to net positions for ''aggregation units'' (rather than firm-wide) for the purpose of complying with Rule 10a–1).

position in the same security or in a related security.

Short selling provides the market with two important benefits: market liquidity and pricing efficiency. Substantial market liquidity is provided through short selling by market professionals, such as market makers, block positioners, and specialists, who facilitate the operation of the markets by offsetting temporary imbalances in the supply and demand for securities. To the extent that short sales are effected in the market by securities professionals, such short sale activities, in effect, add to the trading supply of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary contraction of supply.

Short selling also can contribute to the pricing efficiency of the equities markets. Efficient markets require that prices fully reflect all buy and sell interest. When a short seller speculates on a downward movement in a security, his transaction is a mirror image of the person who purchases the security based upon speculation that the security's price will rise. Both the purchaser and the short seller hope to profit by buying the security at one price and selling at a higher price. The strategies primarily differ in the sequence of transactions. Market participants who believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency because their transactions inform the market of their evaluation of future stock price performance. This evaluation is reflected in the resulting market price of the security. Arbitrageurs also contribute to pricing efficiency by utilizing short sales to profit from price disparities between a stock and a derivative security, such as a convertible security or an option on that stock. For example, an arbitrageur may purchase a convertible security and sell the underlying stock short to profit from a current price differential between two economically similar positions.[4]

Although short selling serves useful market purposes, it also may be used as a tool for manipulation.[5] One example is the ''bear raid'' where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest. Many people blamed ''bear raids'' for the 1929 stock market crash and the market's prolonged inability to recover from the crash.[6] Short selling was one of the central issues studied by Congress before enacting the Exchange Act, but Congress made no determinations about its permissibility.[7] Instead, Congress gave the Commission broad authority to regulate short sales in order to stop short selling abuses.[8]

B. Current Regulation of Short Selling

1. Rule 10a–1

Section 10(a) of the Exchange Act gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as necessary to protect investors.[9] After conducting an inquiry into the effects of concentrated short selling during the market break of 1937, the Commission adopted Rule 10a–1 under that grant of authority.[10] The core provisions of the Rule are largely the same today as when they were adopted.

Paragraph (a) of Rule 10a–1 generally covers short sales in any security registered on a national securities exchange (listed securities) if trades of the security are reported pursuant to an ''effective transaction reporting plan'' and if information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information.[11] Paragraph (b) applies to short sales on a national exchange in securities that are not covered by paragraph (a). Short sales of securities not registered on an exchange and transactions in securities covered by paragraph (b) that are effected in the OTC market are not subject to the Rule.[12]

Rule 10a–1(a)(1) provides that, subject to certain exceptions, a listed security may be sold short: (i) At a price above the price at which the immediately preceding sale was effected (plus tick), or (ii) at the last sale price if it is higher than the last different price (zero-plus tick). Conversely, short sales are not permitted on minus ticks or zero-minus ticks, subject to narrow exceptions. The operation of these provisions is commonly described as the ''tick test.'' The reference price for the tick test is either the last transaction price reported pursuant to an effective transaction reporting plan [13] or on a particular exchange.[14] Both the New York Stock Exchange, Inc. (NYSE) and the American Stock Exchange LLC (Amex) have elected to use the prices of trades on their own floors for the tick test.[15]

The Commission adopted the tick test after considering the effects of short selling in downward moving markets.[16] In adopting this approach, the Commission sought to achieve three objectives:

(i) Allowing relatively unrestricted short selling in an advancing market;

(ii) Preventing short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down; and

(iii) Preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.[17]

These objectives continue to be the foundation for Rule 10a–1. They represent the Commission's goal to prevent short selling that could manipulate or depress the market for a security, irrespective of the intention of the short seller.[18] Because Congress granted specific statutory authority to regulate short sales, the Commission adopted a rule that restricts certain types of short sales. Thus, a person can violate the rule without manipulative or fraudulent intent.

A number of exceptions have been incorporated into Rule 10a–1 for a range of activities that are not deemed to present the concerns that the Rule was designed to address.[19] The Commission

[4] Such arbitrage activity is specifically excepted from compliance with the provisions of the short sale rule in paragraph (e)(7) of Rule 10a–1. 17 CFR 240.10a–1(e)(7).

[5] *See, e.g., S.E.C.* v. *Gardiner,* 48 S.E.C. Docket 811, No. 91 Civ. 2091 (S.D.N.Y. March 27, 1991) (alleged manipulation by sales representative by directing or inducing customers to sell stock short in order to depress its price).

[6] *See* 7 Louis Loss and Joel Seligman, Securities Regulation 3203–04, note 213 (3d ed. 1989).

[7] *See* 2 Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 247 (1963) (Special Study).

[8] *Id.*

[9] 15 U.S.C. 78j(a).

[10] *See* Securities Exchange Act Release No. 1548 (January 24, 1938), 3 FR 213. In this release, the Commission also adopted Rule 3b–3.

[11] Rule 10a–1 uses the term ''effective transaction reporting plan'' as defined in Rule 11Aa3–1 (17 CFR 240.11Aa3–1) under the Exchange Act. *See* 17 CFR 240.10a–1(a)(1)(i).

[12] The National Association of Securities Dealers, Inc. (NASD) has adopted a short sale rule that applies to Nasdaq National Market System (NMS) securities. *See infra* Section I.B.2.

[13] 17 CFR 240.10a–1(a). An ''effective transaction reporting plan'' is a plan approved by the Commission for collecting, processing, and disseminating transaction reports in reported securities. *See* 17 CFR 11Aa3–1(a)(3).

[14] 17 CFR 240.10a–1(b).

[15] NYSE Rule 440B and Amex Rule 7.

[16] The tick test replicated the approach used by the NYSE at the time.

[17] *See* Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 (1976 Release).

[18] *See, e.g., SEC* v. *Tudor Investment Corp.,* 62 S.E.C. Docket 2269, No. 96 CV 02119 (D.D.C. Sept. 12, 1996) (concentrated short sales of stocks of the Dow Jones Industrial Average (DJIA) seen as significant factor in a drop in value of the DJIA).

[19] *See* 17 CFR 240.10a–1(e)(1)–(13).

has also granted relief from the Rule in specific situations that did not appear to present the opportunity for abuse that the Rule was designed to prevent.[20] Recently, the Commission has received a variety of additional requests for relief from the Rule. Some of these requests, if granted, would result in fundamental changes in the operation of the Rule. We think public comment on these proposals would assist us in evaluating them. Therefore, we have reflected the requests in this release.

2. Short Selling Over-the-Counter Securities

Rule 10a–1 only covers short sales of securities listed or traded on an exchange.[21] In 1986, the NASD commissioned a study of short sales in the Nasdaq market.[22] This study concluded that adopting restrictions similar to the tick test for Nasdaq securities would impose a restraint on trading. However, the NASD proposed a short sale rule covering Nasdaq National Market System (NMS) securities,[23] citing a competitive disadvantage between the NASD and the exchanges.[24] In 1994, the Commission approved the NASD's rule.[25] It is currently designated as NASD Rule 3350.[26]

NASD Rule 3350 prohibits short sales by NASD members in NMS securities at or below the current best (inside) bid as shown on the Nasdaq screen when that bid is lower than the previous best (inside) bid (this is referred to as the ''bid test''). It contains certain exemptions, including an exemption for qualified Nasdaq market makers, options market makers, and warrant market makers. Rule 3350 also includes exceptions similar to those provided under Rule 10a–1. The NASD also requires members to report regularly to the NASD their total short positions in all customer and proprietary firm accounts.[27]

In 1996, the NASD produced a study of the economic impact of the Nasdaq short sale rule.[28] This study concluded that the Nasdaq short sale rule is effective in restricting short sale activity at the inside bid during large price declines and has no adverse effects on market quality. It stated that ''the Nasdaq Short Sale Rule meets its intended objective—to slow down the piling-on of short sales when prices fall—with very little adverse impact on normal short sale activity on Nasdaq.'' [29]

C. Previous Reviews of Short Selling

1. The 1963 Special Study

In 1963, the Commission included an examination of short selling in response to the request by Congress for a study of the securities markets.[30] One purpose of the Special Study was to determine ''the relationships between changes in short positions and subsequent price trends.'' [31] The Special Study observed that the ratio of short sales to total volume increases in a declining market. It concluded that the short sale rules did not prevent the harmful effects of short selling that the rules were designed to prevent. The Special Study recommended improvements in short sale data collection.

2. The 1976 Proposing Release

In 1976, the Commission ordered a public investigation and proposed temporary rules related to short selling.[32] The Commission stated that the proceedings were ''intended to be the first step in a thorough and comprehensive reexamination of short sale regulation in the light of changing market and regulatory conditions and to provide a framework for public discussion of the issues.'' [33]

These proposals were intended to enable the Commission to collect data regarding the effects of unrestricted short-selling on the markets. The 1976 Release noted the problems of insufficient data that the Special Study faced in 1963. It added that ''the availability of data with respect to short selling continues to be inadequate to establish meaningful conclusions'' regarding the general effects of short selling or the efficacy of short sale regulation.[34] The Commission believed that it was possible that no conclusive statistical evidence regarding the short or long-term effects of short selling could be gathered while Rule 10a–1 limited short selling activity, and that some type of suspension of the existing short sale rules might be necessary. Accordingly, the Commission proposed alternative temporary rules that would have suspended the tick test in varying degrees.

The Commission proposed three alternative temporary rules. The first alternative would have suspended the operation of the short sale rule for all securities registered, or admitted to unlisted trading privileges, on a national securities exchange. The second alternative would have suspended the operation of the tick test only for equity securities (other than warrants, rights, or options) that are registered, or admitted to unlisted trading privileges, on more than one national securities exchange and for which transactions are reported in the consolidated system. The final alternative would have suspended the operation of the tick test only for the fifty most active equity securities (other than warrants, rights, or options) during the 12 calendar months preceding the effective date of the rule.

The Commission received 12 comment letters in response to the 1976 Proposals.[35] Eight commenters, including the NYSE and Amex, strongly opposed any suspension of the tick test. The common sentiment against the proposed changes was that the short sale rule provides important protection for investors that should not be removed. The NYSE's reasons for opposing any changes in short sale regulation are representative of the comments against adopting any of the proposals. The NYSE believed the most damaging consequences of the changes would be: (1) Wider day-to-day price fluctuations; (2) disadvantages for public customers who could not

[20] *See, e.g., Letter regarding Instinet Corporation Crossing Network,* (1992) Fed. Sec. L. Rep. (CCH) ¶ 76,290 (July 1, 1992); *Letter regarding Portfolio System for Institutional Trading,* (1991–1992) Fed. Sec. L. Rep. (CCH) ¶ 76,097 (December 31, 1991); *Letter regarding Off-Hours Trading by the Amex,* (1991) Fed. Sec. L. Rep. (CCH) ¶ 79,802 (August 5, 1991); *Letter regarding Operation of Off-Hours Trading by the NYSE,* (1991) Fed. Sec. L. Rep. (CCH) ¶ 79,736 (June 13, 1991); *Letter regarding Merrill Lynch, Pierce, Fenner & Smith, Inc.* (December 17, 1986), published with modifications in Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 (Merrill Lynch Letter).

[21] However, the Rule applies to transactions in exchange listed securities whether effected on an exchange or in the OTC markets.

[22] *See* Irving Pollack, Short-Sale Regulation of NASDAQ Securities (1986) (Pollack Study).

[23] NMS securities are securities of issuers that meet a series of standards similar to those required for listing on an exchange. These securities are distinguished from securities traded on the Nasdaq SmallCap market.

[24] *See* Securities Exchange Act Release No. 34277 (July 6, 1994), 59 FR 34885.

[25] *Id.* In the approval order, the Commission recognized that exchange markets were able to attract customers with claims that their markets protect against potential short selling abuses. However, several commenters cited the Pollack Study, *supra* note 21, to support their opposition to the NASD short sale rule. Originally approved for only 18 months, the NASD and the Commission have extended Rule 3350 numerous times. Most recently, the Commission approved an extension of the rule until December 31, 1999. Securities Exchange Act Release No. 41568 (June 28, 1999), 64 FR 36416.

[26] *NASD Manual,* Conduct Rules, Rule 3350.

[27] *NASD Manual,* Conduct Rules, Rule 3360.

[28] The Economic Impact of the Nasdaq Short Sale Rule, Prepared by D. Timothy McCormick and Lorraine Reilly (1996) (Nasdaq Economic Study).

[29] *Id.* at 30.

[30] Special Study, *supra* note 7, at 246–294.

[31] *Id.* at 248.

[32] *See* 1976 Release, *supra* note 17.

[33] *Id.* at 56530.

[34] *Id.* at 56534.

[35] *See* Comment letters in Public File No. S7–665, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

withdraw limit orders to purchase before market professionals sold short; (3) accelerated price declines and increased volatility; (4) distortions in the markets for secondary and tertiary stocks; and (5) impaired market liquidity because block positioners would be discouraged from taking positions. Two commenters thought that the Commission needed more information before eliminating the tick test. AT&T, the only issuer to comment, opposed the revision or elimination of Rule 10a–1 because of the potential increase in the volatility of its stock. One commenter thought that all short sales should be unregulated.[36]

In 1980, the Commission withdrew the proposals, principally due to the public comments opposing the elimination of the tick test.[37]

3. 1991 Congressional Report on Short Selling

In 1991, the House Committee on Government Operations released a report on short selling.[38] The House Report stated that the ''effects of short selling on the securities markets are not widely understood,'' and that ''(m)any people have questioned the effectiveness of the present uptick rule and, by implication at least, question whether any purpose would be served by implementing a similar rule for NASDAQ trading.'' [39]

The House Report made numerous findings and recommendations, including that: (1) Short selling plays an important and constructive functional role in the equity market; (2) The uptick rule acts as a price stabilizing force and should be retained; (3) Short sale regulation should be extended to the Nasdaq system; (4) Many complaints about short selling are not soundly based and may be the result of a poor understanding of short selling; (5) ''A pattern of abusive and destructive rumor mongering, targeted specifically at companies in the equity securities of which some short-selling investors have established major short positions, appear(ed) to be occurring;'' (6) A large part of the problem with equity securities targeted by short sellers is the psychological misperception that short sellers possess much greater manipulative power than they really do; (7) A method for collecting daily short-selling activity and weekly short interest data from broker-dealers should be developed and this information should be available electronically to the market in aggregate form; and (8) Congress should enact a reporting requirement for large individual short positions.[40]

Since the House Report, a number of changes have occurred that impact its findings. The NASD adopted a short sale rule covering NMS securities. Both the NYSE and the NASD adopted rules requiring members to report data on their short sale activities. In 1991, the Commission published a concept release requesting comment on reporting material short positions.[41] The Commission has not taken any further action on this matter.

D. Recent Developments

Despite the many studies and recommendations, the basic provisions of Rule 10a–1 have remained unchanged for 60 years. Developments in the markets, however, may have diminished the need for the Rule in its current form. Among other things, the national securities exchanges today have high levels of transparency and regulatory surveillance. Transparency helps market participants observe and evaluate market price movements which limits the ability of short sales to unevenly affect prices. The self-regulatory organizations (SROs) also have sophisticated surveillance technologies that allow them to monitor market activity on a real-time basis. This surveillance reduces the risk of undetected manipulation and permits regulators to monitor the types of activities that Rule 10a–1 is designed to prevent. As the markets change, commentators continually question the relationship between the objectives of Rule 10a–1 and its operation.[42]

Short selling is instrumental to a growing number of sophisticated investment models and instruments. For example, short sales are used to hedge option positions and to engage in a variety of arbitrage strategies.[43] Short selling is also integral to other trading and investment strategies that are not tied to individual securities, but involve baskets of securities. The restrictions in the Rule may inject unnecessary inefficiencies into such trading strategies. To accommodate the developments, we have granted a number of requests for relief from Rule 10a–1.[44] The growing array of requests for relief indicate that present short sale regulation may have become unduly burdensome and possibly ill-suited for the present and future markets.

II. Concepts Regarding Short Sale Regulation

In this section of the release, we present for public comment eight concepts regarding short sale regulation: (1) Suspending the short sale rule when the security or market is above a threshold price; (2) Providing an exception for actively traded securities; (3) Focusing short sale restrictions on certain market events and trading strategies; (4) Excepting hedging transactions from short sale regulation; (5) Revising the short sale rule in response to certain market developments; (6) Revising the definition of ''short sale''; (7) Extending the short sale rule to non-exchange listed securities; and (8) Eliminating Rule 10a–1.

We seek comment on these concepts to assist our review of Rule 10a–1 and short selling in the current market. We encourage commenters addressing the concepts in this release to present data to support their positions.

A. Suspending the Short Sale Rule When the Security or Market is Above a Threshold Price

One objective of short sale regulation is to permit relatively unrestricted short selling in an advancing market. The tick test in Rule 10a–1, however, applies in all market conditions. Thus, even in a generally advancing market, a short sale would be inhibited when the price of the transaction does not permit the seller to meet the tick test.[45] This restriction may allow the prices of securities to advance beyond the prices that the market would reflect if short selling were unrestricted. Some argue that the restrictions contribute to market volatility because prices move up

[36] *Comment letter from Lynch, Jones & Ryan* (March 23, 1977).

[37] Securities Exchange Act Release No. 17347 (November 28, 1980), 45 FR 80834.

[38] Short-Selling Activity in the Stock Market: Market Effects and the Need for Regulation (Part 1) (House Report), H.R. Rep. No. 102–414 (1991), *reprinted* in CCH Federal Securities Law Reports Number 1483 Part II (1992).

[39] *Id.* at 1. As discussed above, the NASD adopted its short sale rule in 1994.

[40] *Id.*

[41] Securities Exchange Act Release No. 29278 (June 7, 1991), 56 FR 27280, 27281 (1991 Release).

[42] *See, e.g.,* Jonathan R. Macey, Mark Mitchell, and Jeffry Netter, *Restrictions on Short Sales: an Analysis of the Uptick Rule and its Role in View of the October 1987 Stock Market Crash,* 74 Cornell L. Rev. 799 (1989); and J. Randall Woolridge and Amy Dickinson, *Short Selling and Common Stock Prices,* Financial Analysts Journal, January-February 1994.

[43] Arbitrage can involve inherent relationships between securities, such as convertible arbitrage, or statistical relationships, as used in ''pairs trading.''

[44] *See, e.g., Letter regarding Optimark* (October 31, 1997), included in Public File No. S7–24–99, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[45] *See* Alexander, Gordon J., and Mark Peterson, *Short Selling on the New York Stock Exchange and the Effects of the Uptick Rule,* Journal of Financial Intermediation, Vol. VIII, Issue 1 (June 1999) (this article concludes that the short sale rule fails to meet its objective to allow relatively unrestricted short selling in advancing markets).

without the checks that unrestricted short selling would provide.

In response to recent criticism of the Rule, we seek comment on suspending the tick test when a security's price is above a threshold.[46] This alternative approach assumes that the current Rule is unnecessarily restrictive in upward moving markets. By suspending the tick test when the security or the market is above a threshold price, short sellers could sell without regard to price movements. The tick test would apply, however, at any time the price of the security (or a market index) went below the threshold (*i.e.,* the tick test would apply at prices below the threshold). We request comment on this concept to determine if such an alternative is consistent with the Rule's objective to allow relatively unrestricted short selling in an advancing market.

We further request comment on what benchmark would be appropriate for establishing the threshold price discussed in this alternative approach. One possible benchmark is the previous day's closing price of a security.[47] Another possible benchmark could be a percentage decline in the price of the security. For example, the threshold could be 5 percent or 10 percent below the previous closing price of the security. A general market indicator also could be used as a benchmark. For example, the tick test's application could correspond to the operation of SRO rules that impose limitations when markets experience significant declines.[48] Once the market indicators crossed the threshold, the tick test would apply.

Q1. Does Rule 10a–1 permit relatively unrestricted short selling in an advancing market? If not, please provide specific examples to demonstrate that this objective is not currently met.

Q2. Does more short selling occur in an advancing market or a declining one?

Q3. Should the threshold price for suspending the tick test be the previous closing price of the security?

Q4. Should the threshold price correlate to a point change or a percentage change in the price of a security?

Q5. Would volatile markets create complexity for this structure as short sellers must continually take into account the market price of the security to determine whether short selling is restricted?

Q6. If the security's price moves below the threshold price, should the tick test remain in effect during the trading session even if the price subsequently moves above the threshold price?

Q7. Is there another price or manner of determining a more effective threshold for this purpose?

Q8. Could a short seller initiate downward momentum on the price of a security through short selling down to the threshold price? If so, could this momentum cause the depressing effect on the market for a security that Rule 10a–1 is intended to prevent?

Q9. Is it appropriate or preferable to base short sale regulation on general market movements, rather than the price of individual securities?

B. Providing An Exception for Actively Traded Securities

Some of the Commission's anti-manipulation rules assume that highly liquid securities are less vulnerable to manipulation and abuse than securities that are less liquid. For example, Rule 101 of Regulation M has an exception for securities with a public float value of at least $150 million and an average daily trading volume of at least $1 million.[49] A similar approach may be effective for regulating short sales.

Q10. Are highly liquid securities less vulnerable to the abuses that Rule 10a–1 is designed to prevent?

Q11. Are the Regulation M requirements for liquidity under the exception in Rule 101(c)(1) adequate standards for this purpose? If not, what values would work better for this purpose?

Q12. Rule 10a–1 is not focused solely on preventing manipulative activity. Is it appropriate to use these anti-manipulation approaches in the short sale context?

C. Focusing Short Sale Restrictions on Certain Market Events and Trading Strategies

Certain market events and trading strategies may make a security more vulnerable to abusive short sale activity. The Commission previously has recognized that certain events increase the potential for short selling abuse.[50] Specific market events related to an issuer or a security (such as a pending merger or acquisition) may cause this increased vulnerability. Also, there may be certain times in a trading day when there is a heightened concern about manipulation.[51] We, therefore, request comment on whether short selling should continue to be regulated or even prohibited during specific market conditions.

Q13. Are there corporate events (*e.g.,* mergers, acquisitions, or tender offers) that make a security vulnerable to abusive short selling?

Q14. Are there other cyclical, or regular market events (*e.g.,* option expiration dates or the opening and closing of a trading session) that make a security vulnerable to abusive short selling?

Q15. Are there other trading abuses or manipulations involving short sales under unusual market conditions that Rule 10a–1 currently does not address? If so, could the Rule be amended to prevent these abuses?

Q16. Should short selling be prohibited for a period preceding a significant corporate or market event?

Q17. If the Rule was eliminated, should restrictions continue to apply preceding a significant corporate or market event?

D. Excepting Hedging Transactions From Short Sale Regulation

Today, short selling is integral to many complex trading strategies involving a variety of sophisticated financial instruments. Short sales are often used in these strategies to hedge a position in another security or a related financial instrument. Short positions and short sales related to such hedges are treated the same under Rule 10a–1 as any other short activity. Complying with Rule 10a–1 potentially increases transaction costs on persons using short hedging because of delays caused by waiting for upticks. The risks of a particular strategy, therefore, also may increase as a result of the Rule. We seek comment on whether hedged short positions should be excluded from calculating a person's net position. We also seek comment on whether we should propose adding an exception to Rule 10a–1 that would cover short sales conducted exclusively for the purpose of establishing a *bona fide* hedge.[52]

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[46] This approach to short sale regulation has been suggested by others. *See Letter from David A. Rocker to Chairman Arthur Levitt* (March 5, 1998), included in Public File No. S7–24–99, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

[47] Transaction prices in securities covered by Rule 10a–1 must be reported in accordance with Rule 11Aa3–1. 17 CFR 240.10a–1(a)(1)(i).

[48] *See, e.g.,* NYSE Rule 80A (which, among other things, imposes certain trading restrictions when the Dow Jones Industrial Average (DJIA) declines or advances by at least the ''two-percent value'' as calculated in the rule from its previous closing level).

[49] *See* 17 CFR 242.101(c)(1).

[50] *See* Rule 105 of Regulation M (prohibiting a person from purchasing securities in a distribution if he or she has sold that security short within five days prior to the pricing of the distribution). 17 CFR 242.105.

[51] *Cf.* Securities Exchange Act Release No. 17222 (October 17, 1980), 45 FR 70890 (discussing certain time restrictions on issuer repurchases at the opening and closing of trading sessions).

[52] For the purposes of Rule 10a–1, the Commission has described a *bona fide* hedge as

Q18. Is the definition of ''*bona fide* hedge'' currently used by the Commission appropriate and adequate?

We have received a number of inquiries seeking relief from Rule 10a–1 for short sales that are part of a *bona fide* hedge. Proponents argue that it is unlikely that short sales used to create *bona fide* hedges present a threat of manipulation because gains from the short position would be offset by losses in an equivalent security, *i.e.*, they are ''economically neutral.'' [53] Rule 10a–1 currently may inhibit such short sales even though they present little risk of the abuses that it was designed to guard against. We have provided exceptions from and interpretations of Rule 10a–1 for economically neutral short sales that do not present an incentive for abuse.

Rule 10a–1 presently provides exceptions for:

(i) *Bona fide* arbitrage [54] undertaken to profit from a current difference between a convertible security and the underlying common stock; [55] and

(ii) *bona fide* arbitrage undertaken to profit from a current difference between the price of a security in the United States and its price abroad.[56]

Both of these exceptions allow short sales without compliance with the tick test, where the sales are to take advantage of temporary price differentials between related securities or different markets.

Rule 10a–1 also has a limited exception for block positioning activities by broker-dealers.[57] This exception permits a broker-dealer selling securities that it acquired as a block positioner to disregard, in determining whether it is net long or net short, proprietary short positions to the extent those short positions are the subject of one or more offsetting positions created in the course of *bona fide* arbitrage, risk arbitrage,[58] or *bona fide* hedge activities. The Commission relied upon the premise that the short positions excluded from the calculation are not subject to the same potential for abuse as short positions that are not linked to an offsetting position.

We recently granted relief for certain specialist activities that expands on the aggregation relief discussed above.[59] The exemptions provide greater flexibility where short positions are subject to *bona fide* hedges. As with the block positioner exception and the Merrill Lynch Letter,[60] the exemptions exclude hedged short positions from the calculation of a net position. In addition, the short sales were limited to the specialists' performance of obligatory market functions.

Using a rationale similar to that underlying the limited exception for block positioning activities, our staff took a limited no-action position to facilitate unwinding certain index arbitrage positions with a long stock component. This relief from the tick test applies to broker-dealers unwinding long index arbitrage positions. As with block positioners, this no-action position was limited to circumstances where the sale of securities was deemed a short sale solely as a result of the netting of the index arbitrage long position with one or more short positions created in the course of arbitrage or hedging activities. These securities positions were considered economically neutral, and the unwinding of the index arbitrage position was not thought to involve the types of abuses that Rule 10a–1 was designed to prevent. In these contexts, the staff assumed that economically neutral transactions do not present the incentive to engage in short sales in a manner that would cause or accelerate a decline in the market, because any gain from the short stock would be offset by a loss in the security or securities making up the *bona fide* hedge or arbitrage position.[61]

Q19. Should the Commission exclude hedged short positions for the purposes of determining what a person's net position is under Rule 3b–3?

Q20. Should long stock positions that are fully hedged be excluded from the calculation of a person's net position in that stock?

In addition, we have received requests for relief from Rule 10a–1 to permit short sales that are part of trading strategies conducted to establish *bona fide* hedges. Many of the strategies use statistical formulas or relationships between or among securities to determine the offsetting transaction for the hedge. For example, the purchaser of a convertible security may short the underlying security to hedge against a potential decline in the price of the underlying security. The short sales used in these strategies are distinguishable from short sales that reflect an opinion about the current or future market price of a security.

A broad array of financial instruments can be hedged using short sales of securities. These instruments may not be related to the security sold short, but they nonetheless are economically equivalent. Because of the potential variety of instruments that may be hedged with short sales, we believe that an exception would have to be crafted broadly enough to afford flexibility. For example, the Rule could except short sales that are conducted to offset ''qualified financial contracts'' (QFC), using the definition in the Federal Deposit Insurance Corporation Act that includes ''any securities contract, forward contract, repurchase agreement, swap agreement, and any similar agreement. * * *'' [62]

Q21. Should a broad exception covering short sales offset by equivalent securities be proposed? If so, what securities should be considered equivalent?

Q22. Is ''economic neutrality'' the proper basis for such an exception? If not, what types of relationships (using a short hedge) that appear to be economically neutral present a potential for manipulation that Rule 10a–1 is designed to prevent?

The relationship between a short position and the instrument hedged by the short position will vary according to custom and practice. Firms that are more tolerant of risk may not fully hedge a position. Instead, they may use a ratio hedge that reflects their tolerance of risk. Such hedging techniques may be difficult for regulatory agencies to evaluate and determine whether a particular hedge should be viewed as a *bona fide* hedge.[63]

Q23. Should an exception for hedging transactions be limited to transactions or positions that involve a complete

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largely a matter of custom and practice, but it must involve long and short positions in related securities where one security is exercisable, convertible, or otherwise related by its terms to the other security, and substantially offsets the risk of that security. To be considered *bona fide*, the hedge must offset most or all of the risk of the security being hedged. *See, e.g.*, Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415, 24420 (1992 Release) (citing Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084). We request comment on whether this definition is appropriate or adequate.

[53] *See* Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120 note 14.

[54] *Bona fide* arbitrage is ''an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to 'lock in' a gross profit or spread resulting from a current differential in pricing.'' *See*, 1992 Release, *supra* note 51, at 6089.

[55] 17 CFR 240.10a–1(e)(7).

[56] 17 CFR 240.10a–1(e)(8).

[57] 17 CFR 240.10a–1(e)(13).

[58] Risk arbitrage is a transaction effected with a view to profit from the consummation of a merger, acquisition, tender offer or other similar transaction involving a recapitalization.

[59] *See, e.g., Letter regarding Select Sector SPDRs II* (February 12, 1999); *Letter regarding Select Sector SPDRs* (December 28, 1998).

[60] *See* Merrill Lynch Letter, *supra* note 20.

[61] Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120. *See also* Securities Exchange Act Release No. 20715 (March 13, 1984), 49 FR 9414, 9415; 1992 Release at 24419.

[62] 12 U.S.C. 1821(e)(8)(D)(i).

[63] *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084, at 6090.

hedge? If so, how should a complete hedge be defined and measured?

Q24. What type of surveillance should the Commission consider for monitoring short sales conducted as part of economically neutral transactions?

E. Revising the Short Sale Rule in Response to Certain Market Developments

If Rule 10a–1 is retained (in whole or in part), certain basic adjustments may be required to keep pace with changes to the operation of the national securities exchanges. We request comments on two potential changes: Expansion of trading hours into after-hours trading sessions and conversion to price quotations using a decimal format. Please comment on any other changes to the operation of the national securities exchanges or alternative trading systems (ATSs) that you believe may affect the regulation of short selling.

1. After-hours Trading Sessions

Securities trading is rapidly expanding beyond the regular trading hours of 9:30 a.m. to 4 p.m. This evolution is manifested by the proliferation of trading in ATSs and consideration of extended trading sessions by both the NYSE and Nasdaq. As in regular hours trading, short sellers could add liquidity and contribute to pricing efficiency in after-hours trading.

The tick test of Rule 10a–1 currently operates relative to the last reported price on the Consolidated Tape. If the Consolidated Tape does not operate after the close of regular trading hours, short sales can only be executed at a price above the closing price on the Consolidated Tape for the security (or, at the closing price if that price was an uptick). This result could greatly limit the ability to execute short sales in after hours trading.

We note that Rule 10a–1 permits exchanges to use the price of the last transaction on the exchange, rather than the last price reported to the Consolidated Tape, as the last reported price. Thus, an exchange operating an after-hours session could rely on this provision. ATSs cannot rely on this provision. Thus, short sales through ATSs must use the last price reported to the Consolidated Tape.

Q25. If the Consolidated Tape does not operate during after hours trading, should we consider adopting an exception to permit each ATS to use the last transaction in its system as the reference price?

Q26. What impact would multiple permissible prices at which short sales could be executed have on the effectiveness of short sale regulation?

Q27. If a number of ATSs all operated using their internal prices for Rule 10a–1 compliance, each could produce a different ''closing'' price at the close of trading on the ATS. How would multiple after-hours ''last sale'' prices affect the first trade in the morning trading session when the Consolidated Tape recommences operation?

2. Decimalization

We also note that the securities industry is targeting June 30, 2000, as the date when price quotations will be expressed in terms of decimals rather than fractions. Decimal pricing may result in exchanges setting the Minimum Price Variation (MPV) (*i.e.*, the smallest amount by which the price of a security can change), which today is 1/16 ($.0625) for most equity securities, at one cent or potentially even smaller. A further result of the use of smaller MPVs is that the short sale rule may be triggered by a change in price that, on a percentage basis, could reflect an extremely small decrease in the price of the security. For example, the average price per share traded on the NYSE for June 1999 was approximately 45 7/8. In an environment where the MPV is 1/16, a decrease in the share price by 1/16 (.136%) would trigger the short sale rule. In an environment where the MPV is one cent, the short sale rule would be triggered by a decrease of the share price by 1/100 (.02%).

At least one study has analyzed the effects of smaller spreads on the operation of Rule 10a–1.[64] The study concludes that smaller increments, such as one cent, would improve execution quality for certain short sales and hurt others.

Q28. How did the recent decrease in the MPV from 1/8 to 1/16 affect short selling?

Q29. How will the potential use of a smaller MPV affect the operation of Rule 10a–1?

Q30. Is a price change as small as one penny per share the type of market impact that the short sale rule is designed to prevent?

Q31. Would the use of a smaller MPV support modifying or eliminating Rule 10a–1?

Q32. Should Rule 10a–1 be altered to remain effective with respect to smaller MPV?

F. Revising the Definition of ''Short Sale'' Under Rule 3b–3

The definition of ''short sale'' set forth in Rule 3b–3 is integrally related to regulating short sales under Rule 10a–1. As with Rule 10a–1, many developments in the securities markets have challenged the current definition.

1. Aggregation

Short sellers are required to net all of their positions to determine whether they are ''short'' under the definition in Rule 3b–3. Continual netting is cumbersome and impractical for large, multi-service firms. As a result, the staff of the Commission has granted relief to these firms to ease the burdens of complying with Rule 10a–1, while preserving the protections that the rule provides.[65]

Q33. Should we consider changing the definition of ''short sale'' to reduce the need to aggregate positions within a single entity? Please describe other situations where an alternative to firm-wide aggregation is justified.

2. Strategies for Creating a Temporary ''Long'' Position

Certain trading strategies have developed that may be used to avoid the restrictions of the short sale rule. Traders employing such strategies enter arrangements with a counterparty to create a position in an equity security that technically is long, but gives the traders no real economic stake in the equity security. Typically, these strategies rely on the provision of Rule 3b–3 that provides that a person has a long position in a security if he has ''entered into an unconditional contract, binding on both parties thereto, to purchase [the stock] but has not yet received it.'' [66] Often, these strategies involve the creation of a married put prior to, or simultaneous with, a sale of the stock.[67] Soon after creating this arrangement (*i.e.*, later in the day), it is unwound when the market participant purchases shares to return to the counterparty.

A potential for abuse exists where the trader aggressively sells the ''long'' stock position, destabilizing the price of the stock, and soon after repurchases the stock in the market to return to the counterparty. This type of strategy may present a heightened potential for manipulation. While there are legitimate reasons to engage in married puts (or

[64] See Alexander, Gordon J. and Mark A. Peterson, *Quote Jumping, Minimum Tick Variation, and the Execution of Short Sell Orders,* 1999 working paper, included in Public File No. S7–24–99, available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

[65] *See supra* note 2.

[66] 17 CFR 240.3b–3(2). *See also* 1992 Release, *supra* note 51.

[67] Married puts can be used to hedge the price paid for a stock through the simultaneous purchase of a stock and deep-in-the-money puts for the stock.

other similar arrangements), we are concerned that they may be used for improper purposes.

Q34. Please describe examples of any manipulative strategies that exploit the current definition of ''short sale,'' and whether regulatory measures should be adopted to combat such strategies.

G. Extending the Short Sale Rule to Non-Exchange Listed Securities

Current short sale regulations cover securities that are either listed on an exchange or traded in the Nasdaq NMS. As a result, they cover securities that are generally characterized by high trading liquidity. In addition, these markets have a relatively high degree of transparency.

Securities traded in the OTC markets (*e.g.*, Nasdaq Small Cap, the NASD's OTCBB, the Pink Sheets) are not subject to short sale restrictions. The staff frequently receives complaints alleging short sale abuses involving securities in the OTC markets. As a corollary to other concepts presented in this release, we seek comment on regulating short sales in this market sector. We recognize that section 10(a) does not grant specific authority to the Commission to regulate short sales of securities not listed on a national exchange. Thus, regulations that extend short sale regulation to new market sectors would have to be adopted under other available statutory authority.

Q35. Should we consider extending short sale regulation to cover non-exchange listed securities?

Q36. If so, how should the new regulation restrict short sales? Does the current NASD short sale rule provide an applicable model for this purpose?

H. Eliminating Rule 10a–1

As noted above, the need for short sale regulation has often been debated. We believe that the developments in the securities markets noted in this release warrant a general review of Rule 10a–1. Therefore, we are also seeking comment on whether we should consider eliminating Rule 10a–1 as a prophylactic measure and rely on the antifraud and anti-manipulation provisions of the securities laws to address abusive short selling.

One school of thought believes that unrestricted short selling can involve abusive activity that influences market prices for securities. This view was strongly expressed to Congress during its investigations of the securities markets prior to enacting the Exchange Act, which gave the Commission the authority to regulate short sales.[68] Proponents of this view believe that successive short selling by speculators may accelerate the impact of their bearish outlook for a security.[69] In 1963, the Special Study concluded that the aggravating influence of short sales occurred even with regulatory restrictions (which are still in place today).[70] However, data about the actual relationship between short selling and price movements in the securities markets is scarce.[71]

In contrast, a number of commentators have argued that short sale regulation prevents the market from reflecting the true or ''efficient'' price of a security.[72] These commentators specifically criticize Rule 10a–1 for imposing costs on market participants as they wait for an uptick.[73] We have considered these observations and determined that the concept of eliminating the tick test deserves analysis in light of recent market developments. If we eliminate the Rule, short selling would only be subject to recordkeeping, reporting, and the general antifraud and anti-manipulation rules.[74]

Q37. Are the objectives of Rule 10a–1 legitimate concerns in today's markets?

Q38. Are the provisions of Rule 10a–1 necessary in the securities markets? If so, please give specific examples that demonstrate this need.

Q39. Does Rule 10a–1 continue to serve a valid purpose in a declining market by preventing short sellers from accelerating declines in securities prices, or ''depressing'' the market?

Q40. Does Rule 10a–1 prevent efficient pricing or slow the incorporation of negative perceptions into an efficient price? Does the need for more efficient pricing, if there is a need, outweigh the protective benefits of Rule 10a–1?

Q41. Is Rule 10a–1 effective in preventing manipulative short selling?

Q42. Would deregulation of short selling lead to an increase of speculation in the market? If so, would this increase disadvantage investors that are not engaged in speculation?

Q43. Does Rule 10a–1 limit price volatility in the securities that it covers?

Q44. Would investors avoid securities, or classes of securities, that they perceive to be vulnerable to abusive short selling? If so, would this result be exacerbated by deregulation of short selling?

Q45. Would antifraud surveillance and enforcement actions be enough to protect investors from abusive short selling?

Q46. If we rescind Rule 10a–1, should we reconsider a recordkeeping and/or disclosure requirement for significant short positions?[75]

Q47. Would dissemination of aggregate open short positions on a daily basis decrease the necessity of Rule 10a–1? What costs would be associated with such a program?

Q48. If we rescind Rule 10a–1, should we consider adopting a rule that requires a seller to identify a source of borrowable shares prior to executing a short sale?

Q49. If we rescind Rule 10a–1, should SROs continue to regulate short selling through their rules?

Q50. If the short sale rule is retained, should we consider ways to regulate short sales of all securities, not just those listed on exchanges (specifically, OTC securities, including those securities quoted in the non-Nasdaq OTC markets)?

Q51. If the short sale rule is retained, should we consider replacing the tick test with a bid test similar to NASD Rule 3350?

Typically, market professionals are able to act quickly in response to news. Eliminating the short sale rule may enable short sellers to act even more rapidly. Open public limit orders may be hit in rapid succession at prices that no longer are attractive to the investors that placed the orders. As a result, these orders may be hit before the investors have the opportunity to cancel them.

Q52. Without the tick test, would market professionals have an unfair advantage over public investor limit orders?

Q53. Would unrestricted short selling increase the risk for certain trading strategies (*e.g.*, block positioning)?

III. Conclusion

The securities markets and short selling activities have changed significantly from the era in which Rule 10a–1 was adopted. We solicit comment on alternative approaches to regulating short sales to determine the appropriate response to these continuing developments.

By the Commission.

[68] *See* Special Study, *supra* note 7, at 247.

[69] *See* Woolridge, *supra* note 42 (concluding that short sellers do not enjoy unfair profits by forcing the price of a security down through short sales).

[70] Special Study, *supra* note 7, at 293–294.

[71] *See, e.g.*, 1976 Release, supra note 17, at 56534.

[72] *See, e.g.*, Macey, *supra* note 42.

[73] *See* Alexander, *supra* note 45.

[74] *E.g.*, 15 U.S.C. 78i(a) and 78j(b); 17 CFR 240.10b–5.

[75] *See* 1991 Release, *supra* note 41.

Dated: October 20, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–27879 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 878, and 880

[Docket No. 98N–0313]

Surgeon's and Patient Examination Gloves; Reclassification; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 27, 2000, the comment period for the proposed rule that appeared in the **Federal Register** of July 30, 1999 (64 FR 41710) . The proposed rule would reclassify all surgeon's and patient examination gloves as class II medical devices. The agency is taking this action in response to two requests for extension of the comment period. This extension of the comment period is intended to allow interested persons additional time to submit comments on the proposed rule.

DATES: Written comments by January 27, 2000.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4777.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

In the **Federal Register** of July 30, 1999, FDA published a proposed rule to reclassify all surgeon's and patient examination gloves as class II medical devices. FDA is soliciting comments and information from interested persons concerning the reclassification of these devices into four categories (powdered surgeon's gloves, powder-free surgeon's gloves, powdered patient examination gloves, and powder-free patient examination gloves), and it proposed special controls consisting of a ''Medical Glove Guidance Manual'' and labeling requirements that address protein and powder content.

FDA received one request from a manufacturer of medical gloves and another request from a voluntary standard setting organization to extend the comment period an additional 90 days. The manufacturer and the voluntary standard setting organization requested additional time to allow the American Society for Testing and Materials (ASTM), a voluntary standard setting organization, to complete its balloting for revisions of its standards to include a recommended maximum powder limit in its standards for latex surgeon's gloves, latex patient examination gloves, polyvinyl medical gloves, and nitrile patient examination gloves. The manufacturer and the voluntary standard setting organization wanted the additional time to allow FDA and others to consider ASTM's recommendations along with FDA's proposal. In response to the letters, FDA is extending the comment period for 90 additional days. Elsewhere in this issue of the **Federal Register**, FDA is announcing an extension of the comment period for the draft guidance entitled ''Medical Glove Guidance Manual.''

II. Comments

Interested persons may, on or before January 27, 2000, submit to the Dockets Management Branch (address above) written comments regarding the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 21, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28109 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Parts 40 and 42

[Public Notice 3122]

Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, as Amended—Change in Procedures for Payment of Immigrant Visa Fees

AGENCY: Department of State.

ACTION: Proposed rule, with request for comments.

SUMMARY: This rule changes the regulation relating to immigrant visa fees to require the applicant to pay the application processing fee prior to the time of application. Related changes are made to ensure that this fee change is not misunderstood as changing the long-held Department of State principle that an alien has ''applied for a visa'' only when, in the case of nonimmigrants, the application (with processing fee or evidence of the prior payment of the processing fee) has been accepted for adjudication or, in the case of immigrants, the applicant has presented all of the required forms and the processing fee (or evidence of the prior payment of the processing fee) and has attested to the application under oath or affirmation before the consular officer.

DATES: Comments must be received on or before December 27, 1999.

ADDRESSES: For written comments, please contact H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The basic purpose of this regulation is to modify the point in time at which an immigrant visa applicant must pay the application processing fee. The regulation defining the time at which applications have been ''made'' is being added to prevent any confusion from arising as a result of the revised terminology in the fee regulation.

Why is it necessary to alter the time when the applicant must pay the immigrant visa processing fee? An application fee is not a penalty for applying for a visa; it is intended to cover the costs of the processing required in connection with such an application. The current regulation calls for payment of the application fee prior to the formal application interview, normally when the applicant is at the embassy or consulate on the day of the visa interview. However, services to the applicant, and costs incurred by the government, begin long before that time. Records must be established by the Department of State as soon as an approved petition is received from the Immigration and Naturalization Service and a number of processing steps then ensue. As the purpose of a processing fee is to cover these costs, it is appropriate that the fee be collected at

an earlier point in the procedures. However, due to heavy immigrant visa demand, many immigrant visa registrants may wait years after registration before reaching the point of receiving a request from the Department to obtain the documents needed to support their visa application. In recognition of this, the Department believes it would be unfair to collect the processing fee at the time of registration. On the other hand, once an applicant has been informed that a visa number is expected to become available and instructed to obtain such supporting documents, it is quite reasonable to collect the processing fee at that point. Doing so may also permit the Department to develop more efficient fee collection procedures. Provision is made for refund of the fee if, for reasons attributable only to the U.S. Government, the applicant is precluded from proceeding to the remaining steps in making the application after payment of the fee.

''Making'' an application. The point at which the application is made is here made explicit in the regulation.

Why is it necessary to clarify the definition of ''making an application'' in immigrant visa cases? Because immigrant visa cases are quite complex and involve many steps along the way, some people speak of ''having applied for a visa'' when the only thing that has happened to that point is that a relative or prospective employer has filed a petition to accord the alien a particular status under the immigration laws. Sometimes such persons believe that when they have been told to obtain supporting documents, or to complete a biographic form, they have now ''applied.'' This regulation makes it clear that a person has ''applied'' for an immigrant visa when he or she has presented all required forms, documents and processing fees (or evidence of the prior payment of the processing fees) and has been interviewed by a consular officer and has attested to the veracity and validity of the documents submitted. Except as otherwise provided by regulation (§§ 42.62(a) and 42.63(a)(2)), the law (8 U.S.C. 1202(e)) requires the appearance and the taking of an oath before a consular officer. Therefore, it has always been the expressed view of the Department, implicit throughout its regulations, that an alien cannot be considered to have ''applied'' for an immigrant visa until this requirement is fulfilled. This distinction may become important in instances in which aliens must apply for a visa by a particular date. To the extent that some people might mistake payment of the application processing fee for the making of an application, it is useful to reiterate this point at this time.

Why should the definition of ''making an application for a visa'' be clarified in the case of nonimmigrant visas? Normally, a consular officer takes action on a nonimmigrant visa application when the officer receives required forms, documents and fees or evidence of the prior payment of the fees. Thus, the nonimmigrant visa application is not as susceptible to be subject to misunderstanding as in the case of immigrant visas. This rule does, however, clarify the fact that signing the form and giving it to a travel agent for presentation, or mailing it to a consulate, or leaving it in the consular mailbox, is not, in itself, sufficient. It must also be received by a consular officer and be accepted for adjudication.

Regulatory Analysis and Notices

Proposed Rule

This is a proposed rule, with a 60-day provision for public comments.

The Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

E.O. 12988 and E.O. 12866

This rule has been reviewed as required under E.O. 12998 and determined to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency therewith. The rule does not directly affect states or local governments or Federal relationships and does not create unfunded mandates.

5 U.S.C. Chapter 8

As required by 5 U.S.C., chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

Paperwork Reduction Act

This rule does not create any new paperwork requirements.

List of Subjects in 22 CFR Parts 40 and 42

Aliens, Immigrants, Passports and visas.

In view of the foregoing, 22 CFR part 40 and 22 CFR part 42 are amended as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 is revised to read as folows:

Authority: 8 U.S.C. 1104.

2. Section 40.1 is amended by redesignating paragraphs (l), (m), (n), (o), (p), (q), (r), and (s) as paragraphs (m), (n), (o), (p), (q), (r), (s), and (t), respectively, and adding a new paragraph (l) to read as follows:

§ 40.1 Definitions

* * * * *

(l) *Make or file an application for a visa* means: (1) For a nonimmigrant visa applicant, submitting for formal adjudication by a consular officer of a completed Form OF–156, with any required supporting documents and the requisite processing fee or evidence of the prior payment of the processing fee when such documents are received and accepted for adjudication by the consular officer;

(2) for an immigrant visa applicant, personally appearing before a consular officer and verifying by oath or affirmation the statements contained on the Form OF–230 and in all supporting documents, having previously submitted all forms and documents required in advance of the appearance and paid the visa application processing fee.

* * * * *

PART 42—[AMENDED]

3. The authority citation for part 42 continues to read:

Authority: 8 U.S.C. 1104.

4. Section 42.71 is amended by revising paragraph (b) to read as follows:

§ 42.71 Authority to issue visas; visa fees.

* * * * *

(b) *Immigrant visa fees.* The Secretary of State prescribes separate fees for the processing of immigrant visa applications and for the issuance of immigrant visas thereafter to persons whose applications are approved. An individual registered for immigrant visa processing must pay the processing fee upon being notified that a visa is expected to become available in the near future and being requested to obtain the supporting documentation needed to apply formally for a visa, in accordance with instructions received with such notification. The fee must be made before the applicant will receive an appointment to appear and make application before a consular officer. The applicant must pay the issuance fee after the consular officer has completed the visa interview and approved

issuance of the visa, but prior to its issuance. A fee collected for the processing of an immigrant visa application is refundable only if the principal officer of a post or the officer in charge of a consular section determines that the notification of prospective visa availability was sufficiently erroneous to preclude the applicant from benefiting from the processing. A fee collected for the issuance of an immigrant visa is refundable only if either of such officers determines that the visa was issued in error or could not be used as a result of U.S. Government actions over which the alien had no control and for which the alien was not responsible in whole or in part.

Dated: September 10, 1999.

Maura A. Harty,

Acting Assistant Secretary of State for Consular Affairs.

[FR Doc. 99–24439 Filed 10–27–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–252487–96]

RIN 1545–AX25

Inbound Grantor Trusts With Foreign Grantors; 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 inbound grantor trusts with foreign grantors.

DATES: The public hearing originally scheduled for Tuesday, November 2, 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 notice of public hearing that appeared in the **Federal Register** on August 10, 1999, (64 FR 43323), announced that a public hearing was scheduled for November 2, 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 671 of the Internal Revenue Code. The public comment period for these proposed regulations expired on October 12, 1999.

The notice of proposed rulemaking and 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 October 18, 1999, no one has requested to speak. Therefore, the public hearing scheduled for November 2, 1999, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–28038 Filed 10–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–101519–97]

RIN 1545–AV00

Withdrawal of Notice of Federal Tax Lien in Certain Circumstances; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the withdrawal of notice of federal tax liens in certain circumstances.

DATES: The public hearing is being held on November 30, 1999, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by November 16, 1999.

ADDRESSES: The public hearing is being held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:DOM:CORP:R (REG–101519–97), room 5226, Internal Revenue Service , POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–101519–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting them directly to the IRS Internet site at http://www.irs.gov/tax__regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be places on the building access list to attend the hearing LaNita Van Dyke, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–101519–97) that was published in the **Federal Register** on Wednesday, June 30, 1999 (64 FR 35102).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, November 16, 1999.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–28130 Filed 10–27–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–79–1–7328b, FRL–6459–7]

Approval and Promulgation of Implementation Plans; Texas; Repeal of Board Seal Rule and Revisions to Particulate Matter Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action approving revisions

to the Texas Natural Resource Conservation Commission (TNRCC) regulations in the Texas State Implementation Plan (SIP). These revisions remove the Texas Air Control Board (TACB) Seal rule from the Texas SIP and revise and recodify regulations for control of particulate matter in the Texas SIP. Removal of the Board Seal rule eliminates a rule that no longer applies to TNRCC. These revisions to the particulate matter regulations update the SIP-approved regulations and make the SIP citations consistent with the current State citations.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 29, 1999.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION: This document concerns repeal of the TACB Board Seal rule from the Texas SIP and revisions to the particulate matter regulations in the Texas SIP. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

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

Dated: October 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–27137 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD093–3040; FRL–6460–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOCs From Paint, Resin and Adhesive Manufacturing and Adhesive Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland for the purpose of amending its regulation to control volatile organic compounds (VOC) from Paint, Resin & Adhesive Manufacturing and Adhesive Application. The revisions amend the definition of ''honeycomb core installation'' to include additional substrates and clarify the general emission standard for VOCs from adhesive applications. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 29, 1999.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III office address listed above, or via e-mail at Lewis.Janice@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 30, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–27202 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA71–168b; FRL–6452–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; and Yolo-Solano Air Quality Management District

ACTION: Proposed rule.

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the recission and removal of a obsolete rule and the addition of rules to control oxides of nitrogen (NO_X) emissions from natural gas-fired residential water heaters.

The intended effect of this action is the recission and removel of an obsolete rule and to regulate emissions of nitrogen oxides in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final

rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on these proposed rules. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by November 29, 1999.

ADDRESSES: Comments should be addressed to: Andy Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102) 401 ''M'' Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Kern County Air Pollution Control District 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370.

Yolo-Solano Air Quality Management District 1947 Galileo Court, Suite 103 Davis, CA 95616–4882.

FOR FURTHER INFORMATION CONTACT: Sam Agpawa, Air planning Office [Air-2], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1228.

SUPPLEMENTARY INFORMATION: This document concerns (1); Kern County Air Pollution Control District, Rule 424, Natural Gas-Fired Residential Water Heaters and (2)Yolo-Solano Air Quality Management District, Rule 2.37, Natural Gas-Fired Residential Water Heaters. The rules were submitted to EPA on November 18, 1993; and February 24 1995 respectively by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: September 14, 1999.

Keith Takata,

Acting, Regional Administrator, Region IX.

[FR Doc. 99–27200 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217–148; FRL–6465–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) for the San Joaquin Valley Unified Air Pollution Control District (''SJVUAPCD''). This revision concerns SJVUAPCD Rule 4354, which controls oxides of nitrogen (NO_X) emissions from glass melting furnaces.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because the revision, while strengthening the SIP, does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg Ave., Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces. Rule 4354 was submitted by the State of California to EPA on September 29, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. SJVUAPCD is classified as severe [1]; therefore this area is subject to the RACT requirements of

[1] SJVUAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces, adopted by the SJVUAPCD on April 16, 1998. The State of California submitted this amended version of Rule 4354 to EPA on September 29, 1998. The rule was found to be complete on January 26, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [2].

NO_X emissions contribute to the production of ground level ozone and smog. SJVUAPCD Rule 4354 specifies exhaust emission standards for NO_X, carbon monoxide (CO), and VOCs, and was originally adopted as part of SJVUAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents [3]. Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB) has developed a guidance document entitled, ''Suggested Control Measure for the control of Nitrogen Emissions from Glass Melting Furnaces.'' EPA has used CARB's RACT Determination, dated September 5, 1980, in evaluating Rule 4354 for consistency with the CAA's RACT requirements.

There is currently a September 14, 1994 version of San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4354, Glass Melting Furnaces in the SIP. The 1994 rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X), volatile organic compounds (VOCs) and carbon monoxide (CO).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

The version of the rule submitted in 1998 contains the following significant modifications from the 1994 version:

- A new Tier 2 emissions limit reduces NO_X emission levels for flat glass, container glass, and fiberglass furnaces and adds controls for CO and VOCs.
- A Bubbling option, CEMS (or alternate emissions monitoring with daily recordkeeping), and five year record retention requirements.
- Exemptions from emission control requirements on start-up have been increased for all furnaces with innovative controls to allow 180 days from first glass pull, or 30 days after achieving 60% of capacity, whichever is later.
- Exemptions from emission control requirements have also been added for unlimited periods of time from the ''start of a change to initiate'' a start-up, shutdown, or idling.
- New ''Tier 2 controls'' compliance deadline at the first furnace rebuild after January 1, 1999.
- Source testing for each furnace, or furnace battery, shall occur each calender year, not more than every 18 months, but not sooner than every 6 months.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 4354 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. The SJVUAPCD has projected that incorporation of Rule 4354 into the SIP would decrease the NO_X emissions allowed by the SIP.

EPA has evaluated San Joaquin Valley Unified Air Pollution Control District Rule 4354 for consistency with the CAA, EPA regulations, and EPA policy and has found that although SJVUAPCD Rule 4354 will strengthen the SIP, this rule contains deficiencies which must be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA.

- *Section 3.17.3: Start-up definition:* states: ''180 days following initial glass pull, or 30 days after the glass pull rate reaches 60 percent of the furnace's glass production capacity, whichever occurs later, for any furnace that uses a NO_X control technique * * * '' Coupled with section 4.2, this would seem to allow for

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

an unlimited period of time for operations up to 60% glass production while exempt from compliance tests and possibly controls while at production temperatures. EPA policy generally does not allow automatic exemption from excess emissions during such periods. The District needs to demonstrate that RACT limits are to be in place at all possible times. Control systems need to be in operation and limits established as temperatures are increased to levels where NO_X is made and *before* the furnace is at production levels. The time allowed to operate with exemption, at less than 60% of rated capacity, must be limited. 180 days start-up exemption seems excessive. The district should remove this exemption or demonstrate that it complies with CAA Sections 110(l) and 182 regarding rule relaxations and RACT.

- *Section 4.2: Exemptions:* states: (new text in italic) ''The requirements of Section 5.0 shall not apply during periods of start-up, shutdown or idling. *The period of exemption shall apply from the beginning of operational changes required to initiate idling, shutdown, or start-up. The owner shall comply with the requirements of Section 6.7 when performing such operations.''*

Initiation of operational changes allow the ''beginning of startup, idling and cool down'' exemptions, which could last forever. The requirements of section 6.7 do nothing to limit these periods. The duration of these periods must have finite limits. Clarifying statements are required on two issues: (1) that control systems must be in operation during these periods of exemption, and (2) that the exemption periods indicate the period of time allowed *before a compliance test* is required. Burner controls operate from the start, a SCR unit can start at 650 F., and a SNCR can begin operation at 1800 F. There should be stated limits for emission levels considered acceptable during the startup, idling and cool down periods. The first glass draw, when temperatures approach 2900 degrees F., should be allowed only if the system is in compliance with these limits. (See TSD referenced Guidance Document: *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,* U.S. EPA, Office of Air Quality Planning and Standards, September 20, 1999).

- *Section 5.3: Tier 1 NO_X emission limit Compliance Determination:* The first equation should be reformatted to clarify that ''CF'' is in the numerator.
- *Section 7.1: Compliance schedule:* A final date for major NO_X sources to adopt CEMS or alternate continuous monitoring methods should be specified to prevent avoidance of continuous monitoring by running forever without an official ''rebuild.''
- *Section 7.2.3: Full compliance schedule:* A final date for facilities to achieve the full Tier 2 compliance should be specified to prevent avoidance of controls by running forever without an official ''rebuild.''
- *Sections 9.0, 9.4, and 9.7: Aggregated NO_X emissions:* This is an Alternate Emission Control Plan (AECP). Provisions must be consistent with the EPA Emissions Trading Policy Statement (ETPS) published on December 4, 1986 (51 FR 43814), the Economic Incentive Program Rules (EIP) promulgated April 7, 1994 (59 FR 16690), and EPA policies regarding equivalency provisions, AECPs, cross-line averaging, and other bubbles as described in the document entitled, ''Issues Relating to VOC Regulation Cutpoints, deficiencies, and deviations: Clarification to Appendix D of November 24, 1987 **Federal Register**.'' The EIP and EPA policies required AECP provisions to meet, among other things, a 10 percent (%) or greater reduction in emissions beyond the established baseline.

A detailed discussion of these deficiencies can be found in the Technical Support Document for Rule 4354, dated October 1, 1999, which is available from the U.S. EPA, Region IX office. Because of these deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD's submitted Rule 4354 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the San Joaquin Valley Unified Air Pollution Control District and is currently in effect in the San Joaquin Valley Unified Air Pollution Control District. EPA's final limited disapproval action will not prevent the San Joaquin Valley Unified Air Pollution Control District or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 18, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–28216 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–102–1–7395; FRL–6465–2]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed conditional approval.

SUMMARY: The EPA is proposing conditional approval of rules into the Texas State Implementation Plan (SIP). These rules require Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_X) in the Houston/Galveston (H/G), and the Beaumont/Port Arthur (B/PA) ozone nonattainment areas. Texas originally submitted these rules on June 15, 1993. Texas has made nine revisions to the rules since the original Submittal. In this document we propose conditional approval of Texas' SIP submittals concerning control of NO_X emissions dating from June 15, 1993 to May 20, 1998, as meeting the NO_X RACT requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents about this action including the Technical Support Document, are available for public inspection during normal business hours at the above and following location. Persons interested in examining these documents should

make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION:

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Administrative Requirements

Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

I. What Are We Proposing To Approve?

We are proposing conditional approval of revisions to the Texas Rule 30 TAC Chapter 117 for the control of air pollution from nitrogen compounds. These measures will reduce NO_X emissions in H/G and B/PA ozone nonattainment areas. By this approval we are agreeing that the State of Texas will be implementing the RACT on sources listed in Section XIII of this notice. Specifically, we are proposing to conditionally approve revisions submitted on June 15, 1993, August 31, 1993, June 9, 1994, August 3, 1994, September 21, 1994, December 29, 1994, March 6, 1996, August 9, 1996, May 21, 1997, and May 20, 1998. The approval is conditioned on Texas revising Regulation 117.570 to remove the ability to add one standard deviation to the emissions baseline for trading purposes. Furthermore, the Texas Accelerated Vehicle Retirement (AVR) program is not a part of the approved SIP (see 62 FR 66576, December 19, 1997, and 63 FR 41756, August 5, 1998); consequently, if a source plans to rely upon any emission reduction credits generated or claimed through the AVR program, for interim compliance with Chapter 117, the State will have to submit a separate source specific SIP revision to us for approval.

Texas must submit the approvals of the alternative case-specific specifications under sections 117.121, 117.221, 117.321 and 117.426, by the Executive Director or the Commissioners, to the EPA for approval as source-specific SIP revisions. Texas must submit approvals of a petition for phased RACT under Section 117.540, by the Executive Director or the Commissioners, to the EPA for approval as source-specific SIP revision. Otherwise, a source operating under such a State approval is subject to Federal enforcement action for violation of the required specifications and/or compliance deadline.

II. What Are Nitrogen Oxides?

Nitrogen oxides (NO_X) belong to the group of criteria air pollutants. The NO_X are produced from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

III. What Is Reasonably Available Control Technology?

Reasonably Available Control Technology is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. This requirement is established by sections 182(b)(2) and 182(f) of the Act. These sections, taken together, establish the requirements for Texas to submit a NO_X RACT regulation for all major stationary sources of NO_X in ozone nonattainment areas classified as moderate and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

IV. What Are the Clean Air Act's RACT Requirements for NO_X Emissions?

Section 182(b)(2) requires States located in areas classified as moderate ozone nonattainment areas to require implementation of RACT with respect to all major sources of VOCs. Section 182(f) states that, ''The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen.'' This NO_X RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

On November 25, 1992, (57 FR 55620), we published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement). The NO_X Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. You should refer to the NO_X supplement for further information on the NO_X requirements. The EPA's mandatory Economic Incentive Program (EIP) rules for criteria pollutants appear in 40 CFR part 51, subpart U (59 FR 16710). The EPA's discretionary EIP rules concerning emission trading appear in the 1994 EIP guidance document (59 FR 16690). In addition, other EPA guidance memoranda, such as those included in the ''NO_X Policy Document for the Clean Air Act of 1990,'' (EPA–452/R96–005, March 1996), should also be referred to for more information about NO_X requirements.

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) petitioned us under section 182(b) to temporarily exempt the B/PA and H/G ozone nonattainment areas from the NO_X requirements of the Act. The TNRCC asked for the exemption based on air quality modeling that indicated that the control of NO_X would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS). We approved the petition on April 19, 1995.

The temporary exemption was to expire on December 31, 1996 with RACT compliance no later than May 31, 1997. On March 6, 1996, the TNRCC asked us to extend the temporary waiver. The TNRCC asked for an extension of the temporary waiver based on section 182(f) of the Act. Section 182(f) allows for a waiver of certain federally required NO_X control measures, if the State demonstrates that NO_X reductions do not contribute to ozone attainment in moderate or above areas. The State submitted modeling information with a petition predicting that the NO_X reductions would be

counterproductive to ozone attainment in portions of H/G and B/PA areas. The EPA approved the petition and granted an extension until December 31, 1997, to allow time for carrying out further modeling. The NO_X RACT compliance date was as expeditious as practicable, but no later than May 31, 1999. Based on this further modeling, TNRCC allowed the waiver to expire. We provided notice that the waiver had expired in the **Federal Register** on February 12, 1998 (63 FR 7071). The NO_X RACT compliance date was extended to no later than November 15, 1999.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions not covered by either a pre-enactment or post-enactment control techniques guideline (CTG) document. There were no NO_X CTGs issued before enactment and we have not issued a CTG document for any NO_X sources since enactment of the Act. States can use the information contained in the Alternative Control Techniques (ACTs) to develop their RACT rules. The Texas rules covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than November 15, 1999.

V. What Are Definitions of Major Sources for NO_X?

Section 302 of the Act generally defines ''major stationary source'' as a facility or source of air pollution which emits, when uncontrolled, 100 tons per year (tpy) or more of air pollution. This general definition applies unless another specific provision of the Act explicitly defines major source differently. Therefore, for NO_X, a major source is one which emits, when uncontrolled, 100 tpy or more of NO_X in marginal and moderate areas. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X.

According to section 182(d) of the Act, a major source in a severe nonattainment area is a source that emits, when uncontrolled, 25 tpy or more of NO_X.

Houston is a severe ozone nonattainment area, so the major source size for Houston is 25 tpy or more, when uncontrolled. Beaumont is a moderate ozone nonattainment area, so the major source size for Beaumont is 100 tpy or more, when uncontrolled.

VI. What Are Alternative Control Techniques (ACTs)?

Section 183(c) of the Act provides that we will issue technical documents which identify alternative controls for stationary sources of oxides of nitrogen which emit, when uncontrolled, 25 tpy or more of this pollutant. These ACT documents are to be subsequently revised and updated by us. The information in the ACT documents is generated from EPA papers, literature sources and contacts, control equipment vendors, engineering firms, and Federal, State, and local regulatory agencies. States can use information in the ACT to develop their RACT regulations. The following table contains list of ACT documents for various source categories of NO_X with their corresponding EPA publication numbers.

TABLE I.—ACT DOCUMENTS FOR SOURCE CATEGORIES OF NO_X AND THEIR EPA PUBLICATION NUMBERS

Source category	EPA publication number
Nitric/adipic Acid Plants	EPA–450/3–91–026
Gas Turbines	EPA–453/R–93–007
Process Heaters	EPA–453/R–93–034
Internal Combustion Engines	EPA–453/R–93–032
Cement Plants	EPA–453/R–94–004
Non-utility Boilers	EPA–453/R–94–022
Utility Boilers	EPA–453/R–94–023
Glass Manufacturing	EPA–453/R–94–037
Iron and Steel Manufacturing	EPA–453/R–94–065

VII. What is a State Implementation Plan?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. The NAAQS are established under section 109 of the Act to protect public health, and they address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each state has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

VIII. What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State may submit the adopted provisions to us and request that these provisions be included in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek

additional public comment regarding this action. If adverse comments are received, we must address them prior to a final action.

All State regulations and supporting information approved by us under section 110 of the Act are incorporated into the federally approved SIP. Records of these SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which were approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

IX. What Does Federal Approval of a SIP Mean to me?

Enforcement of the State regulation before and after it is incorporated into federally approved SIP is primarily a state function. However, once the regulation is federally approved, we and the public may take enforcement action against violators of these regulations if the State fails to do so.

X. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas. The H/G and B/PA are nonattainment areas for ozone.

XI. What Counties in Texas Will This Rule Affect?

This rule affects the H/G and B/PA ozone nonattainment areas. The B/PA area is classified as moderate ozone nonattainment and includes the following counties: Hardin, Jefferson, and Orange. The H/G is classified as severe ozone nonattainment and includes the following counties: Brazoria, Chambers, Fort Bend, Harris, Galveston, Liberty, Montgomery, and Waller. If you are in one of these counties, you should refer to the rules to determine if and how this rule will affect you.

XII. What Are the Specific Rule Revisions EPA is Proposing To Approve?

The State of Texas submitted the NO_X RACT program Chapter 117, ''Control of Air Pollution From Nitrogen Compounds,'' as a number of revisions to the SIP. This rulemaking will address the following SIP revisions:

A. On June 15, 1993, the Governor submitted a major revision that adopted new NO_X regulations, sections 117.10, 117.101–117.601, and repealed the old regulations, Sections 117.1–117.4. Texas submitted this revision to us to comply with the Act's 1990 amendments requirements concerning control of nitrogen oxides emissions at major stationary sources in ozone nonattainment areas. These rules included emission limitations, control technologies, and a RACT averaging program allowing facility-wide averaging with each unit having an enforceable emission limit. The *Texas Register* published these regulations on May 28, 1993 (18TR3409) and effective June 9, 1993.

B. On August 30, 1993, Texas adopted amendments to sections 117.105 and 117.205, repealed sections 117.540, 117.550, and added new sections 117.540, 117.550, and 117.580. Texas added section 117.540, phased RACT, to allow affected sources to petition TNRCC for a later compliance date. A source may receive the later compliance date, if it shows there were unforseen and unavoidable delays in delivery, construction and installation of control equipment. The new section 117.550 provided an avenue for a general permit approach for collateral criteria pollutant increases. The new section 117.580 provided for a NO_X source cap program. Instead of unit emission rates, a facility could comply with an overall facility mass emissions cap. The cap was based upon the average actual activity level, using the lower of actual or allowable for previously permitted sources; restricted how shutdown units may be incorporated; restricted how units exempt from NO_X RACT can be incorporated; and required that the area's offset ratio be used for exempt units brought into the plant cap. The proposed changes were part of a series of proposed revisions to Chapter 117 being developed in response to requirements by the Act and EPA comments. The *Texas Register* published the amendments to these sections on December 3, 1993 (18TR8956) and effective December 15, 1993.

C. On May 25, 1994, Texas adopted amendments to sections 117.10, 117.103–117.121, 117.203–117.221, 117.311–117.321, 117.411–117.421, 117.510–117.560, added section 117.223, and repealed section 117.580. The new section 117.580 provided for a NO_X source cap program. Section 117.580 (source cap) was moved to Section 117.223. A new subsection 117.540(c) allowed the use of MERCs from scrappage for interim compliance with Chapter 117, if the source followed the procedures of section 117.570 (Trading). The life of these vehicle scrappage MERCs was three years. The *Texas Register* published the adopted revisions on June 10, 1994 (19TR4523) and effective June 23, 1994.

D. On July 27, 1994, Texas adopted the new section 117.570 and repealed the old section 117.570. The new 117.570 established a NO_X RACT trading program to provide a cost-effective alternative method of complying with the NO_X emission specifications of this chapter. Under the new trading program, an owner or operator may reduce the required amount of NO_X emissions by using an approved Emission Reduction Credit (ERC). The ERC may be generated by another company in the same ozone nonattainment area. Shutdown credits can be generated and used only by sources participating in a source cap. The source cap provisions in section 117.223 did not allow for generation of paper credits. The *Texas Register* published these changes on August 9, 1994 (19TR6223) and effective August 23, 1994.

E. On August 31, 1994, Texas adopted amendments to sections 117.451, 117.510, 117.520, 117.530, and 117.601. The purpose of the adopted changes was to extend the final compliance date of the Chapter 117 rule from May 31, 1995, to May 31, 1997. The *Texas Register* published these revisions on September 9, 1994 (19TR7128) and effective September 22, 1994.

F. On December 7, 1994, Texas adopted amendments to section 117.510. The amendment extends the Federal acid rain January 1, 1995 compliance date under section 117.510(2)(A), concerning certification of continuous emissions monitoring systems for Phase II oil-fired and Phase II gas-fired units at electric utility sources, to May 31, 1997. The *Texas Register* published these revisions on December 16, 1994 (19TR10005) and effective January 2, 1995.

G. On January 10, 1996, Texas adopted amendments to sections 117.451, 117.510, 117.520, 117.530, and 117.601. The purpose of adopted amendments was to extend the final compliance date of the Chapter 117 rule

from May 31, 1997, to May 31, 1999. The *Texas Register* published these revisions on January 19, 1996 (21TR516) and effective February 1, 1996.

H. On July 24, 1996, Texas adopted revisions to section 117.540. The amendments to section 117.540, regarding Phased RACT, extended applicable dates to be consistent with the May 31, 1999 final compliance date. This revision extended the final compliance date for an approved phased RACT request to August 31, 2000. In addition, Texas added new subsection 117.540(c), allowing the use of clean-fueled vehicle MERCs to meet chapter 117 requirements on an interim basis. Texas moved the scrappage MERCs to subsection 117.540(b). The life of the clean fuel vehicle MERCs is two years for MERCs generated prior to September 1, 2002, and there after, the estimated remaining useful vehicle life. The Texas Register published these revisions on August 9, 1996 (21TR7560) and effective August 16, 1996.

I. On April 30, 1997, Texas adopted the repeal of section 117.550. Texas moved the collateral emission increases associated with installation of NO_X control measures into the permitting requirements of Chapter 116. The EPA is acting on the repeal of section 117.550, but is not acting on Chapter 116 in this action. The *Texas Register* published this adoption on May 13, 1997 (22TR4248) and effective May 22, 1997.

J. On May 20, 1998, Texas adopted revisions to subsections 117.451, 117.510, 117.520, 117.530, 117.540, and 117.601 extending the final NO_X RACT compliance date, for certain major source nitrogen oxides control measures in the H/G and B/PA ozone nonattainment areas, to November 15, 1999, and made emission monitoring requirements more flexible. Texas extended the final phased RACT compliance date to no later than February 15, 2001. Texas revised the compliance period for carbon mooxide emissions, in subsection 117.105(j), from a twenty-four hour period to an hourly period for any electric utility unit which does not use a Continuous Emission Monitoring System (CEMS) or Presumptive Emission Monitoring System (PEMS) for CO, stating that twenty-four hours of manual stack sampling is impractical. The *Texas Register* published this adoption on June 5, 1998 (23TR5973) and effective June 10, 1998.

XIII. What Kind of Major Source Categories Will This Rule Affect?

This rule will affect NO_X emissions from the following existing source categories in Texas: (a) Utility boilers, steam generators, auxiliary steam boilers, and gas turbines used to generate electricity in H/G and B/PA ozone nonattainment areas (see section 117.101 of this rule); (b) commercial, institutional, or industrial boiler (non-utility boiler) and process heaters in H/G and B/PA with a maximum rated capacity of 40 million Btu per hour or greater, stationary gas turbines in H/G and B/PA with a megawatt (mW) rating of 1.0 mW or higher; (c) stationary rich burn internal combustion engines of 150 horsepower (hp) or greater for stationary rich burn internal combustion engines in H/G ozone nonattainment area, and stationary internal combustion engines of 300 hp or greater for stationary internal combustion engines in B/PA ozone nonattainment area (see section 117.210 of this rule); and (d) nitric acid manufacturing (see section 117.401 of this rule) and adipic acid manufacturing (see section 117.301 of this rule) plants in H/G and B/PA ozone nonattainment areas.

XIV. Are NO_X Emissions Specifications in Texas Rule Comparable With Federal Guidelines?

The emission specifications in pounds NO_X per million Btu (lb NO_X /MMBtu) from utility boilers are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Utility Boilers,'' EPA–453/R–94–023, March 1994, and 57 FR 55620 (the NO_X supplement).

The emission specifications in pounds NO_X per million Btu (lb NO_X/MMBtu) from non-utility boilers are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional Boilers,'' EPA–453/R–94–022, March 1994.

The emission specifications in pound nitrogen dioxide (NO_2) per ton of acid produced (lb NO_2/ton acid) from Nitric and Adipic acid manufacturing plants are in agreement with the ''Alternative Control Techniques Document—Nitric and Adipic Acid Manufacturing Plants,'' EPA–450/3–91–026, December 1991.

The emission specifications in pounds NO_X per million Btu (lb NO_X/MMBtu) from process heaters are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Process Heaters (Revised),'' EPA–453/R–93–034, September 1993.

The emission specifications in gram NO_X per horsepower-hour (g/hp-hr) from internal combustion engines are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines,'' EPA–453/R–93–032, July 1993.

The emission specifications in parts per million (ppm) NO_X from stationary gas turbines are in agreement with the ''Alternative Control Techniques Document—NO_X Emissions from Stationary Gas Turbines,'' EPA–453/R–93–007, January 1993.

The NO_X emissions specifications in this rule are comparable with our guidelines for RACT and ACT documents. A listing of our ACT documents is in Table I of this proposed action. For a complete review and evaluation of this rule please refer to the Technical Support Document (TSD) developed for this proposed action. The following table contains a summary of the type of affected sources, their corresponding emission limit, and relevant applicability information for these sources in the H/G and B/PA nonattainment areas.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS

Source	NO_X limit	Additional information
Utility Boilers	0.26 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 24-hour rolling average.
Utility Boilers	0.20 lb/MMBtu	Natural gas or a combination of natural gas and waste oil, 30-day rolling average.
Utility Boilers	0.38 lb/MMBtu	Coal, tangentially-fired, 24-hour rolling average.
Utility Boilers	0.43 lb/MMBtu	Coal, wall-fired, 24-hour rolling average.
Utility Boilers	0.30 lb/MMBtu	Fuel oil only, 24-hour rolling average.
Utility Boilers	[a(0.26) + b(0.30)]/(a + b)	Oil and gas mixture, 24-hour rolling average, where. a = percent natural gas heat input. b = percent fuel oil heat input.

TABLE II.—SUMMARY OF THE TEXAS NO_X RACT RULE FOR SOURCES IN THE H/G AND B/PA NON-ATTAINMENT AREAS—Continued

Source	NO_X limit	Additional information
Stationary Gas Turbines	42 parts per million (ppmvd)	@ 15% O2, natural gas, ≥ 30 Mega Watt (mW) annual electric output ≥ 2500 hour mW rating.
Stationary Gas Turbines	65 parts per million (ppmvd)	@ 15% O2, fuel oil/
Stationary Gas Turbines	0.20 lb/MMBtu	Natural gas, peaking units, annual electric output <2500 hour mW rating.
Stationary Gas Turbines	0.30 lb/MMBtu	Fuel oil, peaking units, annual electric output <2500 hour mW rating.
Non-utility Boilers	0.10 lb/MMBtu	Natural gas, low heat release and T < 200 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.15 lb/MMBtu	Natural gas, low heat release, preheated air 200 ≤ T < 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boiler	0.20 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.20 lb/MMBtu	Natural gas, high heat release, without air or preheated air T < 250 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.24 lb/MMBtu	Natural gas, high heat release, preheated air 250 ≤T < 500 °F, capacity ≥ 100 MMBtu/hr.
Non-utility Boilers	0.28 lb/MMBtu	Natural gas, high heat release, preheated air T ≥ 500 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, preheated air T ,< 200 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.13 lb/MMBtu	Natural gas, preheated air 200 ≤T < 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.18 lb/MMBtu	Natural gas, low heat release, preheated air T ≥ 400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.10 lb/MMBtu	Natural gas, firebox T < 1400 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.125 lb/MMBtu	Natural gas, firebox 1400 ≤T < 1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters	0.15 lb/MMBtu	Natural gas, firebox T ≥ 1800 °F, capacity ≥ 100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Liquid fuel, capacity ≥ 100 MMBtu/hr.
Process Heaters and Non-utility Boilers.	0.30 lb/MMBtu	Wood fuel, capacity ≥ 100 MMBtu/hr.
Stationary Gas Turbines	42 parts per million (ppmvd)	@ 15% O2, rating ≥ 10 mW.
Reciprocating Internal Combustion Engines.	2.0 gram/hp-hr	Natural gas, rich burn, stationary, capacity ≥ 150 hp in H/G, capacity ≥ 300 hp in B/PA.
Absorbers of Adipic Acid Production Units.	2.5 lb/ton of acid produced	24-hr rolling average.
Absorbers of Nitric Acid Production Units.	2.0 lb/ton of acid produced	24-hr rolling average.

XV. Why Is This a Conditional Approval?

The allowable NO_X emission rates are calculated based on a rolling 30-day average method (see equation 117.223(b)(1) of this rule) and based on a maximum daily cap method (see equation 117.223(b)(2) of this rule). The definition of actual daily heat input in 117.570(b)(2), and the definition of actual historical average of the daily heat input in 117.223(b)(1) allow sources to add one standard deviation to their baseline heat input or emission rate to establish the baseline for generating emission credits. Adding one standard deviation to the baseline could generate ''paper credits.''

We understand from Texas that this allowance was an inadvertent oversight and they have committed in the July 19, 1999, letter to change the rule and submit it as a SIP revision to our office by November 15, 1999. We are conditionally approving the rule based on their commitment.

XVI. What Are the Monitoring Requirements?

The Act requires that SIP rules be enforceable. To insure continuous compliance, SIP rules must have monitoring requirements. The Texas NO_X Rules require either a CEMS or PEMS to ensure compliance.

It is very important to use proper Quality Assurance/Quality Control (QA/QC) techniques to insure the monitors read correctly. One issue we are concerned with is that the Texas rules allow a Cylinder Gas Audit (CGA) to replace the Relative Accuracy Test Audit (RATA) for ongoing QA/QC of the monitors.

Our rules under 40 CFR part 60, New Source Performance Standards for new sources prohibit the use of CGA for more than 3 consecutive calender quarters. The CGA outlined in 40 CFR part 60, appendix F is the test which demonstrates that the analyzer reads correctly over its range. For example, in a CGA test you might compare the protocol gases of 0 ppm, 50 ppm, and 100 ppm to what the analyzer reads. If the analyzer's readings match the concentration of the corresponding protocol gas, then the analyzer passes the CGA test. The CGA or linearity test however, is only a means of verifying performance of the analyzer and not a means of verifying performance of the total monitoring system.

The RATA determines if the CEMS reads correctly during actual operation by testing the entire system. The RATA compares the readings of the CEMS to an independent ''reference method'' when both the CEMS and RATA are

measuring the pollutant concentration in the stack simultaneously. The reference method is designed to be as accurate as possible and verifies that the CEMS will perform correctly in normal operation.

Texas has stated that economic reasons, i.e., higher cost of performing a RATA vs. cost of performing a CGA and ease of scheduling a CGA as opposed to scheduling a RATA, as the reasons for substituting a CGA with RATA for ongoing quality assurance of CEMS. Texas believes, if performed correctly, a CGA test provides adequate assurance of monitor operation and that additional cost of RATA is not justified.

We are proposing to agree with Texas in substituting a CGA with RATA for ongoing quality assurance of CEMS. As indicated at the outset of this notice, we will be collecting comments and consider any comments received on this subject by November 29, 1999.

Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB 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, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on State, local, or tribal governments. The proposed rule does not impose any enforceable rules on any of these entities. This proposed action does not create any new requirements but simply approves the requirements the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposed rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132, (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

C. Executive Order 13045

Executive Order 13045, entitled ''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.

The 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 proposed rule is not subject to E.O. 13045 because it proposes to approve a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, 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, E.O. 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed action does not involve or impose any new requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP proposes approval does not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State Submittal does not affect State-enforceability. Moreover, EPA's disapproval of the Submittal does not impose any new requirements. Therefore, I certify that this proposal

action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 6, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–28215 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103–1a; FRL–6464–7]

Approval and Promulgation of Implementation Plans; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate Coshocton, Gallia, and Lorain Counties to the status of areas in attainment of the National Ambient Air Quality Standards (NAAQS)for sulfur dioxide (SO_2). Ohio requested this action on October 26, 1995, and provided supplemental supporting material to EPA in a letter dated September 14, 1999.

EPA is also proposing to approve the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is proposing to approve State-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric—Conesville plant; in Gallia County: Ohio Valley Electric Company—Kyger Creek plant and Ohio Power—Gavin Plant; and in Lorain County: CEI—Avon Lake plant, Ohio Edison—Edgewater Plant, U.S. Steel—Lorain plant, and B.F. Goodrich Company—Lorain County plant. These limits would replace equivalent limits in the Federal Implementation Plan (FIP) for these three Counties.

EPA is ''parallel processing'' Ohio's request to redesignate the three counties to attainment while Ohio finalizes its rule revisions. If Ohio's final submittal is the same as the submittal on which this proposal is made and EPA receives no persuasive adverse comments then EPA will take final action to approve the redesignation requests. Otherwise, EPA will repropose this action.

DATES: Comments on this proposed action must be received by November 29, 1999.

ADDRESSES: You may send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Program Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Phuong Nguyen, Environmental Scientist, at (312) 886–6701 before visiting the region 5 office.)

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information

1. What Action Is EPA Proposing To Take Today?

In this action, EPA proposes to approve three SO_2 redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and Lorain Counties. EPA also proposes to approve the maintenance plans for these counties. Finally, EPA proposes to approve State-adopted emission limits for the remaining sources in these three counties.

This action applies parallel processing, in which EPA proposes action on proposed State rules based on the expectation that the State will finalize its rules as proposed. If the State's final rules differs significantly from the proposed rules, then EPA will repropose action.

2. Why Is EPA Proposing To Take This Action?

EPA is proposing to take this action because the redesignation requests meet the five criteria all redesignation requests must meet. The emission limits

in the submittal are equivalent to those allowed by the FIP limits. Coshocton, Gallia, Lorain Counties have been designated as nonattainment areas for sulfur dioxide but now meet the sulfur dioxide NAAQS. The three counties have plans for keeping their sulfur dioxide levels within the health-based standard for the next 10 years and beyond. The plans require the three counties to consider impacts of future activities on air quality and to manage those activities.

3. What Is the Background for This Action?

EPA promulgated the applicable FIP in 1976. The FIP requires significant emission reductions at specific facilities throughout the State to attain and maintain the NAAQS for SO2.

On October 5, 1978, Coshocton, Gallia, and Lorain Counties (among others) were designated as nonattainment areas for the primary sulfur dioxide standards. The State adopted its own regulations in 1979, generally imposing limits similar to those promulgated in the FIP. The State submitted these regulations for EPA approval in 1980, including regulations for Coshocton, Gallia, and Lorain Counties.

The State then withdrew its submittal for selected sources. These sources are:

1. Coshocton County:
   —Columbus and Southern Ohio Electric—Conesville plant.
2. Gallia County:
   —Ohio Valley Electric Company—Kyger Creek plant,
   —Ohio Power—Gavin plant.
3. Lorain County:
   —Cleveland Electric Illuminating (CEI)—Avon Lake plant,
   —Ohio Edison—Edgewater plant.
   —U.S. Steel—Lorain plant.
   —B.F. Goodrich Company.

EPA approved this SIP regulation on January 27, 1981, for Coshocton, Gallia, and Lorain counties (46 FR 8481) except for the source limits withdrawn by the State. The federally promulgated FIP regulations, therefore, have remained in effect for the above sources.

On October 26, 1995, Governor George Voinovich requested that EPA redesignate to attainment all remaining SO_2 nonattainment areas within the State of Ohio, including Coshocton, Gallia, and Lorain Counties.

On May 28, 1996, EPA Administrator Browner sent a letter to Governor Voinovich informing him that the redesignation request depended on EPA approval of State-adopted rules in place of FIP rules.

II. Background on Ohio Submittal

1. What Information Did Ohio Submit and What Were its Requests?

In June 1999, Ohio e-mailed copies of proposed rule revisions for Coshocton, Gallia, and Lorain Counties to EPA. On September 14, 1999, Ohio submitted additional material requested by EPA to support the State's requests to redesignate these Counties to attainment with respect to SO_2. The state requested parallel processing by EPA to approve SIP limits for the specific facilities named above in these three counties in place of federal promulgated limits. In addition, the State requested approval for the SO_2 maintenance plans for Coshocton, Gallia, and Lorain Counties. Finally, the State requested approval of its request to redesignate these three counties to attainment status for sulfur dioxide.

2. What Guidance Documents Did EPA Use in This Rulemaking To Evaluate Ohio's Requests?

Guidance for these requests includes a September 28, 1994, memorandum from the Director, Air Quality Management Division, Office of Air Quality Planning and Standards, EPA, to the Director, Air and Radiation Division, Region 5, entitled, ''Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan''.

This memorandum sets forth three criteria to be met for the approval of State limits that are equivalent to existing FIP limits without new modeling. Under the first two criteria, there must be no known inadequacy in the original attainment demonstration. Under the third criterion, the State limits must reflect no relaxation of existing emission limits.

All three of these criteria are met by the State-promulgated SIP limits. Therefore, the revised limits, if adopted and submitted as proposed, can be considered to be adequate to assure attainment without further modeling.

Another guidance document relevant to this rulemaking is an April 21, 1983 memorandum entitled ''Section 107 Designation Policy Summary'' from the Director of the EPA Office of Air Quality Planning and Standards, which requires eight consecutive quarters of data showing SO_2 NAAQS attainment before an area can be redesignated. A county violates the NAAQS when its SO_2 level exceeds the NAAQS more than once in any year. Coshocton, Gallia, and Lorain Counties have eight consecutive quarters of data showing SO_2 NAAQS attainment.

Finally, a September 4, 1992, EPA policy memorandum on ''Procedures for Processing Requests to Redesignate Areas to Attainment'' was also relevant to this rulemaking. This memorandum explains that additional dispersion modeling is not required in support of an SO_2 redesignation request if an adequate modeled attainment demonstration was previously submitted and approved as part of the implemented SIP, and no indication of an existing air quality deficiency exists. These conditions are met here.

III. SIP Approval

1. How Do These Emission Limits Compare to the FIP Limits?

The proposed emission limits are equivalent to the FIP limits for Coshocton, Gallia, and Lorain Counties, respectively. As a result of these limits, attainment in Coshocton, Gallia, and Lorain counties is assured on the basis of State-adopted, EPA-approved limits. Consequently, there is no further need for federally promulgated limits, and the corresponding FIP limits for these sources in all three counties can be rescinded.

2. What Are the Sources and Emission Limits That Will Be Affected by the SIP Approval?

The table below shows the sources and state emission limits that will be affected by the SIP approval.

County names	State emission limits	Source names
Coshocton County	—OAC 3745–18–22 (B)	—Columbus and Southern Ohio Electric; Conesville.
Gallia County	—OAC 3745–18–33 (B)	—Ohio Valley Electric Company; Kyger Creek.
	—OAC 3745–18–33 (D)	—Ohio Power-Gavin.
Lorain County	—OAC 3745–18–53 (B)	—CEI-Avon Lake.
	—OAC 3745–18–53 (D)	—Ohio Edision; Edgewater Plant.
	—OAC 3745–18–53 (E)	—U.S. Steel.
	—OAC 3745–18–53 (G)	—B.F. Goodrich.

IV. Maintenance Plan Approval

1. How Does the Maintenance Plan Apply in These Three Counties?

Ohio's attainment plan for sulfur dioxide provides for attainment even with major sources emitting their maximum allowable emissions. Therefore, maintenance is provided by assuring that minor source impacts do not increase significantly. The principal minor sources are distant point sources and diesel vehicles.

2. What Are the Reduction Requirements?

Title IV reductions and the required national conversion to low sulfur diesel fuel were the identified maintenance plan provisions contained in the approved redesignation for Washington and Morgan Counties in 1994 (59 FR 48403). These reductions will also be realized in the other nonattainment counties such as Coshocton, Gallia, and Lorain.

V. Redesignation Evaluation Criteria

1. What Five Criteria Did EPA Use To Review the Redesignation Requests?

Section 107(d)(3)(E) of the Clean Air Act (Act), as amended in 1990, establishes requirements to be met before an area may be redesignated from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if the following five conditions are met:

(A) The area has attained the applicable NAAQS.

(B) The area has a fully approved SIP under section 110(k) of the Act.

(C) The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.

(D) The EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act.

(E) The State has met all requirements applicable to the area under section 110 and part D of the Act.

2. Are These Five Criteria Satisfied for Coshocton, Gallia, and Lorain Counties?

A. Demonstrated Attainment of the NAAQS

Relevant Agency guidance is provided in both the April 21, 1983, and September 4, 1992 guidance documents cited above. The April 21, 1983 memorandum explains that eight consecutive quarters of data showing SO_2 NAAQS attainment are required for redesignation. The September 4, 1992 guidance explains that the area must have no more than one exceedance per year.

Ohio's September 14, 1999, submittal provides ambient monitoring data showing that Coshocton, Gallia, and Lorain counties have met the NAAQS for the years 1980–1995.

Dispersion modeling is commonly used to demonstrate attainment of the SO_2 NAAQS. A modeling analysis was done in 1976 to show that, under all allowed operating scenarios, the emission limits in these three counties' SO_2 SIPs would lead to attainment and maintenance of the SO_2 standards. According to the September 4, 1992 memorandum, no further dispersion modeling is needed for the counties' redesignation. Ohio has provided evidence that sources in these counties are complying with these limits.

Based on this evidence, EPA concludes that emissions are sufficiently low to assure attainment throughout these areas currently designated nonattainment.

B. Fully Approved SIP

The SIP for the area at issue must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply.

EPA's guidance for implementing section 110 of the Act is discussed in the General Preamble to Title I (44 FR 20372, April 14, 1979; and 57 FR 13498, April 16, 1992). The SO_2 SIP for Coshocton, Gallia, and Lorain counties met the requirements of section 110 of the Act, and EPA approved the SIP on January 27, 1981, except that EPA did not take action for a limited set of sources.

State limits for the remaining set of specific sources in Coshocton, Gallia, and Lorain Counties are being proposed for approval in this rulemaking.

C. Permanent and Enforceable Reductions in Emissions

Coshocton, Gallia, Lorain Counties attained the SO_2 standards by implementing the SO_2 SIP controls.

The reductions in SO_2 emissions primarily come from converting some fuel-burning sources to lower sulfur content fuels, and to shutting down various types of sources. The use of lower-sulfur ''cleaner'' fuels is ensured by the facilities'' air emission permits and federally enforceable SIP regulations.

D. Fully Approved Maintenance Plan

EPA has concluded that the combination of limitations on maximum allowable emissions from major point sources and implementation of programs that will yield reductions in minor source emissions will assure maintenance of the standards. Approval of the maintenance plan is being proposed in today's action.

E. Part D and Other Section 110 Requirements

With the approval of limits proposed today, along with the approval of limits and attainment demonstration published January 27, 1981 (46 FR 8481), Ohio has met the relevant requirements.

VI. Proposed Rulemaking Action

In summary, EPA is proposing to approve State-adopted emission limits for 7 sources in Coshocton, Gallia, and Lorain Counties. In addition, EPA is proposing to approve the SO_2 maintenance plan for Coshocton, Gallia, and Lorain Counties as adequately ensuring that attainment will be maintained. We are proposing to rescind the FIP limits for Coshocton, Gallia, and Lorain Counties because we are also proposing to replace these FIP limits with the State limits. Finally, EPA is proposing to approve redesignation requests from the State of Ohio which were submitted on September 14, 1999.

VII. Administration Requirements

A. Executive Order 12866

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

B. Executive Orders on Federalism

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

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments.

The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 [64 FR 43255 (August 10, 1999)], which will take effect on November 2, 1999. In the interim, current Executive Order 12612 [52 FR 41685 (October 30, 1987)] on federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

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

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of 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, E.O. 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. National Technology Transfer and Advancement Act

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: October 20, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–28042 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6464–8]

EPA Standards for the Management of Cement Kiln Dust; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Extension of period for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing an extension of the public comment period for its Proposed Rule on Standards for the Management of Cement Kiln Dust to February 17, 2000.

DATES: The comment period of the Proposed Rule on Standards for the Management of Cement Kiln Dust is extended and will close on February 17, 2000.

ADDRESSES: Those persons wishing to submit public comments must send an original and two copies of their comments referencing EPA docket number F–1999–CKDP–FFFFF to: RCRA Docket Information Center (5305W), U.S. Environmental Protection Agency Headquarters (EPA,HQ), 401 M Street, SW, Washington, DC, 20460. Hand deliveries of comments, including courier, postal and non-postal express deliveries, should be made to the Arlington, VA address below.

Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also identify the docket number F–1999–CKDP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at Crystal Gateway I Building, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The Proposed Rule is also available electronically. See the **SUPPLEMENTARY INFORMATION** section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Bill Schoenborn, U.S. Environmental Protection Agency (5306W), 401 M Street, SW, Washington, DC 20460, at (703) 308–8483, or e-mail: *schoenborn.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

Customer Service

In developing the Proposed Rule, we tried to address the concerns of all our stakeholders. Your comments will help us improve this regulatory action. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this regulatory action may affect you, or other relevant information. We welcome your views on all aspects of this action, but we request comments in particular on the items discussed in the Proposed Rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the report.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

Copies of the full proposal, titled *Standards for the Management of Cement Kiln Dust; Proposed Rule* (EPA publication number EPA 530–Z–99–007), are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: http://www.epa.gov/osw/special.htm. Printed copies of the proposal and related documents, can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

Background

Cement kiln dust (CKD) is one of six ''special wastes'' (also known as *Bevill wastes*) that were temporarily exempt from hazardous waste regulation under Resource Conservation Recovery Act, until information could be gathered and assessed and the most appropriate regulatory approach could be determined. In 1993, EPA issued a detailed and comprehensive study of CKD in a Report to Congress that explored a broad spectrum of issues related to the adverse effects on human health and the environment from the disposal of CKD. Following extensive evaluation and public comment, on January 31, 1995, EPA concluded that additional control of CKD is warranted to protect human health, and to prevent environmental damage associated with current disposal practices, including off-site uses, for this waste (see 60 FR 7366, February 7, 1995). The Agency issued a proposed rule titled *Standards for the Management of Cement Kiln Dust; Proposed Rule* on August 20, 1999. In the Proposed Rule, EPA established a 90-day public comment period, which is scheduled to close on November 18, 1999. Subsequently, the Agency received requests from stakeholders to extend the comment period another 90 days. EPA supports the requests for an extension, and the comment period will now extend until February 17, 2000.

Dated: September 29, 1999.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 99–28214 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 72

RIN 0920–AA02

Packaging and Handling of Infectious Substances and Select Agents

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Centers for Disease Control and Prevention proposes to

amend the regulations concerning the interstate shipment of infectious substances in order to clarify and expand the existing requirements for proper packaging and handling of these agents. One purpose of the proposed rule is to ensure that all biological materials that are known or suspected of containing an infectious substance are packaged for interstate shipment to minimize the potential for leakage of contents that could contaminate the environment or come into direct physical contact with persons handling such packages during transit. A second purpose is to insure receipt of certain infectious substances. This new regulation will harmonize CDC regulations with other Federal agencies' regulations and with international regulations.

It also updates the requirements for facilities transferring or receiving select agents, incorporating by reference the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

DATE: Written comments must be received on or before December 27, 1999. Written comments on the proposed information collection requirements should also be submitted on or before December 27, 1999.

ADDRESSES: Mail written comments to the following address: Nashandra Hayes, Office of Health and Safety, Centers for Disease Control and Prevention, 1600 Clifton Road, Mail Stop—FO5, Atlanta, Georgia 30333.

Mail written comments on the proposed information collection requirements to: Wendy Taylor, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, rm. 10235, Washington, DC 20503, Att.: Desk Officer for CDC.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan Y. Richmond or Dr. Richard Knudsen, Office of Health and Safety, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail Stop F05, Atlanta, Georgia 30333; telephone (404) 639–2453 or 639–3235, respectively.

SUPPLEMENTARY INFORMATION:

Revised Proposed Notice of Rulemaking

Replaces NPRM at 55 FR 7678, March 2, 1990.

I. Background

Under 42 U.S.C. 264, the Department of Health and Human Services is authorized to promulgate regulations to prevent the introduction, transmission and spread of communicable diseases from foreign countries and between the states. Authority was given to CDC in 1971 to regulate the interstate shipment of infectious substances. The current regulations are at 42 CFR part 72. The regulations provide requirements for minimum packaging and labeling for biological products and diagnostic specimens, and include a list of infectious agents for which special tracking is required. These regulations were last updated in 1980.

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on March 2, 1990 (55 FR 7678), to update the existing packaging requirements for infectious substances. Impetus for that NPRM came from postal workers and members of Congress who expressed concerns about the potential risk of exposure to infectious agents for people who handle improperly packaged or damaged packages of biomedical material during transit. Persons shipping these materials also stated that some definitions in the 1980 regulation were unclear. There had also been changes in the list of infectious agents that required notification of receipt.

Comments on the 1990 NPRM focused on two major issues. Numerous parties, including United States Postal Service workers, submitted comments regarding the transport of clinical specimens for diagnostic studies. Several parties encouraged CDC to harmonize the proposed regulation with the international shipping regulations.

Several government agencies and industry groups, in addition to CDC, regulate the packaging, labeling and shipment of infectious materials within the United States and internationally.

- The Department of Transportation (DOT) Hazardous Materials regulations, at 49 CFR parts 171–180, regulate the interstate transportation by surface or air of infectious substances, medical waste, chemical and radioactive materials. That regulation does not apply to the transport of clinical or diagnostic specimens, unless specifically known to contain an infectious substance (49 CFR 173.134).
- The United States Postal Service (USPS) regulates the shipment, by U.S. mail, of etiologic agents, infectious substances, clinical specimens, biological products, and sharps (e.g., contaminated needles and other sharp medical materials) and unsterilized containers (39 CFR and Domestic Mail Manual C023, Etiologic Agent Preparations, Clinical Specimens, and Biological Products; and International Mail Manual 135 Mailable Dangerous Goods).
- The Department of Labor, Occupational Safety and Health Administration (OSHA), at 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens, regulates the worker safety aspects of the handling, packaging and transport of human blood and body fluids, unfixed tissues, organs and cell cultures, and other fluids from humans and animals infected or possibly infected with bloodborne pathogens.
- The Department of Commerce (DOC) maintains a list of controlled items, including certain microorganisms that cannot be exported from the U.S. (15 CFR parts 768–799). The DOC recommends that shippers follow the CDC regulation for packaging when a shipment is allowed to a foreign country.
- The United Nations Committee of Experts on the Transport of Dangerous Goods makes recommendations on the international transport of infectious substances and clinical specimens. These recommendations are included in the International Civil Aeronautics Organization (ICAO) technical instructions, which have been adopted by the International Air Transport Association (IATA).

—ICAO publishes Technical Instructions for the Safe Transport of Dangerous Goods by Air, based on the United Nations (UN) recommendations for the domestic and international transport of infectious substances and clinical (diagnostic) specimens.

—IATA publishes the Dangerous Goods Regulations (DGR), which further describe for IATA member airlines, the national and international recommendations for air transport of infectious substances and clinical (diagnostic) specimens. The IATA DGR are followed by the domestic and international member airlines.

CDC's regulation, currently at 42 CFR part 72, provides packaging and labeling requirements for shipments of infectious materials. There are several reasons why CDC regulates this area in addition to the other agencies listed above. The focus of the CDC regulation is on protection of the public health by minimizing the potential for (1) Direct physical contact with package contents by persons handling such packages during transit, (2) Contamination of the environment, and (3) The spread of disease into the community. The CDC regulations serve by filling the gaps where there is no governance, by complementing the requirements of other agencies where there is overlapping authority, and by providing CDC as a central reporting authority assures availability of CDC's infectious

disease expertise to assist in the response when packages are damaged.

Although there had been some review of the requirements of other agencies when developing the 1990 NPRM, there had not been any comprehensive attempt to harmonize the various requirements. When comments to the 1990 NPRM were reviewed, it became clear that there was confusion among shippers and handlers as to how all the various requirements of other agencies related to the CDC regulations. Because of substantive differences in the requirements and use of different terminology, there was a clear need to harmonize the various requirements.

In response to the comments on the 1990 NPRM, and as part of the regulatory reform/reinventing government initiative, CDC has collaborated with the other agencies and groups to prepare revised proposed CDC regulations that are in harmony with the other requirements, thereby reducing the burden on shippers while still maintaining, or even improving, packaging standards to protect the public health. In some instances, one or more of the other agencies/groups will also be revising their requirements as part of our joint effort to achieve complementary regulations. We invite specific comment on any requirements contained in the proposed CDC regulations which are thought to be inconsistent or unclear in relation to the requirements of any other regulatory authority.

CDC also serves as a Center for Applied Biosafety and Training for the World Health Organization (WHO) and for the UN. In conjunction with the National Institutes of Health, CDC has participated in developing revised international guidelines for the shipment of infectious materials and diagnostic specimens. This NPRM also reflects the recommendations of the WHO biosafety advisory group, as published in 1997, in Guidelines for the Safe Transport of Infectious Substances and Diagnostic Specimens.

As a result of this extensive collaboration, significant changes have been made to the 1990 NPRM, and a new NPRM is being published to provide the opportunity for laboratories and other shippers of infectious materials, persons who transport or handle packages, public health officials and other affected parties to comment on these proposed regulations to ensure that the final regulations are both complementary to other packaging and shipping requirements and protective of the public health.

CDC believes these regulations will not be an additional burden to shippers because shippers interested in ensuring the integrity of their packages are already utilizing comparable packaging. These regulations will help to ensure that all shippers are aware of and utilize appropriate packaging when shipping infectious substances, thereby protecting the public health.

Comparison of CDC's Proposed Packaging and Labeling Requirements With Other Agencies' and Groups' Packaging and Labeling Requirements

This NPRM proposes packaging and labeling requirements for: (1) Clinical specimens because they may contain infectious agents, and (2) materials known or suspected of containing infectious substances or toxins.

Table 1 shows which types of infectious materials are covered by each regulating authority and the scope of that coverage. As noted in the table, no single agency covers all aspects regarding the shipment of infectious substances.

TABLE 1.—INFECTIOUS SUBSTANCES: COMPARISON OF THE CDC NPRM [1] WITH OSHA,[2] DOT,[3] USPS,[4] AND IATA [5] PACKAGING AND LABELING REQUIREMENTS

Requirements	CDC NPRM [1]	Regulations			
		OSHA [2]	DOT [3]	USPS [4]	IATA [5]
Infectious materials:					
Biological products	+	+	−[6]	+	+
Clinical (diagnostic) specimens	+	+	−[6]	+	+
Cultures and reference stocks	+	+	+	+	+
Packaging materials:					
Watertight primary receptacle	+	+	+	+	+
Absorbent material	+	na	+	+	+
Watertight secondary packaging	+	na	+	+	+
List of contents	+	na	+	−[7]	+
Outer packaging	+	na	+	+	+
Packaging performance standards	+	na	+	+	+
Packaging labels:					
Infectious substance/biohazard symbol label	+	+	+	+	+
Shipping label,[8] outer packaging	+	na	−[9]	+	+
Shipping label, secondary packaging	+	na	na	+	na
Tracking special infectious substances	+	na	na	na	na
Terminology	+	+	+	+	+
Shipping modes covered	All	All	All	Mail only	Air only

Legend: + = same or very similar to the CDC NPRM; − = significantly different from the CDC NPRM; na = not addressed in regulation.

[1] CDC: Centers for Disease Control and Prevention, 42 CFR Part 72 as proposed in this NPRM.
[2] OSHA: Occupational Safety and Health Administration, 29 CFR 1910.1030.
[3] DOT: Department of Transportation, 49 CFR Parts 171–180.
[4] USPS: United States Postal Service, Domestic Mail Manual CO23.
[5] IATA: International Air Transport Association, Dangerous Goods Regulations.
[6] Only those biological products and clinical specimens known to contain infectious substances are covered under 49 CFR 173.134.
[7] USPS requires a list of contents (manifest) for all sharps mailing containers, but only requires a list of contents for other items sent via air transportation
[8] Shipping label: Names, addresses, contact names and phone numbers of person shipping the package and intended recipient (addressee).
[9] DOT specifies that the shipper include an emergency response telephone number on the shipping documents (49 CFR 172.604).

II. Proposed Rule

This proposed rule would amend the existing regulations at 42 CFR part 72 concerning the interstate shipment of infectious substances to clarify and expand the existing requirements for proper packaging and handling of these agents. The purpose of this regulation is to ensure that all biological materials that contain, or may contain, an infectious substance are packaged for interstate shipment in a manner that minimizes the potential for leakage and possible contamination of the environment, or direct physical contact with the contents by persons handling such packages during transit. This rule will also require that infectious agents and toxins capable of causing serious infection, illness or death be labeled and tracked during shipment.

It also updates the requirements for facilities transferring or receiving select agents, incorporating by reference the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

A. Definitions

Biological products—Biological product means a biological product that is subject to preparation and manufacture in accordance with the provisions of 9 CFR part 102 (Licensed Veterinary Biological Products), 9 CFR part 103 (Biological Products for Experimental Treatment of Animals), 9 CFR part 104 (Imported Biological Products), 21 CFR part 312 (Investigational New Drug Application), or 21 CFR parts 600–680 (Biologics) and that, in accordance with such provisions, may be shipped in interstate traffic. FDA-approved vaccines are exempt from this regulation.

Only biological products that are known or presumed to contain an infectious substance are subject to this regulation.

Clinical Specimens—A clinical specimen is any human or animal material including, but not limited to excreta, secreta, blood and its components, tissue and tissue fluids, that is collected for the purpose of diagnosis, research, or other purposes. Formalin-fixed specimens are excluded. Animal material clinical specimens are subject to the regulation only if known or suspected of containing human pathogens.

Under the concept of Universal Precautions all bodily fluids of human origin must be handled as if they are infectious in order to minimize the potential for exposure to bloodborne pathogens. Section 72.3 in this NPRM meets those requirements.

Some clinical specimens are known or presumed to contain viable infectious micro-organisms that could result in an infection if an exposure occurred during a transport mishap. These specimens must be packaged and labeled as infectious substances (see § 72.4(a)). If exposure could result in an extremely serious infection or illness in an exposed worker or the public, such specimens are considered special infectious substances and must be tracked during shipment.

Infectious substance—CDC has replaced the term ''etiologic agent'' with the DOT and international term ''infectious substance''. For purposes of this regulation, an infectious substance is any substance, clinical specimen or culture, isolate, or other derivative of a clinical specimen that contains, or is suspected of containing a viable infectious virus, prion, or a viable microorganism, such as a bacterium, rickettsia, parasite or fungus, that is known or reasonably believed to cause disease in humans. Toxins known to be pathogenic are to be packaged and shipped either as infectious substances or as special infectious substances (§ 72.5), as applicable.

Examples of infectious substances include:

1. All cultures containing or suspected of containing a microorganism that causes or may cause disease in humans;
2. All human or animal clinical specimens that are known or suspected of containing an infectious microorganism or toxin;
3. Environmental samples to the extent that they are suspected of containing human pathogens at a level that presents risk of infection.
4. Other specimens not included above and designated as infectious by a qualified person (e.g., physician, scientist, veterinarian, nurse).

To maintain consistency with DOT regulations, a qualifying sentence has been added to the definition of an infectious substance that states that a microbial toxin that causes disease in humans will be packaged and shipped as an infectious substance.

Packaging—A change in this NPRM is the adoption of DOT and IATA terminology to clarify that there is agreement among the various organizations involved in regulating this area. The terms ''primary container'', ''secondary container'', and ''outer container'' have been replaced with the DOT terms and definitions of ''primary receptacle'', ''secondary packaging'', and ''outer packaging'.

Special infectious substance means any of the microbiological agents or toxins listed in § 72.5 or appendix A to part 72 (proposed to be recodified as appendix to subpart B). These special infectious substances include those agents listed in the CDC/NIH publication, Biosafety in Microbiological and Biomedical Laboratories, as biosafety level (BSL) 4 and most of the BSL3 agents. Special infectious substances present a potentially high risk of infection and/or death to persons exposed to them through either direct contact, aerosol or ingestion. Therefore, shipments of special infectious substances are tracked to assure their safe arrival.

B. Transport of Clinical Specimens

Clinical specimens are to be packaged in such a manner that they will remain intact under conditions that normally occur during transit. If the primary receptacle were to break or leak during transit, the specimen would be contained by the absorbent material and by the secondary packaging, so no material would leak to the outside surface of the outer packaging.

Packaging requirements for clinical specimens proposed in this NPRM are similar to those for infectious substances, except that the proposed performance standards are less rigorous. These packaging and labeling requirements meet the specifications established by OSHA and various international agencies.

C. Transport of Infectious Substances

Infectious substances are to be packaged in such a manner that they would withstand conditions which would normally occur during transit and would not leak even if the primary receptacle were to break. In addition, the proposed packaging requirements have been enhanced by adding a requirement that the packaging be capable of passing a drop test. The completed package must be capable of passing the tests specified in 49 CFR 178.609. The requirements established in this NPRM meet those of DOT, OSHA, various international agencies and are consistent with the 1999 IATA Dangerous Goods Regulations.

In keeping with DOT and the international guidelines and regulations, volume/weight limits have been changed to four liters or four kilograms in a single package (excluding the packaging and coolant weights). An itemized list of contents must be enclosed between the secondary packaging and outer packaging. The proposed rule also details provisions associated with substances shipped refrigerated or frozen (prefrozen packs,

wet or dry ice), shipped in liquid nitrogen, or as lyophilized materials.

The proposed rule requires on the outer packaging a black and white label bearing the words ''Infectious Substance'', CDC's telephone number for reporting damaged packages, and the biohazard symbol. The proposed rule also would require that the name, address, and telephone number of both the shipper and recipient be affixed to the outer package.

D. Transport of Special Infectious Substances; Failure to Receive

This proposed rule would be unique in requiring that the most dangerous human pathogens be shipped as ''special infectious substances''. These agents include those identified for work at biosafety level 3 and 4 as specified in the Biosafety in Microbiological and Biomedical Laboratories publication.

Special infectious substances must be shipped by the carrier and a system that provides for tracking the shipment and notifying CDC if the packages are not received. Information gathered by CDC from such notifications will be useful in identifying problems and implementing corrective actions.

E. Select Agents

Some of the microorganisms listed as special infectious substances are also considered to be ''select agents'' and are regulated in 42 CFR 72.6 (Additional Requirements for Facilities Transferring or Receiving Select Infectious Agents) (proposed here to be renumbered as Section 72.11). The only changes in this proposed rule to § 72.6 are at § 72.6 (a)(5) (now § 72.11 (a)(5)), and § 72.6 (c)(1) (now § 72.11(c)(1)), which are revised to incorporate the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

F. Variations

To promote innovation and allow for new technologies, the proposed rule would allow the Director, CDC, to approve variations from the requirements of this subpart if, upon written application, it is found that such variations provide protection at least equivalent to that provided by the requirements in this subpart, as finalized, and such findings are made a matter of official written record.

G. Penalties

Violations of the rule would be subject to criminal penalties as prescribed in 42 U.S.C. 271 and 18 U.S.C. 3559, 3571. Specifically, individuals in violation of the rule would be subject to a fine or imprisonment of not more than one year, or both.

III. Procurement of Labels

Shippers will be able to order a supply of the two shipping labels described in the regulations from private printers by furnishing them the exact specifications provided in the final rule, or by purchasing the labels from the Superintendent of Documents (U.S. Government Printing Office, Mail Stop: SSOP, Washington, D.C. 20402–9328).

IV. Analysis of Impacts

A. Review Under Executive Order 12866, Sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (P.L. 104–4), and by the Regulatory Flexibility Act (5 U.S.C 603–605)

The Department has examined the potential impact of this proposed rule as directed by Executive Order 12866, by sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4), and by the Regulatory Flexibility Act (5 U.S.C. 603–605).

Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives, and, when regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed rule is designed to ensure that all biological materials that contain, or may contain, an infectious substance are packaged in a manner for interstate shipment that minimizes the potential for leakage and possible contamination of the environment or direct physical contact with the contents by persons handling such packages during transit. The proposed rule is designed to complement other shipping requirements developed by the Departments of Commerce, Agriculture, and Transportation, the USPS, OSHA, and the International Air Transport Association and, thereby, to reduce the burden on shippers while imposing minimal administrative costs, and to prevent possible serious, harmful effects to public safety and health. (The proposal has been reviewed by the Office of Management and Budget under the terms of the Executive Order.)

The Unfunded Mandates Reform Act of 1995, in sections 202 and 205, requires Federal agencies to prepare several analytic statements before proposing a rule that may result in expenditures of $100 million by State, local and tribal governments, or by the private sector in any one year. Because a final rule resulting from this proposal would not result in expenditures of this magnitude, such statements are not necessary.

The Regulatory Flexibility Act requires Federal agencies to prepare a regulatory flexibility analysis of the potential impact of the proposed rule on small entities and permits agency heads to certify that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. CDC does not know how many small entities will be impacted by this regulation, and does not know what the economic impact on those small entities would be. However, CDC believes that packaging requirements set forth in this rule would not be an additional burden on shippers because this is an amendment to existing PHS rules with which shippers must comply. In addition, it will harmonize these rules with other existing regulations that shippers must follow. CDC believes that this rule will lessen confusion regarding proper packaging and shipping of infectious materials and will bring HHS regulations into conformity with other regulations. CDC is requesting information/comments on the number of small entities that would be impacted by this NPRM, the economic burden on those small entities and why the Secretary should not certify that this rule will have no significant impact on small entities. CDC is also requesting comments/recommendations on other possible less burdensome approaches to ensuring that all infectious or potentially infectious materials are packaged and shipped in a way that minimizes risks to workers, the public and the environment.

These regulations will help to ensure that all shippers are aware of and utilize appropriate packaging when shipping infectious substances, thereby protecting the public health.

B. Review Under the Paperwork Reduction Act of 1995

The proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description and respondent description of the information collection are shown below with an estimate of the annual reporting burden. The estimate includes the time for reviewing instructions, gathering and maintaining the necessary data, and completing and reviewing the collection of information. With respect to the following collection of information, CDC invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of CDC's public

health functions, including whether the information shall have practical utility; (b) the accuracy of CDC's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automatic collection techniques or other forms of information technology.

Title: Packaging and Handling of Infectious Substances and Select Agents.

Description: The CDC proposes to amend the regulations concerning the interstate shipment of infectious substances in order to clarify and expand requirements for proper packaging and handling of these agents. The proposed rule would ensure that all biological materials that may contain an infectious substance are packaged for interstate shipment in a manner that minimizes the potential for leakage and possible contamination of the environment or direct physical contact with the contents by persons handling such packages during transport. It also updates the requirements for facilities transferring or receiving select agents, incorporating by reference the 4th edition of the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories.

Anyone handling damaged or leaking packages of infectious substances during interstate shipment must isolate the package, notify the shipper and intended recipient immediately and notify CDC as soon as feasible (1–800–232–0124). When notifying CDC, the caller should provide a description of the condition of the package, the name, address and telephone number of the shipper, and any other pertinent information, so that information and assistance can be provided, as necessary, regarding appropriate decontamination and disposal procedures.

Persons who ship packages containing special infectious substances must notify the addressee of the date of shipment, and the addressee must confirm receipt by telephone or other electronic means. If the shipper does not receive such confirmation within 3 days of anticipated delivery, the shipper must then contact CDC within 24 hours to enable the agency to determine whether a public health response is necessary. Information gathered by CDC from such notifications will also be useful in identifying problems and implementing corrective actions.

Description of Respondents: Government agencies, universities, research institutions, laboratories, private companies and others that ship or receive infectious substances, and government or commercial carriers of infectious substances.

ESTIMATED ANNUAL REPORTING BURDEN

CFR section	Number of respondents	Frequency of reporting	Total annual responses	Hours per response	Total hours
72.4(b)	500	1x/yr	50	0.1	5
72.5(b)	200	10/yr	2,000	0.1	200
72.5(c)	200	10/yr	2,000	0.1	200
72.5(d)	20	1/yr	20	0.2	4
Total					409

Reporting or Disclosures: These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on past experiences of respondents reporting such information to CDC. There are no capital costs or operating and maintenance costs for the respondents associated with this information collection.

The agency has submitted a copy of this proposed rule to OMB for its review of this information collection. Interested persons are requested to submit written comments regarding this information collection, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW, Rm. 10235, Washington, DC 20503, Att.: Desk Officer for CDC.

List of subjects in 42 CFR Part 72

Biologics, packaging and containers, Transportation.

Dated: March 12, 1999.

Jeffrey Koplan,

Director, Centers for Disease Control and Prevention.

Dated: May 31, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, it is proposed to amend 42 CFR Chapter I, part 72, as follows:

PART 72—PACKAGING AND HANDLING OF INFECTIOUS SUBSTANCES AND SELECT AGENTS

1. The authority citation for Part 72 is revised to read as follows:

Authority: 42 U.S.C. 216, 264, 271; 31 U.S.C. 9701; 18 U.S.C. 3559, 3571; 42 U.S.C. 262 note.

2. The heading of part 72 is revised to read as set forth above.

3. Sections 72.1–72.5 are revised.

4. 72.6 is redesignated as § 72.11.

5. A new § 72.6 is added.

6. A heading for subpart A is added and sections §§ 72.1–72.6 are transferred to subpart A.

7. A heading for subpart B is added and redesignated section 72.11 is transferred to subpart B and amended by revising paragraphs (a)(5) and (c)(1).

8. Section 72.7 is redesignated as section 72.21.

9. A heading for subpart C is added and redesignated section 72.21 is transferred to subpart C.

10. Appendix A to Part 72 is transferred to subpart B and the heading is revised to read ''Appendix to Subpart B''.

The additions and revisions to part 72 read as follows:

Subpart A—Interstate Shipment of Biological Materials That Contain or May Contain Infectious Substances

§ 72.1 Purpose.

The purpose of this regulation is to ensure that all materials that contain or may contain an infectious substance are packaged for interstate shipment in a manner that minimizes the potential for leakage and possible contamination of the environment or direct physical contact with the contents by persons handling such packages during transit.

The rule also requires the tracking of shipments of special infectious substances and requires registration of certain select agents. The requirements of this subpart are in addition to and not in lieu of any other packaging or other requirements for the transportation of infectious substances in interstate traffic as prescribed by the US Department of Transportation, the US Postal Service and other agencies of the Federal Government.

§ 72.2 Definitions.

As used in this subpart:

Absorbent material means material that is capable of absorbing liquids. It may be either particulate or non-particulate, but if particulate, it shall be contained so it does not leak out of the package.

Biological product means a biological product that is subject to preparation and manufacture in accordance with the provisions of 9 CFR part 102 (Licensed Veterinary Biological Products), 9 CFR part 103 (Biological Products for Experimental Treatment of Animals), 9 CFR part 104 (Imported Biological Products), 21 CFR part 312 (Investigational New Drug Application), or 21 CFR parts 600–680 (Biologics) and that, in accordance with such provisions, may be shipped in interstate traffic. Only biological products that are known or presumed to contain an infectious substance are subject to this regulation. FDA-approved vaccines are exempt from this regulation.

Clinical specimen (diagnostic specimen) is any human or animal material including, but not limited to excreta, secreta, blood and its components, tissue and tissue fluids, that is collected for the purposes of diagnosis, research, or other purposes. Formalin-fixed specimens are exempt from this regulation. Animal material clinical specimens are subject to this regulation only if known or suspected of containing human pathogens. All human clinical specimens are covered.

Coolant material means material such as ice, dry ice, liquid nitrogen, and gel packs, that is included in the package to cool the contents.

Infectious substance (etiologic agent) and infectious material are considered synonymous. An infectious substance is defined as a substance containing or suspected of containing an infectious virus, prion, or a viable microorganism, such as a bacterium, rickettsia, parasite or fungus, that is known or reasonably believed to cause disease in humans. Toxins known to be pathogenic to humans are to be packaged and shipped as infectious substances or special infectious substances (§ 72.5). The term ''infectious substance'' excludes any medical waste that is regulated under other federal regulations. For purposes of this regulation, infectious substances include:

(1) All cultures containing or suspected of containing a microorganism that causes or may cause disease in humans;

(2) All human or animal clinical specimens that are known or suspected of containing an infectious microorganism or toxin;

(3) Environmental samples if they are suspected of containing human pathogens at a level that presents risk of infection.

(4) Other specimens not included above and designated as infectious by a qualified person (e.g., a physician, scientist, veterinarian, nurse).

Interstate traffic means the movement, including any portion entirely within a State or possession, from a point of origin in any State or possession or from outside the Untied States, to a point of destination in any other State or possession; or form any State or possession to another country; or between a point of origin and a point of destination in the same State or possession but through any other State, possession or contiguous foreign country.

Outer packaging means the container in which a primary receptacle and secondary package, together with any absorbent materials and cushioning, is shipped.

Primary receptacle means a tube, vial, bottle, ampule, or similar item that contains the material being shipped.

Secondary packaging means a container into which the primary receptacle is placed.

Special infectious substance means any of the microbiological agents or toxins listed in § 72.5 or appendix to subpart B of this part, including any human or animal specimens known or suspected of containing such a microbial agent, or any other microorganism that could cause serious infection and/or death in persons exposed to them through either direct contact, aerosol or ingestion. Additional changes to this list may be made through publication of a notice in the **Federal Register.**

§ 72.3 Transportation of clinical specimens; minimum packaging requirements.

(a) *General requirements.* No person may knowingly transport or cause to be transported in interstate traffic, directly or indirectly, any clinical specimen unless such material is packaged, labeled, and shipped in accordance with the requirements of this section. However, any clinical specimens known or suspected to contain an infectious substance shall be labeled and packaged as described under § 72.4.

(1) Clinical specimens shall be packaged to withstand conditions incident to ordinary handling in transit, including shocks and pressure changes, so that if leakage of the primary receptacle(s) occurs during transit, the contents will be contained within the outer packaging. Required packaging and components are as follows:

(i) A watertight primary receptacle.

(ii) Watertight secondary packaging.

(iii) Absorbent material must be placed between the primary receptacle(s) and the secondary packaging. If multiple primary receptacles are placed in a secondary packaging, they msut be placed so as to ensure that contact between them is prevented. The absorbent material must be sufficient to absorb the entire contents of all primary receptacles.

(iv) Outer packaging must be of adequate strength for its capacity, mass and intended use. Any package with liquid contents shall have sturdy outer packaging constructed of corrugated cardboard, fiberboard, wood, metal, or rigid plastic. Styrofoam, plastic bags and paper envelopes are unacceptable outer packaging for such packages.

(2) The size of the outer package must be at least 100 mm (3.9 inches) in the smallest overall external dimension.

(3) The primary receptacle and the secondary packaging must be capable of withstanding, without leakage, an internal pressure which produces a pressure differential of not less than 95kPA (0.95 bar, 13.8lb/in^2) in the temperature range of −40° C to +55° C (−40° F to 131° F).

(4) An itemized list of contents must be enclosed between the secondary packaging and the outer packaging.

(5) For substances shipped at ambient temperatures or higher, means of ensuring a leak-proof seal of the primary receptacle, such as a heat seal, skirted stopper or metal crimp seal must be provided. Screw caps must be reinforced to ensure they do not leak. Evacuated specimen collection tubes such as Vacutainer® (Becton-Dickinson, Franklin Lakes, NJ) tubes do not require additional sealing.

(6) For substances shipped refrigerated or frozen (wet ice, prefrozen packs, dry ice), ice or dry ice must be placed outside the secondary packaging(s). Interior support must be provided to secure the secondary packaging(s) in the original position as the ice or dry ice melts or sublimates, respectively. If ice is used, the outer

packaging must be leak-proof. If dry ice is used, the outer packaging must permit the release of carbon dioxide gas. The primary receptacle must maintain its containment integrity at the temperature of the refrigerant as well as the temperatures and pressure of air transport to which the receptacle could be subjected if refrigeration were to be lost.

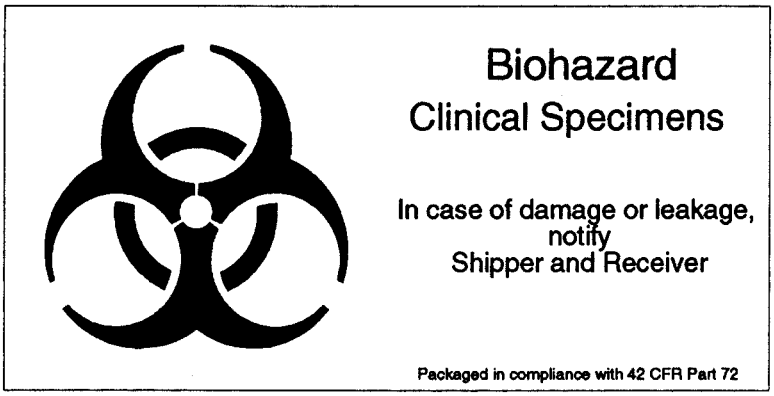
(7) *For substances shipped in liquid nitrogen,* a watertight material, capable of withstanding cryogenic temperatures must be used as the primary receptacles. Secondary packaging must also withstand very low temperatures. All requirements for shipment of liquid nitrogen must also be observed. The primary receptacle must maintain its containment integrity at the temperature of the refrigerant as well as at the temperatures and pressure of air transport to which the receptacle could be subjected if refrigeration were to be lost.

(8) *For lyophilized substances,* primary receptacles capable of containing lyophilized substances must be used (including, but not limited to, flame-sealed glass ampules or rubber-stoppered glass vials with metal seals).

(9) The completed package must be capable of withstanding at least a 1.2 meter drop on a hard unyielding surface without release of its contents.

(10)(i) Biohazard Labeling is required for the primary receptacle and outer packaging as described in 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens.

(ii) The outer packaging shall bear a label as illustrated and described below:



(A) The color of material on which the label is printed shall be bright orange; the printing shall be black. The color of the biohazard symbol shall be black.

(B) The label shall be a rectangle measuring 51 mm (2 inches) high by 102.5 mm (4 inches) long.

(C) The biohazard symbol, measuring 40 mm (1.56 inches) in diameter, shall be centered on a square measuring 51 mm (2 inches) on each side.

(D) Size of the letters (Helvetica) on the label shall be as follows:

Biohazard—16 pt.
Clinical specimens—14 pt.
Packaged in compliance with 42 CFR part 72—6 pt.
In case of damage or leakage, notify—10 pt.
Shipper and Receiver—10 pt.

(iii) The outer packaging shall also bear a shipping label with the names, addresses, and contact names and telephone numbers of the individual/institution sending the package and the intended recipient (addressee).

(b) *Leaking packages.* The carrier, the receiver, or anyone handling a package described in paragraph (a) of this section that is leaking, shall upon discovery of leakage, isolate the package, and immediately, or as soon as feasible, notify the shipper and intended recipient to receive instructions on clean-up and disposition of the package.

§ 72.4 Transportation of infectious substances; minimum packaging requirements.

(a) *General requirements.* No person may knowingly transport or cause to be transported in interstate traffic, directly or indirectly, any infectious substance, including clinical specimens or biological products that are known or presumed to contain infectious substances, unless such material is packaged, labeled, and shipped in accordance with the requirements of this section.

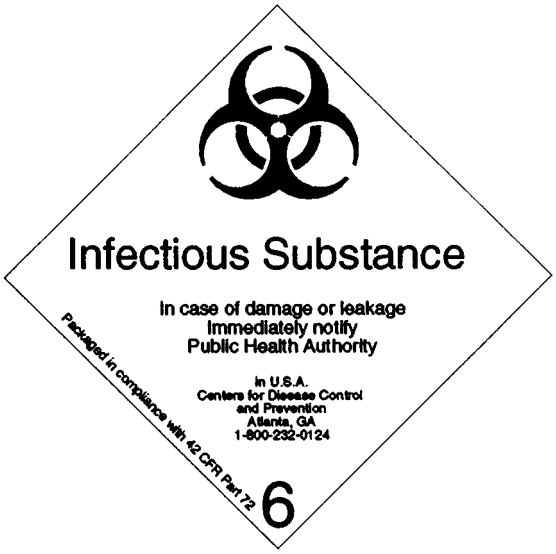
(1) Infectious substances shall be packaged to meet the requirements of § 72.3(a) (1)–(8).

(2) The maximum amount of infectious substances that may be placed in a single outer shipping package shall not exceed four liters or four kilograms, excluding the packaging and coolant weights.

(3) In addition, each complete package must be capable of passing the tests specified in 49 CFR 178.609.

(4)(i) Biohazard Labeling is required for the primary receptacle and outer package as described in 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens.

(ii) The outer packaging shall bear a label as illustrated and described below:



(A) The color of material on which the label is printed shall be white and the printing shall be in black; the biohazard symbol shall be in black.

(B) The label shall be a diamond-on-point measuring, at a minimum, 51 mm (4 inches) on each side.

(C) The black biohazard symbol, measuring 21 mm (.81 inches) in diameter, shall be centered on a square measuring 51 mm (2 inches) on each side.

(D) Size of the letters (Helvetica) on the label shall be as follows:

Infectious Substance—16 pt.
Packaged in compliance with 42 CFR Part 72—5 pt.
In case of damage or leakage—7 pt.
Immediately notify—7 pt.
Public Health Authority—7 pt.
In U.S.A.—5 pt
Centers for Disease Control and Prevention—5 pt.
Atlanta, GA—5 pt
1–800–232–0124—5 pt.
6—24 pt.

(E) The number 6 (mandated by the DOT) shall be centered at the bottom of the label.

(iii) The outer packaging and the secondary packaging shall also bear labels with the names, addresses, and contact names and telephone numbers of the individual/institution sending the package and of the intended recipient (addressee).

(b) *Damaged or leaking packages.* The carrier, the receiver, or anyone handling a package described in paragraph (a) of this section that is damaged or leaking, shall upon discovery of damage or leakage, isolate the package and immediately, or as soon as feasible, in order to receive instructions on appropriate decontamination and disposal, notify the shipper, receiver, and the Centers for Disease Control and Prevention by telephone at 1–800–232–0124. The caller shall provide a description of the condition of the package; the name, address and telephone number of the shipper; and other pertinent information.

(This information collection has been approved by OMB (0920–0199)).

§ 72.5 Packaging and method of shipment of special infectious substances; failure to receive.

(a) *List of special infectious substances.* (1) The following microorganisms and toxins are considered special infectious substances because they present a potentially high risk of infection and/or death to persons exposed to them through either direct contact, aerosol or ingestion. Shipments of special infectious substances must be tracked to assure their safe arrival.

Bacterial Agents

Bacillus anthracis
Bartonella bacilliformis
Brucella, all species
Burkholderia (Pseudomonas) mallei
Burkholderia (Pseudomonas) pseudomallei
Clostridium botulinum
Francisella tularensis
Mycobacterium tuberculosis (drug-resistant strains)
Yersinia pestis

Viral and Rickettsial Agents

Arboviruses assigned to Biosafety level 3 or 4 in the CDC/NIH publication Biosafety in Microbiological and Biomedical Laboratories, which may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Other Viral Agents

Crimean-Congo hemorrhagic fever virus
Eastern Equine Encephalitis virus
Ebola virus
Hantaan virus (Korean hemorrhagic fever virus)
Hantavirus (all viruses of genus)
Herpesvirus simiae (B virus)
Lassa fever virus
Lymphocytic choriomeningitis virus
Marburg virus
Pox viruses pathogenic for humans (e.g., smallpox, monkeypox)
South American Hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito)
Tick-borne Encephalitis complex viruses
Venezuelan Equine Encephalitis virus
Yellow fever virus

Rickettsial Agents:

Rickettsia rickettsiae
Rickettsia prowazekii
Coxiella burnetti

Fungal Agents

Coccidioides immitis
Histoplasma capsulatum
Histoplasma duboisii

Toxins

Toxins listed in appendix to Subpart B of this part are to be shipped as special infectious substances. Other microbial toxins known to be pathogenic shall be shipped as infectious substances, as provided under § 72.4.

(2) This list may be supplemented through publication of a notice in the **Federal Register**. Call 1–888–232–3299 (the FAX Information system in CDC's Office of Health and Safety) for a copy of the current list, or check the CDC website at http://www.cdc.gov/od/ohs.

(b) *Packaging and method of shipment.* All materials that contain or are reasonably believed to contain a special infectious substance shall be packaged and labeled for interstate shipment according to the requirements of § 72.4. In addition, the shipper shall: Use a shipping system that provides for tracking during transport (e.g., registered mail or those of certain

private carriers); Provide 24 hours-per-day telephonic response to emergency calls from carriers in case of a spill or incident involving a package containing a special infectious agent; and, Notify the addressee by telephone or other electronic means of the date of shipment on the date of shipment, or provide a written schedule of shipment in advance, and request confirmation of receipt of each shipment. Records of such notifications shall be retained by the shipper until notified of receipt.

(c) *Confirmation of receipt.* Upon receipt, the addressee shall provide confirmation to the shipper by telephone or other electronic means.

(d) *Failure to receive.* When confirmation of receipt of material designated in paragraph (a) of this section is not received by the shipper within 3 days following anticipated delivery of the package, the shipper shall notify the carrier which shall immediately seek to ascertain the disposition of the package. In addition, the shipper shall notify the Centers for Disease Control and Prevention within 24 hours by telephone at 1–800–232–0214 to enable the agency to determine whether a public health response is necessary.

§ 72.6 Requirements; variations.

The Director, Centers for Disease Control and Prevention, may approve variations from the requirements of this subpart if, upon written application, review and evaluation, it is found that such variations provide protection at least equivalent to that provided by compliance with the requirements specified in this subpart, and such findings are made a matter of official written record.

§ 72.7 [Redesignated as § 72.21]

Subpart B—Handling of Select Agents

§ 72.11 Additional requirements for facilities transferring or receiving select agents.

(a) * * *

(5) The requirements for BSL–2, 3, and 4 operations pertaining to this section are contained in the CDC/NIH publication, ''Biosafety in Microbiological and Biomedical Laboratories,'' Fourth Edition, May 1999 which is hereby incorporated by reference. The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR part 51 the incorporation by reference of the above publication. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia, or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC. The manual is also available on the CDC web site at www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm.

* * * * *

(c) * * *. (1) The Secretary may authorize a state agency or private entity to register facilities under paragraph (a) of this section, if the Secretary determines that the registering entity's criteria for determining the biosafety standards for facilities handling select agents are consistent with the requirements contained in the CDC/NIH publication ''Biosafety in Microbiological and Biomedical Laboratories,'' Fourth Edition.

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Subpart C—Penalties

§ 72.21 [Redesignated from § 72.7]

Appendix A to Part 72 [Transferred to Subpart B and heading revised]

Appendix to Subpart B

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[FR Doc. 99–27640 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1825 and 1852

Standard Clause for Export Controlled Technology

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This is a proposed rule amending the NASA FAR Supplement (NFS) to add a contract clause the purpose of which is to assure contractors (and offerors) understand that they are responsible for controlling export compliance in accordance with law and regulation, and that they should not rely on NASA to obtain necessary licenses in execution of the contracted work. This clause complies with performance based contracting principles. It notifies the contractor of its responsibilities under the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) during contract performance. Additional, tailored clauses may be required when specific exemptions or licenses are applicable, as, for example, with the International Space Station. These clauses would be developed on a case-by-case basis.

DATES: Comments should be submitted on or before December 27, 1999.

ADDRESSES: Interested parties should submit written comments to Patrick Flynn, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to patrick.flynn@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK), (202) 358–0460.

SUPPLEMENTARY INFORMATION:

A. Background

The potential for disclosure of military or dual-use technology to foreign powers is a serious concern throughout the Government. The acquisition community should take steps to control exports of sensitive data, and hardware, and services at all levels of contract management, including subcontracts and technical interchanges. In response to field center requests, NASA proposes an ''Export Licenses'' clause and guidance for the NFS. The clause notifies contractors they are responsible for obtaining all required licenses when exporting.

B. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1825 and, 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part Parts 1825 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1825 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1825—FOREIGN ACQUISITION

2. Sections 1825.970, 1825.970–1, and 1825.970–2 are added to read as follows:

1825.970 Export control.

1825.970–1 Background.

(a) NASA contractors and subcontractors are subject to U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799. The contractor is responsible for obtaining the appropriate licenses or other approvals from the Department of State or the Department of Commerce when it exports hardware, technical data, or software, or provides technical assistance to a foreign destination or ''foreign person'', as defined in 22 CFR 120.16, and there are no applicable or available exemptions/exceptions to the ITAR/EAR, respectively. A person who is lawfully admitted for permanent residence in the United States is not a ''foreign person''. (See 22 CFR 120.165 and 15 CFR 734.2(b)(2)(ii).)

(b) The exemption at 22 CFR 125.4(b)(3) of the ITAR provides that a contractor may export technical data without a license if the contract between the agency and the exporter provides for the export of the data. The clause at 1852.225–70, Alternate I, provides contractual authority for the exemption, but the exemption is available only after the contracting officer, or designated representative, provides written authorization or direction enabling its use. It is NASA policy that the exemption at 22 CFR 125.4(b)(3) may only be used when technical data (including software) is exchanged with a NASA foreign partner pursuant to the terms of an international agreement in furtherance of an international collaborative effort. The contracting officer must obtain the approval of the Center Export Administrator before granting the contractor the authority to use this exemption.

1825.970–2 Contract clause.

Insert the clause at 1852.225–70, Export Licenses, in all solicitations and contracts, except in contracts with foreign entities. Insert the clause with its Alternate I when the NASA project office indicates that technical data (including software) is to be exchanged by the contractor with a NASA foreign partner pursuant to an international agreement.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.225–70 is added to read as follows:

1852.225–70 Export Licenses.

As prescribed in 1825.970–2, insert the following clause:

Export Licenses

(Date)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120–130, and the Export Administration Regulations (EAR), 15 CFR Parts 730–799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

Alternate I

(Date)

As prescribed in 1825.970–2, add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[FR Doc. 99–27961 Filed 10–27–99; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register

Vol. 64, No. 208

Thursday, October 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–077, A–427–078, A–428–082, and C–408–046]

Continuation of Antidumping Findings on Sugar from Belgium, France and Germany and Countervailing Duty Order on Sugar from the European Community

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Continuation of antidumping findings on sugar from Belgium, France and Germany and countervailing duty order on sugar from the European Community

SUMMARY: On February 2, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended (''the Act''), determined that revocation of the antidumping findings on sugar from Belgium, France and Germany would be likely to lead to continuation or recurrence of dumping (64 FR 5638 (February 2, 1999)). On September 19, 1999, the Department determined that revocation of the countervailing duty order on sugar from the European Community would be likely to lead to continuation or recurrence of a countervailable subsidy (64 FR 49464 (September 19, 1999)). On October 6, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping findings on sugar from Belgium, France, and Germany and revocation of the countervailing duty order on sugar from the European Community would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 54335 (October 6, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping findings on sugar from Belgium, France, and Germany, and continuation of the countervailing duty order on sugar from the European Union.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 28, 1999.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52759, respectively) of the antidumping duty findings on sugar from Belgium, France, and Germany, and of the countervailing duty order on sugar from the European Union pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping findings would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the findings to be revoked (*see Final Results of Expedited Sunset Reviews: Sugar from France, Belgium and Germany,* 64 FR 5638 (February 4, 1999)). Further, the Department found that revocation of the countervailing duty order on sugar from the European Community would be likely to lead to continuation or recurrence of a countervailable subsidy and notified the Commission of the net countervailable subsidy likely to prevail were the order to be revoked and the nature of the subsidy (*see Final Results of Full Sunset Review: Sugar from the European Community,* 64 FR 49464 (September 13, 1999)).

On October 6, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping findings on sugar from Belgium, France, and Germany, and revocation of the countervailing duty order on sugar from the European Union would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sugar From the European Union; Sugar From Belgium, France, and Germany; and Sugar and Syrups From Canada,* 64 FR 54355 (October 6, 1999), and USITC Pub. 3238, Inv. Nos. 104–TAA–7, AA1921–198–200, and 731–TA–3 (September 1999)).

Scope

The merchandise subject to these antidumping findings from France, Belgium, and Germany is sugar, both raw and refined, with the exception of specialty sugars (*e.g.,* cones, hats, pearls, loaves). The order on sugar from France excludes homeopathic sugar pellets meeting the following criteria: (1) Composed of 85 percent sucrose and 15 percent lactose; (2) having a polished, matte appearance, and more uniformly porous than domestic sugar cubes; (3) produced in two sizes of 2 mm and 3.8 mm in diameter. [1]

The merchandise under review is currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 1701.1100, 1701.1101, 1701.1102, 1701.1103, 1701.1105, 1701.1110, 1701.1120, 1701.1150, 1701.1200, 1701.1201, 1701.1202, 1701.1205, 1701.1210, 1701.1250, 1701.9105, 1701.9110, 1701.9120, 1701.9121, 1701.9122, 1701.9130, 1701.9900, 1701.9901, 1701.9902, 1701.9905, 1701.9910, 1701.9950, 1702.9005, 1702.9010, 1702.9020, 1702.9030, 1702.9031, 1702.9032, 2106.9011, 2106.9012, 2106.9042, 2106.9044, and 2106.9046. The HTSUS item numbers are provided for convenience and customs purposes only. They are not determinative of the products subject to the orders. The written description remains dispositive.

The merchandise subject to the countervailing duty order from the European Community is sugar, with the exception of specialty sugars (*e.g.,* cones, hats, pearls, loaves), from the European Community. Blends of sugar and dextrose, a corn-derived sweetener, containing at least 65 percent sugar are within the scope of this order. The merchandise subject to this order is currently classifiable under item numbers 1701.11.00, 1701.12.00,

[1] *See Sugar from France; Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Finding,* 61 FR 40609 (August 5, 1996).

1701.91.20, and 1701.99.00 of the HTSUS (*see Sugar from the European Community; Final Results of Countervailing Duty Administrative Review*, 55 FR 35703 (August 31, 1990)). HTSUS subheadings are provided for convenience and customs purposes only. They are not determinative of the products subject to the order. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping findings and this countervailing duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping findings on sugar from Belgium, France, and Germany, and of the countervailing duty order on sugar from the European Community. The Department will instruct the U.S. Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these antidumping findings and countervailing duty order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) the Department intends to initiate the next five-year reviews of these findings and order not later than September 2004.

Dated: October 22, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28241 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of reviews, heavy forged hand tools from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the administrative review of the antidumping duty orders on Heavy Forged Hand Tools from the People's Republic of China. These reviews cover five manufacturers/exporters of the subject merchandise to the United States for the period February 1, 1998 to January 31, 1999.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or James Terpstra, AD/CVD Enforcement, Office 4, Group II, Import Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3601, or (202)–482–3965, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete the final results of these reviews within the initial time limit established by the Uruguay Round Agreements Act (245 days after the last day of the anniversary month), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until February 28, 2000. *See* Memorandum from Bernard T. Carreau to Robert LaRussa, on file in the Central Records Unit located in room B–099 of the main Department of Commerce building (October 21, 1999).

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A).

Dated: October 22, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–28239 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose From the United Kingdom: Notice of Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for final results of antidumping duty administrative review of industrial nitrocellulose from the United Kingdom.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the antidumping duty administrative review of the antidumping order on industrial nitrocellulose from the United Kingdom. This review covers one producer/exporter of industrial nitrocellulose for the period July 1, 1997, through June 30, 1998.

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–6320 or (202) 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351(1998).

Extension of Time Limit for Final Results

The Department published the preliminary results of this administrative review on August 6, 1999 (64 FR 42908). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. Due to the complexity of the issues in this case, the Department determines that it is not practicable to complete the preliminary results of this review within the statutory time limit. *See* memorandum from Bernard T. Carreau to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters. Therefore, the Department is extending the time limit for the final results of the aforementioned review to February 2, 2000.

This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 22, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–28238 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–085]

Revocation of Antidumping Duty Order: Sugar and Syrups From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order: Sugar and syrup from Canada.

SUMMARY: Pursuant to section 751(c) of the Tariff Act from 1930, as amended (''the Act''), the United States International Trade Commission (''the Commission'') determined that revocation of the antidumping duty order on sugar and syrups from Canada is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 54355 (October 6, 1999)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department of Commerce (''the Department'') is publishing notice of the revocation of the antidumping duty order on sugar and syrups from Canada. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52759, respectively) of the antidumping duty order on sugar and syrups from Canada pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Full Sunset Review: Sugar and Syrups from Canada*, 64 FR 48326 (September 3, 1999)).

On October 6, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on sugar and syrups would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sugar From the European Union; Sugar From Belgium, France, and Germany; and Sugar and Syrups From Canada*, 64 FR 54355 (October 6, 1999), and USITC Pub. 3238, Inv. Nos. 104–TAA–7, AA1921–198–200, and 731–TA–3 (September 1999)).

Scope

The merchandise subject to this antidumping duty order is sugar and syrups from Canada produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar.[1] The subject merchandise is currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 1701.99.0500, 1701.99.1000, 1701.99.5000, 1702.90.1000, and 1702.90.2000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping duty order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, will revoke the antidumping duty order on sugar and syrups from Canada. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: October 22, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–28240 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] This order excludes icing sugar decorations as determined in the U.S. Customs Classification of January 31, 1983 (CLA–2 CO:R:CV:G).

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Health, et al. Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated 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). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC.

Docket Number: 99–020. Applicant: National Institutes of Health, Bethesda, MD 20892. Instrument: Electron Microscope, Model JEM-1010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 64 FR 50058, September 15, 1999. Order Date: July 13, 1999.

Docket Number: 99–021. Applicant: University of Kentucky, Lexington, KY 40506–0046. Instrument: Electron Microscope, Model JEM–2010F. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 64 FR 50058, September 15, 1999. Order Date: June 30, 1999.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–28242 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092099A]

Atlantic Highly Migratory Species Fisheries; Atlantic Yellowfin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: As required under the Fisheries Act of 1995, NMFS is publishing final statistics on the level of U.S. recreational and commercial landings of Atlantic yellowfin tuna (YFT) in metric tons (mt) since 1981. Preliminary statistics were published in March 1996, and NMFS received considerable public comment. NMFS is publishing these final statistics to inform the public of updated data on landings trends in the YFT recreational and commercial fisheries.

ADDRESSES: To request a copy of the scientific paper which forms the basis for these revised YFT statistics, contact Pasquale Scida at 978–281–9208.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of yellowfin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

NMFS is required under the Fisheries Act of 1995, Title III, Atlantic Tunas Convention Act, section 309(a) to publish **Federal Register** documents with preliminary and final/revised statistics on the commercial and recreational yellowfin tuna landings for the past 10 years. NMFS published preliminary data on YFT landings in a **Federal Register** document to inform the public of trends in YFT recreational and commercial landings (61 FR 10319, March 13, 1996). In order to meet the intent of the Fisheries Act of 1995, given the complexity of the issues involved with a complex data recovery of YFT landings, NMFS deemed it preferable to at least publish preliminary data within the 140-day deadline and requested public comment over a 2-month time period.

These preliminary data and data issues have been discussed at meetings of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) in recent years. Comments received from both the general public and from the ICCAT Advisory Committee (IAC) resulted in extensive reexamination of the data by NMFS scientists to gather the best available data on commercial and recreational YFT landings for publication and subsequent revisions to the preliminary statistics. At the November 1998 IAC meeting, a copy of a draft report to be used as the basis for submitting revised estimates of YFT landings to ICCAT was circulated to the IAC. After further refining the information, NMFS provided a draft scientific paper detailing YFT data revisions to the IAC at its March 1999 meeting.

The source of the YFT data and revisions made to the historical database are described in a paper that has been submitted to the ICCAT Standing Committee on Research and Statistics (SCRS) at its 1999 meetings. As noted in the summary of this SCRS paper, a variety of commercial landings databases were examined for the purpose of evaluating the possible need for revising reports of U.S. landings of Atlantic bigeye, albacore, yellowfin, and skipjack tuna to ICCAT. This SCRS paper updates, with appropriate revision and additions, a previous review of U.S. commercial landings of Atlantic yellowfin as presented in an earlier SCRS paper. In addition, various sources of recreational landing tallies and estimates are examined and landings values are presented. To obtain copies of this SCRS paper, see **ADDRESSES**.

In presenting these revised data to the SCRS, the United States is formally revising historical landings statistics. These revised statistics have been submitted through the ICCAT reporting process, after incorporating the review comments received from both the IAC and the SCRS, and will be published in future reports of the SCRS. Because this review and revision of YFT statistics included extensive research of all sources of YFT data and a variety of estimation techniques, NMFS considers these historical data as the best data available at this time. NMFS, therefore, does not intend to consider further revisions to these data unless new, verifiable data become available.

NMFS is exploring and, in some cases, implementing new measures designed to improve the quality of YFT commercial and recreational landings data. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, adopted in April 1999, includes new permitting and reporting requirements for recreational vessels, including logbooks for Highly Migratory Species charter/headboats, if selected. Through efforts implemented under the Atlantic Coast Cooperative Statistics Program, NMFS is working with states and other fishery management authorities to ensure uniform, non-redundant, and consistent data collection systems. These and other efforts should contribute to improved quality of YFT data in coming years.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: October 22, 1999.

Gary C. Matlock,

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

TABLE: YELLOWFIN TUNA COMMERCIAL AND RECREATIONAL LANDINGS, 1981–1998, IN METRIC TONS ROUND WEIGHT

Year	Commercial Landings	Recreational Landings
1981	1886	1274
1982	819	912
1983	358	2196
1984	1775	405
1985	6342	3394
1986	5102	4836
1987	5710	3952
1988	9166	1899
1989	6530	1930
1990	5121	545
1991	5495	1418
1992	5982	957
1993	4386	1898
1994	3775	4522
1995	4395	4157
1996	3788	4498
1997	4105	3569
1998	2693	2927

[FR Doc. 99–28104 Filed 10–27–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Notice of Establishment of the Technology Advisory Committee

SUMMARY: The Commodity Futures Trading Commission has determined to establish the ''Technology Advisory Committee'' As required by Section 9(a)(2) of the Federal Advisory Committee Act 5 U.S.C. app. 2, § 9(a)(2) and 41 CFR 101–6.1007, the Commission has consulted with the Committee Management Secretariat of the General Services Administration. The Commission certifies that the creation of this advisory committee is necessary and is in the public interest in connection with the performance of duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended. This notice is published pursuant to Section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 9(a)(2) and 41 CFR 101–6.1015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fox, Legal Counsel to Commissioner James E. Newsome, at 202–418–5052, or Marcia K. Blase, Committee Management Officer, at 202–418–5138. Written comments should be

submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Sophisticated communication technology has expanded access to markets and market users. The rise of electronic screen-based trading is changing the face of the financial services industry and along with it, the regulatory concerns of the Commission, of other regulators and of the United States Congress. As electronic trading platforms become more prevalent and in some markets, directly compete with or displace traditional open-outcry trading pits, it is imperative that the Commission keep informed of the ever evolving technological environment, the impact of technology on our markets, market professionals and other market participants, and to consider regulatory reform as appropriate.

The Technology Advisory Committee's charter directs the committee to assist the Commission in: (1) Reviewing emerging technologists utilized by financial services and commodity markets and their participants, (2) identifying technology providers for the financial services and commodity markets, (3) analyzing the impact of emerging technologies on financial services and commodity markets, as well as on market professionals and market users, particularly in the areas of system capacities and readiness, order flow practices, and clearing and payment activities, (4) reviewing the Commodity Exchange Act and the regulations promulgated thereunder to assess their applicability to electronic issues and to ensure the Commission's ability to exercise appropriate fraud and manipulation authority, and (5) examining ways that the Commission may respond to the increasing use of technology in financial services and commodity markets through appropriate legislative proposals and/or regulatory reform.

The Commission anticipates that the Technology Advisory Committee will provide a valuable forum for information exchange and advice on these matters. The reports, recommendations and general advice from the committee will enable the Commission to assess more effectively the need for possible statutory, regulatory, policy or programmatic initiatives to address the challenges posed by a technology driven marketplace. The committee's membership will include representatives of those markets, firms and market users most directly involved in and affected by the technological evolution of the industry and will be balanced in terms of points of view represented. Toward that end, the Commission is considering for membership a broad cross-section of persons representing technology providers, exchanges, regulatory organizations, financial intermediaries, end-users, traders and academics.

The Commission has found that advice on such specialized matters is best obtained through the advisory committee framework rather than through other more costly, less flexible and less efficient means of assembling persons from all sectors of the financial services industry. The Commission has also found that the Technology Advisory Committee will not duplicate the functions of the Commission, another existing advisory committee, or other means such as public hearings. The Commission has concluded, therefore, that the creation of the Technology Advisory Committee is essential to the accomplishment of its mission and is in the public interest.

Fifteen days after publication of this notice in the **Federal Register**, a copy of the charter of the Technology Advisory Committee will be filed with the Chairman of the Commission, the Senate Committee on Agriculture, Nutrition and Forestry, and the House Committee on Agriculture. A copy of the charter will be furnished to the Library of Congress and the Committee Management Secretariat and will be posted on the Commission's website at http://www.cftc.gov.

Issued in Washington, DC, on October 20, 1999, by the Commission.

Jean W. Webb,

Secretary of the Commission.

[FR Doc. 99–28105 Filed 10–27–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 5, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5111.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–28342 Filed 10–26–99; 1:40 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 12, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean W. Webb,

Secretary of the Commission.

[FR Doc. 99–28343 Filed 10–26–99; 1:40 pm

BILLING CODE 6351–001–M

COMMODITY FUTURES TRADING

Sunshine Act Meeting Commission

AGENCY HOLDING THE MEETING: Commodity Future Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, November 19, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–28344 Filed 10–26–99; 1:40 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, November 26, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–28345 Filed 10–26–99; 1:40 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Wurtsmith Air Force Base (AFB), Michigan

On August 13, 1999, the Air Force issued the Second Supplemental Record of Decision (SSROD) for the disposal and reuse of Wurtsmith AFB, Michigan. The decisions included in this SSROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the disposal and reuse of Wurtsmith AFB, filed with the Environmental Protection Agency and made available to the public on September 24, 1993.

Wurtsmith AFB closed on June 30, 1993, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on December 12, 1994 and a Supplemental ROD on July 7, 1996 that documented decisions regarding the intended disposal of Government-owned property at the base. Since the issuance of the ROD and SROD, changing governmental priorities and economic situations have required modifications to some of the Air Force's disposal decisions.

Approximately 33 acres and 18 facilities in Parcels 20, 28, 31, 33 and 38 at the former base will be made available to the Charter Township of Oscoda (''Township'') for inclusion in the no-cost rural Economic Development Conveyance (EDC). Any property not conveyed through the EDC will be made available for public sale. Formerly, the property was identified in the Supplemental ROD (SROD) for disposal through public benefit conveyances or public sale.

The Air Force will terminate its lease on the Township-owned land upon which Buildings 225, 245, 500, 305, 420, 445, and 1608 are located and the buildings will become the property of the Township. Formerly, the Air Force was to have terminated its leasehold interest in the property and offered the property for public sale, with proceeds apportioned with the Township in a mutually agreed upon manner.

The implementation of these conversion activities and associated environmental mitigation measures will proceed with minimal adverse impact to the environmental. This action conforms with applicable Federal, State, and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment. The analyses contained in the FEIS are still valid.

Any questions regarding this matter may be directed to Mr. John P. Carr, Program Manager at (703) 696–5547. Correspondence should be sent to AFBCA/DB, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–28223 Filed 10–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Grissom Air Force Base (AFB), Indiana

On August 13, 1999, the Air Force issued the Third Supplemental Record of Decision (TSROD) for and the disposal reuse of Grissom AFB, Indiana. The decisions included in this TSROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the disposal and reuse of Grissom AFB, filed with the Environmental Protection Agency and made available to the public on September 16, 1994.

Grissom AFB closed on September 30, 1994, pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note) and the recommendations of the Defense Base Closure and Realignment Commission. The FEIS analyzed potential environmental impacts of the Air Force's disposal options by portraying a variety of potential land uses to cover a range of reasonably foreseeable future uses of the property and facilities by others.

The Air Force issued a ROD on October 11, 1994 and Supplemental RODs on June 20, 1997 and April 14, 1998 that documented decisions regarding the intended disposal of Government-owned property at the base. Since the issuance of the ROD and SRODs, changing governmental priorities and economic situations have required modifications to some of the Air Force's disposal decisions.

Parcels H, I, J, K, S, and F: These parcels are made available for disposal by Economic Development Conveyance (EDC). The previous disposal decision was to convey approximately 113 acres and 51 facilities on Parcels H, I, J, and K by public sale; Parcel S by negotiated sale; and Parcel F by Public Benefit Conveyance (PBC) through the Department of Interior (DOI) to the state of Indiana.

Parcel M: An unimproved 2-acre portion of Parcel M, adjacent to the west side of the wastewater treatment plant, is made available for public health PBC, public sale or EDC. The previous disposal decision was to make the entire Parcel M available for EDC.

Parcels 01 and 02: Parcels 01 (waste treatment facilities, including approximately 1 acre of land) and 02 (water production, storage and distribution facilities, including approximately 1 acre of land) are made available for disposal by EDC and public sale, as well as by PBC. The previous decision was to convey Parcels 01 and 02 to Peru Utilities through a public health PBC.

The implementation of these conversion activities and associated environmental mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations; and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment. The analyses contained in the FEIS are still valid.

Any questions regarding this matter may be directed to Mr. John P. Carr, Program Manager at (703) 696–5547. Correspondence should be sent to AFBCA/DB, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–28224 Filed 10–27–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment; Regarding Bonneville Power Administration's Subscription Power Sales to Customers and Customer's Sales of Firm Resources

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of revised draft policy proposal.

SUMMARY: BPA is publishing a revised draft policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts under sections 5(b) and 9(c) of the Northwest Electric Power Planning and Conservation Act, (the Northwest Power Act), P.L. 96–501, and section 3(d) of the Act of August 31, 1964, (the Northwest Preference Act), P.L. 88–552. This revised draft policy would modify BPA's 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy. *See* Modifications to 1994 Non-Federal Participation Capacity Ownership Contracts and Section 9(c) Policy.

DATES: Comments must be received by Tuesday, November 30, 1999.

ADDRESSES: Comments on the revised policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, may be sent to: Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212; or faxed to (503) 230–4019. Comments may be sent electronically to: *comment@bpa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, telephone (503) 230–4328 or 1–800–622–4519.

Information can also be obtained from your BPA Account Executive or from:

—Mr. Allen Burns, Vice President, Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–7640

—Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358–7409

—Mr. John Elizalde, Acting Manager, Western Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97232, telephone (503) 230–7597

—Mr. Steve Oliver, Manager, Bulk Power Business Area, 905 N.E. 11th, P.O. Box 3621, Portland OR 97208, telephone (503) 230–3295

SUPPLEMENTARY INFORMATION:

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On December 21, 1998, BPA published its Power Subscription Strategy and accompanying Record of Decision for selling Federal power under new contracts with its publicly and cooperatively owned utility, investor-owned utility and direct service industrial customers. The Power Subscription Strategy stated overall policies for determining the amount of Federal power to be offered to Pacific Northwest public utility and investor-owned utility customers under section 5(b)(1) of the Northwest Power Act.

On May 6, 1999, BPA published a **Federal Register** Notice with a draft proposed policy for determining the net requirements of publicly and cooperatively owned utility and investor-owned utility customers. (64 Fed. Reg. 24376) BPA sought public comment on its proposed polices for determining utility customer net requirements under section 5(b)(1) of the Northwest Power Act. Adoption of a final policy is important to a successful implementation of BPA's post-2001 power sales contracts under BPA's Power Subscription Strategy.

BPA is issuing this revised draft policy proposal based upon comments and requests to provide additional comment on BPA's draft policy. This policy would provide guidance on implementation of the Power Subscription Strategy under applicable statutes and describe how certain factual determinations will be made regarding the amount of Federal power publicly and cooperatively owned utilities, or investor-owned utilities may purchase from BPA under section 5(b)(1) of the Northwest Power Act. BPA's determination of this amount, as described in this revised policy, is affected by a customer's export of hydroelectric resources and non-hydroelectric resources out of the Pacific Northwest in accordance with section 9(c) of the Northwest Power and section 3(d) of the Northwest Preference Act. BPA will review a customer's export of power or output from resources under its 1994 Policy as modified herein.

I. Relevant Statutory Provisions

The Northwest Power Act provisions are:

5(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 *et seq.*] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A). The capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

(B). Such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

5(b)(1) In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1)

9(c) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 23, 1964 (16 U.S.C 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term ''surplus energy'' shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term ''surplus peaking capacity'' shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837d and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. *The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to*

section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus. 16 U.S.C. 839f(c) (emphasis supplied).

The Northwest Preference Act provision is:

3(d) The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy. 16 U.S.C. 837b(d).

II. Scope of the Proposed Policy

The Policy on Determining Net Requirements addresses the amount of Federal power that BPA is obligated to offer to customers requesting contracts to serve firm power loads under section 5(b)(1) of the Northwest Power Act. Purchasers eligible to request a contract under section 5(b)(1) include public body, cooperative, or investor-owned utilities in the region.[1] BPA has a corresponding statutory duty when determining the net requirements of a requesting purchaser to apply the provisions of section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act. Such provisions direct the Administrator to determine whether an export or proposed export of a requesting purchaser's non-hydroelectric or hydroelectric resource would result in an increase in the firm energy requirements of any of BPA's customers. Findings by BPA that the export of such resources are likely to increase BPA's firm obligations, and that the resource could have been conserved, or otherwise retained to serve regional loads, will result in a reduction (decrement)[2] of the amount of Federal power and energy available for purchase under section 5(b)(1) equal to the amount of power and energy, and for the duration, of the export.

III. Policy on Determining Net Requirements

A. Determination of the Amount of Federal Power for Sale Under Section 5(b)(1)

1. BPA will determine the amount of Federal power for sale under section 5(b)(1) in the manner described below. In making this determination BPA will reduce the amount of Federal power a customer may purchase in accordance with section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

(a) BPA will offer an amount of Federal power for sale to a purchaser under section 5(b)(1) based upon such customer's actual retail firm power loads in the region. To establish the purchaser's actual retail firm power loads in the region, BPA may use either the actual measured load of the customer, or the customer's own actual load forecast if BPA determines such forecast is reasonable. (Any actual or forecast loads of the customer shall exclude any wholesale loads served by the customer. Wholesale loads means power sales made by the customer using its own resources to serve its own wholesale customers who are purchasing to resell the power at wholesale or retail.)

(b) For purposes of determining the amount of Federal power BPA will offer to existing customers in the post-2001 period, BPA will require an existing customer to continue to use all generating and contractual resources included in the Firm Resource Exhibit (FRE) of such customer's current 1981 or 1996 power sales contracts for the 1998–1999 operating year. BPA will not, however, require customers to continue the use of resources identified in their 1998–99 FREs for any one of the following reasons: (1) The customer's contractual resource(s) expires prior to October 1, 2001; (2) the customer's generating resource(s) is determined by BPA to be lost due to obsolescence, retirement, or loss of resource in accordance with section III.B.1 (loss of generating resources); or (3) the customer's contractual resource(s) is determined to be lost in accordance with section III.B.2 (loss of contractual resources). In addition, customers who were given express written consent by the Administrator to permanently remove a resource from use in serving regional firm power loads are not required to return such resources to use.

(c) BPA's requirement that the customer continue using the customer's resources listed in its FRE for the 1998–1999 operating year is based upon a decision made in BPA's Power Subscription Strategy. The decision was to establish a baseline for determining the customer's resources expected to continue serving regional firm power loads in the post-2001 period. In addition, BPA will require that all Federal surplus firm power contracts or excess Federal power contracts with terms which extend further than one year beyond 2001 be applied as firm resources used to serve the customer's retail firm power load in the region.

(d) Customers may elect to use additional generating resources or contractual resources for their consumer load service under their section 5(b)(1) contract. Under the contract customers can also agree to contractually commit power purchases from the market to serve any remaining amounts of their retail firm power load in the region which is not served by (1) generating resources or contractual resources that a customer must use to serve load under section III.A.2, above; and (2) additional generating resources or contractual resources that a customer elects to use under this section. Customers may elect to apply short term power purchases from the market to their loads in amounts agreed to under the terms of a BPA 5(b)(1) contract. Customers using market purchases to serve their loads will be required to use such market purchases for the entire 5 year rate period for which BPA establishes rates of general application. All additional generating resources or contractual resources shall be used for the term of the contract except for resources added pursuant to section III.C (renewable resources).

(e) BPA will apply the Declaration Parameters included in the Power Products Catalog under Actual Partial Service for the Subscription Strategy to establish the amount of power available from the customer's generating and contractual resources under the Subscription contract. Because the Declaration Parameters are subject to revision, BPA will use the Declaration Parameters in effect at the time of BPA's contract offer to determine the amount

[1] The Policy also addresses any sales of Federal power BPA makes under section 5(b) in settlement of a customer's right to service under the residential exchange program created under section 5(c) of the Northwest Power Act. While recognizing that this is a settlement, it does not affect the application of, or change, the policy regarding the net requirements of any customer.

[2] The 1994 Section 9(c) Policy BPA published uses the term ''decrement'' to mean a decrease or reduction in BPA's obligations to sell power to a customer under its section 5 power sales contract with BPA. When used in this Policy and modification of that Policy the terms ''decrement,'' ''decrease,'' ''reduce'' or ''reduction'' have the same meaning.

of Federal power offered. The customer may declare a reduction in the amount of power that would otherwise be available from its own generating and contractual resources by the amount of power the customer uses from such resources to serve its wholesale loads, defined above; which were served prior to December 5, 1980, and which continue to be served by such resources.

2. In addition to subsections (a) through (e) above, BPA will reduce the amount of Federal power BPA will offer to a customer under section 5(b)(1), consistent with the application of BPA's Section 9(c) Policy as modified, and resultant findings made under section 9(c) of the Northwest Power Act and section 3(d) of the Northwest Preference Act.

B. Statutory Discontinuance for a Customer's Generating and Contractual Resource

1. A customer's non-Federal generating resource is considered no longer used to serve regional retail firm power load under a section 5(b)(1) contract if the resource's use is permanently discontinued due to obsolescence, retirement, or loss.

(a) Obsolescence must result from the inability to continue to operate a resource due to lack of available replacement parts or sources of fuel supply regardless of price.

(b) Retirement must result from a demonstration by the customer that the cost of replacements, improvements, or additions to continue to operate the resource, combined with the resource's variable operating costs, exceed the reasonable economic return over the remaining life of the resource. The reasonable economic return will be determined by requiring the customer to measure the cost to the customer of replacing its operating resource with market purchases plus the cost to shut down the plant against the cost of operating the resource.

(c) Loss of a resource must result from factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy including complete destruction of the resource, complete loss of the Federal or State license to own or operate the resource, or complete and/or partial reduction of the capability of a resource to the extent of the loss resulting from orders of a State or Federal agency affecting the operation of the resource.

2. A customer's contractual resource is considered no longer used to serve regional firm power load if the customer experiences a permanent loss of contract right. Loss of contract right must result from expiration of the term of the contract, after any extensions of the contract term unilaterally available to the customer, or factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. Loss of contract right does not include the following: (a) a customer's failure to exercise a right to renew a contract; (b) a customer's failure to exercise a right of first refusal on termination of the contract; (c) a change in price under the contract; and (d) any other action or inaction by a customer which results in the contract being unavailable to the customer.

C. Use of New Renewable Resources To Serve Retail Firm Power Loads

1. A customer may elect to use a new renewable resource to serve its regional retail firm power load for a specified period which is less than the term of its section 5(b)(1) contract; provided, however, that such new renewable resource is part of the first 200 aMW of all new renewable resources requested by all BPA customers under this section to serve regional retail firm power load each year. Customers may choose to elect to use new renewable resources at the time of contract execution and during an annual review of their net load requirements under their section 5(b)(1) contract.

2. Only new renewable resources that meet the standards established to qualify for BPA's conservation and renewable resource discount may be used under this section.

3. Application of a new renewable resource under section III.C.1 shall reduce the customer's net requirements load.

D. Changes in the Amount of Federal Power Purchased During the Term of a Contract

1. Under section 5(b)(1) contracts, BPA will require a customer to submit annual reports that track and forecast the customer's retail firm power loads in the region. The purpose for the annual report is to provide information that shows any increase or reduction in the amount of the customer's retail firm power loads in the region from the amount served when the contract was executed. Based on such load information BPA shall make an annual determination of the net firm requirement load of the customer under a section 5(b)(1) contract as follows.[3] First, BPA will account for:

(a) The generating and contractual resources a customer is required to use to serve firm power load in the region under section III.A.1.(b) (FRE firm resources);

(b) Additional resources a customer has elected to use under section III.A.1.(d) (additional generating and contractual resources); and

(c) Power purchases from the market that a customer has contractually committed to purchase in amounts specified in their 5(b)(1) contract, consistent with section III.A.1.(d) (market purchases).

Second, BPA will make adjustments for:

(d) Changes in a customer's new renewable resources used to serve retail firm power load in the region under section III.C.1 (renewable resources);

(e) Changes in the customer resources serving its load pursuant to III.A.1.(b) and III.A.1.(d) due to BPA's determination of a statutory discontinuance of the customer's generating resource(s) or contract resource(s) under section III.B (statutory discontinuance); and,

(f) Any reductions in the amount of power a customer may purchase under a section 5(b)(1) contract due to the annual review under section III.D.3.

2. If BPA's annual determination of a customer's net firm requirement load results in a finding that the amount of Federal power a customer can purchase is less than the contracted amount of power to be purchased for the next contract year, then the customer shall first remove from use for its regional firm load, for a period of one year, any market purchases the customer has agreed to use under its BPA contract. Such removal shall be in an amount and shape equal to the difference between the amount of Federal power a customer can purchase for the next year and the amount and shape of Federal power a customer has contracted to purchase for the next contract year.

If the amount of Federal power a customer can purchase after the removal of the market purchases is still less than the amount of power the customer has contracted to purchase for the next contract year, then BPA will implement the mitigation measure for load loss specified in the customer's section 5(b)(1) contract and reduce the amount of Federal power a customer is obligated to purchase. Alternatively, BPA may consent to the customer's removal of a generating resource or contractual resource from use for its regional firm load, for a period of one year. The

[3] Such reports may be in addition to other load or resource information the customer is required to provide BPA on its loads or resources for contract administration and planning purposes. Such determinations may be in addition to other determinations of net firm power requirements loads made more frequently under the terms of the customer's contract.

portion of a customer's generating resource or contractual resource removed shall be equal to the difference between the amount and shape of Federal power a customer can purchase and the amount and shape of Federal power the customer has contracted to purchase for the next contract year. Any customer's resources, other than market purchases, which are removed from use for regional firm load service under this section, are subject to BPA's determinations made under sections 9(c) of the Northwest Power Act and 3(d) of the Northwest Preference Act. If the customer's use of that resource results in a reduction or decrease in BPA's obligation to provide power under section III.D.3, then BPA will recalculate the amount of power a customer may purchase for the upcoming year as provided under this section (III.D.2).

3. On an annual basis as provided under a section 5(b)(1) contract BPA will review the export of power from a customer's regional non-Federal generating and contractual resources and, if necessary, will reduce the amount of Federal power a customer may purchase in accordance with section IV of this policy.

4. BPA shall make available additional amounts of power to a customer under a section 5(b)(1) contract to serve its regional loads which were formerly served by a customer's generating resources or contractual resources but are no longer required to be used to serve the customer's retail firm power loads in the region, in accordance with section III.B (statutory discontinuance), and BPA will make available Federal power to serve new loads acquired by a customer due to purchase or condemnation of additional distribution for its system. Such service shall be on 6 months notice that such an event has occurred or as mutually agreed.

IV. Scope of the Section 9(c) Policy

A. Modification to BPA's Non-Federal Participation Section 9(c) Policy

BPA's modification to its 1994 Non-Federal Participation Section 9(c) Policy (1994 NFP Policy) is set out below. Deletions, changes and additions are included in an interlined version which is available from BPA on request or at BPA's Web site at http://www.bpa.gov/Power/subscription. BPA's 1994 NFP, as modified will be retitled: BPA's Section 9(c) Policy.

BPA reaffirms the application of its 1994 section 9(c) policy and legal interpretation published in July of 1994. The context for some of the determinations made in the 1994 policy was, in part, prior exports and new exports of firm power from customer resources out of the region by participation in the new, Third AC Intertie. The interpretation has been of general application since 1994 to customer exports. BPA is now modifying the policy to address certain issues which were not previously addressed. Prior determinations made under the 1994 NFP Policy remain in effect for the duration of the export sale.

In the 1994 NFP Policy, BPA did not address the export of firm power from Investor-Owned Utility (IOU) resources because the IOUs were not placing any firm power loads on BPA under their section 5(b)(1) power sales contracts with BPA. *See* footnote 3, page B–10, BPA's 1994 NFP Policy. Since the IOUs were not taking any power service from BPA, reductions pursuant to a section 9(c) determination in their service under those section 5(b)(1) contracts would not have affected their BPA service. Presently, BPA is preparing new section 5(b)(1) power sales contracts for the post-2001 period to be offered to customers eligible to purchase Federal power. BPA anticipates that IOUs will take firm power service from BPA under new 5(b)(1) contracts. BPA will require that the export of firm power from resources of IOUs be accounted for, in setting BPA's net firm load obligations under those contracts. Additionally, the 1994 NFP Policy would be modified to update the technical provisions to accommodate recent changes. Therefore, the 1994 NFP Policy would be modified as follows:

B. Section 9(c) Policy

Section 1. Northwest Power Act Section 9(c) Determinations

As required by the Northwest Power Act, BPA shall make its Section 9(c) determinations for the exports of its customers.

Section 2. Finding Required

In examining the export of Pacific Northwest resources, BPA shall make its finding based on the following requirements of Section 9(c):

(a) BPA shall analyze whether the customer's exports would result in an increase in the electric power requirements of any of its customers in the region. BPA shall do this by examining its load/resource forecasting and planning documents to determine the impact the exports will have on BPA's and its customers' ability to meet Pacific Northwest load presently and in the future. BPA shall also analyze the information available from other sources including least-cost plans and load/resource information of Pacific Northwest utilities which do not currently place any load on BPA.

(b) BPA shall review the specific resources and categories of resources being exported to determine if such exports will result in an increase in the firm energy requirements of its customers and if so, determine whether the resource could be conserved or otherwise retained for service to regional loads by using reasonable means. To do this BPA shall compare the resource a customer is proposing to export with those resources which BPA finds in its analysis can be exported without having to decrement the customer's Section 5(b) utility power sales contract.

Section 3. Scope of Section 9(c) Policy

This Section 9(c) Policy addresses a customer's exports of power from the Pacific Northwest resources out of the region. BPA shall make its Section 9(c) determinations based on a factual determination using information about the specific resource the customer intends to export.

Section 4. Data on Specific Resources

BPA shall base its Section 9(c) determination on specific information BPA has obtained from the customer on the resources it intends to export. This includes, but is not limited to, the following information:

(a) Name of the resource to be exported;

(b) Location of the resource;

(c) type of resource;

(d) Whether the resource is currently in any Pacific Northwest utility's firm resource exhibit;

(e) Whether the resource is planned or existing; and

(f) Type of transaction or sale, and if it is a seasonal exchange, the terms of the exchange.

BPA will also consider any prior history of the resource including prior efforts to market it to BPA or other Pacific Northwest utilities.

Section 5. Prior Case-by-Case Section 9(c) Interpretations

BPA does not propose to modify its existing determinations on Pacific Northwest utility exports including its 1994 NFP Policy determinations and will apply its prior case-by-case interpretations of Section 9(c), and Section 3(d) of the Regional Preference Act to such decisions without modification. Therefore, BPA incorporates by reference in this Policy these prior interpretations of Sections 9(c) and 3(d) and the determinations

made thereunder for the duration of the export sale.

Section 6. Categories of Resources

(a) Exports That Will Not be Decremented by BPA: Under this Section 9(c) Policy determination, BPA will determine whether the export of certain resources will not result in an increase in the electric power requirements of any of its customers. If the export of a resource does not increase the firm energy requirements of BPA's customers, the resource may be exported without a reduction in BPA's firm load obligation under the customer's Section 5(b) utility power sales contract.

(b) Exports That Will be Decremented by BPA: BPA has determined based on its prior policy interpretations of Northwest Power Act Section 9(c) that the following categories of resources are conservable and if they are exported BPA shall decrement the customer's Section 5(b) power sales contract:

(1) All Pacific Northwest hydroelectric resources owned or purchased by a Pacific Northwest utility, whether or not dedicated in any Pacific Northwest utility's firm resource exhibit; and

(2) All Section 5(b)(1)(A) and 5(b)(1)(B) thermal resources that are currently dedicated by a utility in any customer's firm resource exhibit.

Section 7. System Sales

BPA shall utilize a case-by-case approach to system sales. BPA shall require the exporting utility to submit an operating plan for the duration of the export, identifying these specific resources or categories of resources supporting the system sale. If the export is a system sale made up solely of a customer's resources that individually would not result in a decrement if each resource were exported standing alone, then BPA would not decrement a customer's firm power purchase under section 5(b) for such a system sale. BPA shall decrement the customer's Section 5(b) utility power sales contract if the system sale involves the export of hydro to support a power sale (whether or not in a firm resource exhibit); a thermal resource that is in a firm resource exhibit; or any sale that is a prohibited resale of Federal power.

Any customer that was previously a Contracted Requirements customer of BPA, and which is currently purchasing power and energy from BPA under its power sales contract, shall have BPA's firm power obligation under its section 5(b)(1) contract reduced by a system sale in the amount of the power and for the duration of the export sale. If the customer was not placing load on BPA under its section 5(b) utility power sales contract at the time of the export sale, then at such time as the customer requests to place a firm load obligation on BPA, BPA shall make an appropriate determination and may reduce its energy sales to such customer in the amount of the export sale and for any remaining duration of the export sale.

Section 8. Seasonal Exchange

Any seasonal exchange between a customer and an out of region entity which results in no net regional energy deficit during any Operating Year shall not result in a decrement by BPA of the customer's Section 5(b) utility power sales contract.

Section 9. Recall

Any customer that does not want its Northwest Power Act, Section 5(b) power sales contract decremented by BPA may agree to include terms for the recall of its export sale upon notice from BPA that the energy from such customer's resource is needed to meet BPA or other customers firm power load in the Pacific Northwest.

Section 10. Resource Offer

This Section 9(c) Policy gives a customer an option to offer a resource to BPA or to all other Pacific Northwest customers. If offered for sale to BPA, the resource shall be treated as an unsolicited proposal. If BPA proposes to acquire the resource, and if it is greater than 50 aMW or offered for longer than 5 years, it will be subject to the Northwest Power Act Section 6(c) process, which can take more than 12 months. If neither BPA, nor any Pacific Northwest customer, purchases the offered resource (offered at the customer's cost including a reasonable rate of return), the resource may then be exported without a decrement of the customer's Northwest Power Act Section 5(b) power sales contract.

Section 11. Consumer-Owned and Independent Power Producer-Owned Resources

If a customer contracts to purchase and then export any consumer-owned resource or any resource developed by an independent power producer, BPA shall decrement the customer's Section 5(b) power sales contract if the resource being exported is a hydroelectric resource or if the resource is dedicated to any Pacific Northwest utility load in any utility's firm resource exhibit.

Section 12. BPA Notification

BPA shall notify in writing any customer which has exported a resource or proposes to export a resource of the outcome of BPA's Section 9(c) determination. The BPA notification shall be made within 30 working days from the date the customer notifies BPA that it will be exporting a regional resource or BPA receives the information it requests about a specific resource.

C. Scope of the Section 9(c) Policy

BPA's Section 9(c) Policy (9(c) Policy) addresses the effect of exports of resources by any public body, cooperative, or investor-owned utility purchasing power under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of the 9(c) Policy shall be applied to all exports occurring after publication of this 9(c) Policy. Customers that have exported resources prior to publication of the 9(c) Policy may face a reduction in the amount of Federal power that BPA will offer at the time they request a contract under section 5(b)(1) for service after September 30, 2001. A reduction in BPA's obligation to provide firm power requirements to a customer under its section 5(b)(1) contract will be based on a case by case factual determination regarding the export of a resource by a BPA customer, and may be based on the regional load resource balance at the time of the export and other factors. BPA shall address the effect of exports of resources by a customer purchasing power under a contract pursuant to section 5(c), section 5(d)(1), or section 5(f) of the Northwest Power Act on a case by case basis.

D. Subscription 9(c) Study

BPA will perform a Subscription 9(c) Study to be issued with the final Policy on Determining Net Requirements. The study will provide part of the factual basis for determining whether an export of a resource during the period from October 1, 2001, through September 30, 2006, is likely to result in an increase in the firm energy requirements of BPA customers, and if so, whether the resource could be conserved, or otherwise retained to serve regional loads.

V. Section-by-Section Review of Changes in Revised Draft Policy From the Original Draft Proposal Issued April 26, 1999

This section provides section-by-section review of the changes in the revised draft policy from the initial draft policy proposal published in the **Federal Register** on May 6, 1999. The revised draft policy is reorganized as follows: new section III replaces former sections I and II; and new section IV

replaces former section III.A, III.B, III.C, III.D, III.E, and III.F. An interlined version showing the proposed changes is available at BPA's Web site at http://www.bpa.gov/Power/subscription.

III. Policy on Determining Net Requirements

A. Determination of the Amount of Federal Power For Sale Under Section 5(b)(1)

New section III.A includes the provisions included in the former section I. New section III.A.1.(a) is intended to clarify the customer loads BPA will use as the basis of the initial contract offer described in former section I.A.

New section III.A.1.(b) is intended to clarify the resources a customer is required to continue to use to serve load described in former sections I.B, I.C, and I.D. The revised draft policy contains no references to the rate at which BPA would sell power to the customer. Such rate will be established in BPA rate cases. New section III.A.1(b). eliminates the requirement for the customer to notify BPA in writing of lost resources or lost contracts prior to execution of a customer's Subscription contract.

New section III.A.1.(d) is intended to clarify that customers may elect to use additional resources to serve their regional firm power loads in addition to the customer resources required to be used under section III.A.1.(b). Under new section III.A.1.(d) customers can contractually commit to purchase power from the market to serve any consumer load not served by customer resources or purchases from BPA. New section III.A.1.(d) also specifies requirements for the period of use of resources under a section 5(b) contract.

New section III.A.1.(e) is intended to clarify which Declaration Parameters BPA will use to establish the capability of customer resources described in former section I.E. New section III.A.1.(e) also includes a right for a customer to reduce the capability of the resources that are used to serve any wholesale loads that the customer served on December 5, 1980, and continues to serve, from the customer's resources.

New section III.A.2 is intended to clarify the reduction in Federal power purchases due to the export of non-Federal resources described in former section I.F.

B. Statutory Discontinuance for A Customer's Generating and Contractual Resource

New section III.B replaces former sections II.D and II.E. New section III.B is intended to clarify the application of BPA's existing standards to lost generation and contractual resources and loss of contract rights. The initial draft inadvertently omitted application of the description of a loss of contract right from section II.E. Section III.B was moved in the policy to reflect the determination of resources that are permanently discontinued from use to serve the customer's regional firm load between 1998 and the time of contract offer.

New section III.B.1 establishes a physical test of when a resource is obsolescent under the statute and an economic test to be applied when a resource may be retired in its use to serve firm load in the region. New section III.B.1 is also intended to clarify the conditions under which a customer resource is lost, including the partial loss of a resource due to orders of a State or Federal agency.

New section III.B.2 is intended to clarify a customer's loss of a contract right.

C. Use of New Renewable Resources To Serve Retail Firm Power Loads

New section III.C replaces former section II.C. New section III.C is intended to clarify that a customer may elect to use a new renewable resource in its initial contract and during the term of the contract.

D. Changes in the Amount of Power Purchased During the Term of a Contract

New section III.D replaces former sections II.A, II.B, and II.F. New section III.D.1 describes the annual review of the customer's loads under a section 5(b)(1) contract and is intended to clarify that any changes in the amount of power purchased under a section 5(b)(1) contract will be based on forecasts of the expected load changes for the next contract year and how such changes, and other annual changes, in the customer's load and resources will be used to determine a customer's annual net firm requirement load amount under a section 5(b) contract.

New section III.D.2 describes how BPA will compare the amount of Federal power a customer can purchase against the contracted amount of power for the next contract year. Section III.D.2 describes how BPA will implement mitigation measures under its section 5(b) contracts when a customer's right to purchase is less than its contracted amount and provides BPA's consent to a customer's election not to use its non-Federal resource to serve its retail firm power load in the region for the next contract year. Resources that a customer elects not to use to serve its retail firm power load are subject to a BPA determination under BPA's Section 9(c) Policy.

New section III.D.3 is intended to clarify how BPA will annually review the export of energy from a customer's non-Federal resources.

New section III.D.4 describes when customers may purchase additional amounts of Federal power they did not contract to purchase in their initial contract.

IV. Scope of the Section 9(c) Policy

Section IV.A—Modification to BPA's Non-Federal Participation Section 9(c) Policy

Section IV.A modifies BPA's 1994 Non-Federal Participation Section 9(c) Policy and renames it BPA's Section 9(c) Policy.

Section IV.B—Scope of the Section 9(c) Policy

Section IV.B describes the application of the Section 9(c) Policy. The Section 9(c) Policy will be applied to all purchases under a section 5(b) contract for service after October 1, 2001. The findings and interpretations of the Policy shall be applied to all customer exports of power from non-Federal resources or sales of resources occurring after publication of the policy. Customers that have exported power from resources or sold resources prior to publication of the policy may face a reduction of the amount of Federal power they can purchase at the time they request a contract for service after September 30, 2001, based on a case by case factual determination.

Section IV.C—Subscription 9(c) Study

Section IV.C describes a factual study that BPA will provide with its final policy stating a basis for determining what exports of resources during the period from October 1, 2001 until September 30, 2006, may [or may not] result in an increase in the firm energy requirements of BPA's customers. The Subscription 9(c) Study will be based on the principles stated in the Section 9(c) Policy regarding resources that can be conserved to serve a regional load and the resources that may otherwise be retained to serve regional load.

Responsible Official: Mr. Sydney Berwager, Subscription Policy Manager is the official responsible for the development of the revised draft policy proposal for addressing issues under section 5(b) of the Northwest Power Act regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, and

the Section 9(c) Policy which modifies the 1994 NFP.

Issued in Portland, Oregon, on October 19, 1999.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 99–28178 Filed 10–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–10–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 22, 1999.

Take notice that on October 18, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–1046, filed in Docket No. CP00–10–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain natural gas facilities and points of delivery to Mountaineer Gas Company (Mountaineer) under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

Columbia states that the points of delivery to be abandoned are located on jurisdictional pipeline in West Virginia that is being sold to Mountaineer. Mountaineer has agreed to continue providing the service supplied to these points of delivery. Columbia does not propose a reduction or termination of service as a result of the abandonment. Mountaineer will install measurement at the interconnection of Line E and EM–63. The volumes that Columbia delivers to Mountaineer will shift to the site of the new measurement.

Any questions regarding this application should be directed to Steven Hellman at (703) 227–3467, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 10146, Fairfax, Virginia 22030–0146.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–28182 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–38–001]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

October 22, 1999.

Take notice that on October 13, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing the following tariff sheets as part of Destin's FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1999.

Second Revised Sheet No. 2
Original Sheet No. 258

Destin states that the purpose of this filing is to file a tariff sheet referencing certain non-conforming service agreements in compliance with the Commission's order issued September 29, 1999. Destin has requested an effective date of November 1, 1999. Destin states that copies of the filing will be served upon parties designated on the official service list, its shippers 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).

David P. Boergers,

Secretary.

[FR Doc. 99–28183 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR94–271–002]

East Tennessee Natural Gas Company; Notice of Compliance Filing

October 22, 1999.

Take notice that on October 13, 1999, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing the following revised tariff sheets for inclusion in East Tennessee's FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet No. 6
Second Revised Sheet No. 100
First Revised Sheet No. 158
First Revised Sheet No. 159
First Revised Sheet No. 160
Second Revised Sheet No. 161

Tennessee requests that the attached sheets to the filing be made effective November 12, 1999.

Tennessee states that the attached tariff sheets to the filing are submitted in compliance with the Commission's Letter Order in the above-referenced docket. East Tennessee Natural Gas Company, 88 FERC ¶ 61,241 (1999). Tennessee further states that the revised tariff sheets reflect the proposed changes to its FERC Gas Tariff as a result of Tennessee Gas Pipeline Company's (''Tennessee'') reconciliation and termination of Tennessee's Account No. 191.

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)

David P. Boergers,

Secretary.

[FR Doc. 99–28185 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–28–000]

Florida Gas Transmission Company; Notice of Filing of Pro Forma Tariff Changes

October 22, 1999.

Take notice that on October 15, 1999, Florida Gas Transmission Company (FGT) tendered for filing pro forma tariff sheets in compliance with the Commission's Order dated May 26, 1999 and the ''Notice of Extension of Time'' issued July 28, 1999 in Docket No. RP99–186–000:

Pro Forma Sheet No. 125A
Pro Forma Sheet No. 129
Pro Forma Sheet No. 129A
Pro Forma Sheet No. 129C
Pro Forma Sheet No. 163B
Pro Forma Sheet No. 163C
Pro Forma Sheet No. 163D
Pro Forma Sheet No. 163E
Pro Forma Sheet No. 163H
Pro Forma Sheet No. 184B
Pro Forma Sheet No. 184D

FGT states that on December 18, 1998 an Annual Report of system balancing costs and revenues was filed detailing the activity of the Cash Out, Fuel Resolution and Balancing Tools mechanisms for the Settlement Period ended September 30, 1998 in Docket No. RP99–186–000. For the second consecutive year, the Annual Report reflected that system balancing costs exceeded system balancing revenues. FGT's tariff provides that FGT will make a tariff filing to increase the non-compliance penalties in the event system balancing costs exceed system balancing revenues (subject to certain dollar thresholds). Because FGT believed that simply increasing the non-compliance penalties would not adequately address the underlying reasons for the revenue deficiency, FGT requested waiver of this tariff provision. The Commission deferred action on FGT's waiver request and directed its staff to convene a technical conference.

As a result of the technical conference held in Washington, DC on March 11, 1999, FGT and the active parties to the proceeding reached agreement for the resolution of a portion of the cumulative cost underrecovery and agreed to meet and further discuss the causes and possible solutions for the remaining deficiency, as provided for in the Joint Motion for Approval of Limited Waivers (''Joint Motion''), filed by FGT and the active parties on April 12, 1999. At an Operating Committee meeting held in Orlando, Florida on June 8, 1999, FGT and its customers exchanged information and ideas. The Operating Committee attendees agreed that a minor mechanical change to the presentation of the fuel imbalances in the Annual Report was appropriate and recognize that many non-compliance penalties are still tied to specific indices—Tivoli and St. Helena—even though the cash out mechanism has been modified to utilize the highest and lowest of three indices. Finally, FGT and its shippers recognized that the current tariff provisions requiring a tariff filing to increase non-compliance penalties in the event of certain under recoveries may not be appropriate to address the causes of such underrecoveries.

FGT states that the Operating Committee agreed to defer further discussions of more substantive changes to FGT's tariff pending the results of the activity for the current Settlement Period. The data for the Settlement Period ended September 30, 1999 is being compiled by FGT and will be circulated to shippers when complete.

FGT states that as part of the Joint Motion and a ''Request for Extension of Time'' filed on July 23, 1999 it agreed to make a pro forma tariff filing no later than October 15, 1999 to propose changes to FGT's tariff. Accordingly, FGT states, the instant filing is made to reflect limited changes to FGT's tariff.

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).

David P. Boergers,

Secretary.

[FR Doc. 99–28188 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–486–001]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

October 22, 1999.

Take notice that on October 12, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheet listed below for effectiveness on August 1, 1999:

Sub Tenth Revised Sheet No. 289

Granite State states that the purpose of this filing is to comply with the Letter Order issued in this proceeding on September 24, 1999. According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

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).

David P. Boergers,

Secretary.

[FR Doc. 99–28187 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–203–070]

Tennessee Gas Pipeline Company; Notice of Refund Report Filing

October 22, 1999.

Take notice that on October 14, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing its rate case refund report in the above-referenced dockets.

Tennessee states that the refunds were made in compliance with the Commission's Order On Rehearing and Compliance Filing issued in the above-referenced dockets on April 16, 1999. Tennessee Gas Pipeline Company, 87 FERC ¶ 61,086 (1999) (April 16th Order). Tennessee further states that April 16th Order had directed Tennessee to file revised tariff sheets and to make refunds consistent with its allocation of the costs of certain lateral facilities located in Tennessee's New England Rate Zone.

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).

David P. Boergers,

Secretary.

[FR Doc. 99–28184 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–472–001]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

October 22, 1999.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing in the referenced docket on October 15, 1999, certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A to the filing. The effective date for the tariff sheets is November 1, 1999.

Transco states that the purpose of the filing is to comply with the Commission's order dated September 30, 1999 in this proceeding. 88 FERC 61,311 (1999) (''September 30 Order''). In the September 30 Order, the Commission accepted, subject to condition, modification and clarification, Transco's August 18, 1999 filing to revise its authority to enter into negotiated rate transactions. The September 30 Order directed Transco to revise the last sentence of proposed Section 53.3 of the General Terms and Conditions to be consistent with bid evaluation proposals approved by the Commission in other proceedings and to ensure that the net present value evaluations of different rate forms are comparable by providing that only the fixed cost component of the usage revenue in a negotiated rate bid is included when comparing bids. In addition, the September 30 Order directed Transco to refile Section 53 of the General Terms and Conditions to affirmatively state that negotiated rates do not apply as the price cap for capacity release transactions. Transco states that the filing submits revised tariff sheets reflecting the changes required by the September 30 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–28186 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–108–000, et al.]

Idaho Power Company, et al.; Electric Rate and Corporate Regulation Filings

October 19, 1999.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER00–108–000]

Take notice that on October 13, 1999, Idaho Power Company tendered for filing a Notice of Cancellation of all Service Agreements currently effective under the Company's existing FERC Electric Tariff, Volume No. 1, Third Revised.

Idaho Power has requested that said cancellation be effective December 15, 1999.

Copies of the filing were mailed to those utilities now signatory to Idaho Power's FERC Electric Tariff Volume 1, Third Revised, as well as the utility regulatory commissions for Idaho, Oregon and Nevada.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Reliant Energy Desert Basin, LLC

[Docket No. EG00–6–000]

Take notice that on October 14, 1999, Reliant Energy Desert Basin, LLC (Reliant Desert Basin) tendered for filing an application for determination of exempt wholesale generator status, pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.A. § 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Reliant Desert Basin is a Delaware limited liability company and proposed to contract, own and operate a 500 MW gas-fired, combined-cycle facility in Casa Grande, Arizona.

Comment date: November 9, 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.

3. Minnesota Power, Inc.

[Docket No. ER00–106–000]

Take notice that on October 14, 1999, Minnesota Power, Inc. filed its quarterly report for the quarter ending September 30, 1999.

Comment date: November 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra CoGen, Inc.

[Docket No. QF86–442–003]

Take notice that on October 14, 1999, Sierra CoGen, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on March 31, 1986 in Docket No. QF86–442–000. The Facility was self-recertified in Docket Nos. QF86–441–001 and QF86–441–002. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Bear Mountain Cogen, Inc.

[Docket No. QF87–128–005]

Take notice that on October 14, 1999, Bear Mountain Cogen, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of the Bear Mountain facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on March 23, 1987 in Docket No. QF87–128–000. The Commission granted recertification of the facility on September 9, 1994 in Docket No. QF87–128–001. The Facility was self-recertified in Docket Nos. QF87–128–002, QF87–128–003, and QF87–128–004. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. McKittrick Limited

[Docket No. QF87–147–003]

Take notice that on October 15, 1999, McKittrick Limited, 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on February 24, 1987 in Docket No. QF87–147–000. By letter dated June 25, 1991, in Docket No. QF87–147–001, McKittrick notified the FERC of a change in ownership, a name change for the steam host, and revised performance data. The Facility was self-recertified in Docket No. QF87–147–002. Recertification is sought to reflect the divestiture of half of the upstream ownership interests in the facility and a change in status of such owner.

Comment date: November 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–97–000]

Take notice that on October 12, 1999, Alliant Energy Corporate Services, Inc., (Alliant Services), tendered for filing a signed Service Agreement under Alliant's Market Based Wholesale Power Sales Tariff (MR–1) between itself and The Energy Authority (TEA).

Alliant Services respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 7, 1999.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Minergy Neenah, LLC

[Docket No. ER00–104–000]

Take notice that on October 13, 1999, Minergy Neenah, LLC tendered for filing a report of its short-term transactions for the period July 1, 1999 through September 30, 1999.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. AI Energy, Inc.

[Docket No. ER00–105–000]

Take notice that on October 13, 1999, AI Energy, Inc., One Blue Hill Plaza, Pearl River, New York 10965, tendered for filing with the Federal Energy Regulatory Commission a Notice of Succession (Notice) to reflect a name change from AIE Energy, Inc., to AI Energy, Inc. In its Notice, AI Energy, Inc., adopts, ratifies, and makes its own in every respect, all applicable rate schedules and supplements thereto previously filed with the Commission by AIE Energy Inc.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. La Paloma Generating Company, LLC

[Docket No. ER00–107–000]

Take notice that on October 13, 1999, La Paloma Generating Company, LLC (La Paloma), tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity and energy, including certain ancillary services, at market-based rates. La Paloma plans to construct a nominally rated approximately 1,040 MW natural gas-fired, combined cycle power plant near the town of McKittrick, California.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER00–109–000]

Take notice that on October 13 , 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing Notification of Assignment of the Long-Term Firm Point-to-Point Transmission Service Agreement provided by Entergy Power, Inc., to Entergy Services, Inc., regarding the assignment of certain transmission rights to East Texas Electric Cooperative, Inc.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER00–110–000]

Take notice that on October 13, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Public Service Corporation.

NSP requests that the Commission accept the agreement effective September 30, 1999, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Montana Power Trading & Marketing Company

[Docket No. ER00–112–000]

Take notice that on October 13, 1999, Montana Power Trading & Marketing Company tendered for filing notification of transactions under its FERC Electric Rate Schedule No. 1 (Market Based Rates) for the quarter ending September 30, 1999.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER00–113–000]

Take notice that on October 13, 1999, Florida Power Corporation (FPC), tendered for filing revisions to its Open Access Transmission Tariff that provide for Generator Regulation Service and Delivery Scheduling and Balancing Service.

Florida Power requests that the amendments take effect on December 12, which is 60 days after they were filed.

Comment date: November 2, 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. 99–28127 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4459–000, et al.]

Rocky Road Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

October 20, 1999.

Take notice that the following filings have been made with the Commission:

1. Rocky Road Power, LLC

[Docket No. ER99–4459–000]

Take notice that on October 13, 1999, Rocky Road Power, LLC filed its quarterly report for the quarter ending June 30, 1999.

Comment date: November 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Power Providers Inc. and ENMAR Corporation

[Docket Nos. ER96–2303–013 and ER99–254–004]

Take notice that on October 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Quark Power L.L.C., Superior Electric Power Corporation, Agway Energy Services, Inc., Metro Energy Group, LLC, Total Gas & Electric, Inc. and Rainbow Energy Marketing Corporation

[Docket Nos. ER97–2374–010, ER95–1747–016, ER97–4186–008, ER99–801–002, ER97–4202–009 and ER94–1061–022]

Take notice that on October 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Union Electric Development Corporation, AC Power Corporation, Ocean Energy Services, Inc. and Washington Gas Energy Services, Inc.

[Docket Nos. ER97–3663–009, ER97–2867–009, ER96–588–010 and ER96–2830–005]

Take notice that on October 14, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. Conectiv Energy Supply, Inc., Dynegy Power Services, Inc., Enova Energy, Inc., NJR Energy Services Company, New Jersey Natural Energy Company and Russell Energy Services Company

[Docket Nos. ER98–2045–006, ER94–1612–023, ER96–2372–016, ER99–2384–002, ER96–2627–011 and ER96–2882–012]

Take notice that on October 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. Novarco Ltd. and Cook Inlet Energy Supply

[Docket Nos. ER98–4139–004 and ER96–1410–016]

Take notice that on October 18, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

7. New York State Electric & Gas Corporation

[Docket No. ES00–1–000]

Take notice that on October 13, 1999, New York State Electric & Gas Corporation submitted an application under Section 204 of the Federal Power Act, seeking authority to issue all securities with up to $275 million outstanding at any one time, which it may issue prior to January 1, 2005 (or such earlier date that the Commission may authorize, provided that such earlier date is not earlier than January 1, 2002), which have a maturity of one year or less.

Comment date: November 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Cleco Utility Group Inc.

[Docket No. ER99–3855–001]

Take notice that on October 12, 1999, Cleco Utility Group Inc., tendered for filing a notification of change in status and a three-year updated generation market analysis regarding the market-based tariff approved October 8, 1996, in Docket No. ER96–2677–000 for Cleco Utility Group Inc.'s predecessor, Central Louisiana Electric Company, Inc.

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER00–114–000]

Take notice that on October 14, 1999, Commonwealth Edison Company (ComEd) tendered for filing a service agreement establishing Consumers Energy Company (Consumers), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power

sales, and an executed Service Agreement with American Municipal Power-Ohio, Inc. (AMP). ComEd requests an effective date of September 28, 1999 for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on Consumers and AMP.

Comment date: November 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. State Line Energy, L.L.C.

[Docket No. ER96–2869–002]

Take notice that on October 22, 1999, State Line Energy, L.L.C. (State Line), tendered for filing an updated market power study in compliance with an order issued by the Federal Energy Regulatory Commission on October 17, 1996, in the above-referenced docket. See State Line Energy, L.L.C., 77 FERC ¶ 61,040 (1996).

Comment date: November 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Electric Clearinghouse, Inc.

[Docket No. ER94–968–028]

Take notice that on August 16, 1999, Electric Clearinghouse, Inc., tendered for filing its summary of activity for the quarter ended June 30, 1999.

12. DC Tie, Inc., WPS Energy Services, Inc., Edgar Electric Cooperative, d/b/a/ EnerStar Power Corporation, ICC Energy Corporation, Symmetry Devise Research, Inc., Murphy Oil USA, Inc., AMVEST Coal Sales, Inc., AMVEST Power, Inc., American Power Exchange, Inc. and J. Aron & Company

[Docket Nos. ER91–435–031, ER96–1088–027, ER98–2305–004, ER96–1819–012, ER96–2524–007, ER97–610–010, ER97–464–012, ER97–2045–010, ER94–1578–020 and ER95–34–021]

Take notice that on October 13, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

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. 99–28128 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM99–2–000]

Regional Transmission Organizations; Notice of Availability of the Environmental Assessment for the Proposed Regional Transmission Organizations Rulemaking

October 22, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the proposed rulemaking on Regional Transmission Organizations (RTOs). The EA was prepared to further the policies and goals of the National Environmental Policy Act.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Any person wishing to comment on the EA may do so. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *two* copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426; Label *one* copy of the comments for the attention of Jim Turnure, Room 64–09.
- Reference Docket No. RM99–2–000.
- Mail your comments so that they will be received in Washington, DC on or before November 22, 1999.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from James Apperson of the Commission's Office of External Affairs, at (202) 208–0004 or on the FERC Internet website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. The RIMS helpline can be reached at (202) 208–2222.

David P. Boergers,

Secretary.

[FR Doc. 99–28196 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11759–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi L&D #18 Project.

f. *Location:* At the Corps of Engineer's Mississippi L&D #18 Dam, on the Mississippi River, near the Town of Burlington, Henderson County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date for this notice.

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

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Mississippi L&D #18 dam and consist of the following: (1) Twelve 108-inch-diameter, 80-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing twelve generating units with a total capacity of 28 MW and an estimated average annual generation of 172.0 GWh; and (3) a 1,000-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at 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.

Preliminary Permit—Any qualified development applicant desiring a file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the 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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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.

David P. Boergers,

Secretary.

[FR Doc. 99–28189 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11760–000.

c. *Dated filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi L&D #24 Project.

f. *Location:* At the Corps of Engineer's Mississippi L&D 24Dam, on the Mississippi River, near the Town of Clarksville, Pike County, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

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.

The Commission's Rules and practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Mississippi L&D #24 dam and consist of the following: (1) Twenty 114-inch-diameter, 80-foot-long

steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing ten generating units with a total capacity of 50 MW and an estimated average annual generation of 307.0 GWh; and (3) a 500-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at 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.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 of the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the 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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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 not comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28190 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene And Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11763–000.

c. *Date filed:* June 14, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi L&D #16 Project.

f. *Location:* At the Corps of Engineer's Mississippi L&D 16 Dam, on the Mississippi River, near the Town of Muscatine, Rock Island County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael. Spencer@FERC.fed.us, (202) 219–2846.

j. Deadline for filing motions to intervene and protest: 60 days from the issuance date of this notice.

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

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Mississippi L&D #16 dam and consist of the following: (1) Seven 108-inch-diameter, 80-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing seven generating units with a total capacity of 14 MW and an estimated average annual generation of 86.0 GWh; and (3) a 1.5-mile-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction of at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. this filing may be viewed on the web at 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.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of itnent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', MOTION TO INTERVENE'', as applicable, and the 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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comemnts—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 comemnts. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–28191 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11789–000.

c. *Date filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #2 Project.

f. *Location:* At the Corps of Engineer's Kentucky L&D #2, on the Kentucky River, near the Town of Gratz, Henry County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Kentucky L&D #2 and consist of the following: (1) Six 108-inch-diameter, 50-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing six generating units with a total capacity of 8.2 MW and an estimated average annual generation of 50.0 GWh; and (3) a 200-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at 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.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to

submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the 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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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.

David P. Boergers,

Secretary.

[FR Doc. 99–28192 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11790–000.

c. *Date filed:* July 15, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #5 Project.

f. *Location:* At the Corps of Engineer's Kentucky L&D #5, on the Kentucky River, near the Town of Clifton, Anderson County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Kentucky L&D #5 and consist of the following: (1) Five 96-inch-diameter, 50-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing five generating units with a total capacity of 6.0 MW and an estimated average annual generation of 36.0 GWh; and (3) a 200-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at 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.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the 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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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.

David P. Boergers,

Secretary.

[FR Doc. 99–28193 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11794–000.

c. *Date filed:* July 16, 1999.

d. *Applicant:* Shelby Electric Cooperative, Inc.

e. *Name of Project:* Lake Shelbyville Project.

f. *Location:* At the Corps of Engineer's Shelbyville Dam, on the Kaskaskia River, near the Town of Shelbyville, Shelby County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. James E. Coleman, Shelby Electric Cooperative, Route 128 and North 6th Street, Shelbyville, Illinois 62565, (217) 774–3986.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

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.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Shelbyville dam and consist of the following: (1) a 12.25-inch-diameter, 332-foot-long steel penstock, constructed in the existing outlet works; (2) a powerhouse containing one generating unit with a total capacity of 6.1 MW and an estimated average annual generation of 21.2 GWh; and (3) a 800-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.W., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at 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.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the 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, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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.

David P. Boergers,

Secretary.

[FR Doc. 99–28194 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11811–000.

c. *Date Filed:* September 1, 1999.

d. *Applicant:* Wisconsin Logs, Inc.

e. *Name of Project:* Merrill Paper Mill.

f. *Location:* On the Prairie River, in the town of Merrill and the city of Merrill, Lincoln County, Wisconsin. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael A. Swiger, Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, NW, Seventh Floor, Washington, DC 20007, (202) 298–1891.

i. *FERC Contact:* William H. Diehl, E-mail address, William.Diehl@ferc.fed.us, or telephone (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance date of this notice.

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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The existing, inoperative project would consist of: (1) An 18-foot-high dam having a 78-foot-long gated spilway, five 11-foot-wide, 9-foot-high timber taintor gates, a 550-foot-long main earthen embankment, and a 400-foot-long secondary embankment; (2) a reservoir, known as Ward Mill Pond or Prairie Lake, having a 118-acre surface area and a 709-acre-foot storage capacity; (3) a forty-foot-long flume; (4) an intake pipe; (5) a powerhouse containing a 187-kW generating unit; and (6) appurtenant facilities. The facilities are owned by International Paper Company, 3 Paragon Drive, Montvale, New Jersey 07645.

Applicant will finance all efforts required to conduct studies and to prepare and file a license application. Project energy would be used in the lumber mill.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at 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.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the 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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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.

David P. Boergers,

Secretary.

[FR Doc. 99–28195 Filed 10–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Floodplain Involvement for Mead Substation Access Road and Water Supply Improvements

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: Western Area Power Administration (Western) proposes to reconstruct about 1.25 miles of Buchanan Boulevard south of Boulder City, Nevada, to improve the access to Mead Substation. The road is subject to washing out during high intensity thunderstorms at its crossing of Georgia Wash. The existing culverts at the wash cannot handle the flood flows, causing the road to wash out, temporarily blocking access to Mead Substation until repairs can be completed. Two water supply lines that serve Mead Substation also cross Georgia Wash. Western is exploring other water supply options, including replacing the water supply lines. Per a review of the flood hazard maps for Clark County, Nevada, Western determined that the road and water supply lines involve the 100-year floodplain of Georgia Wash. In accordance with the U.S. Department of Energy (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will review the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain. The floodplain assessment will be included in the environmental assessment being prepared for the proposed actions in accordance with DOE National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

DATES: Comments on the proposed floodplain action are due to the address below no later than November 12, 1999.

ADDRESSES: Comments should be addressed to Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, email holt@wapa.gov

FOR FURTHER INFORMATION CONTACT: Mr. George Perkins, Environmental Specialist, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 352–2536, email perkins@wapa.gov.

SUPPLEMENTARY INFORMATION: The proposed Buchanan Boulevard improvements would involve construction activities within the floodplain, including culvert removal, excavation, modifications to the existing drainage channel, new culvert installation, grading, and riprap placement. The floodplain assessment will examine the replacement of the water supply lines where they cross the floodplain, in addition to other water supply options. Buchanan Boulevard crosses the floodplain in Clark County in T. 23 S., R. 64 E., Section 20. Mead Substation is located in T. 23 S., R. 64 E., Section 28. Maps and further information are available from Western from the contact above.

Dated: October 19, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc 99–28179 Filed 10–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Floodplain Involvement for the Miracle Mile-Cheyenne No. 1 Transmission Line

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: Western Area Power Administration (Western) proposes to redirect the flow of the Little Laramie River about 9 miles north west of Laramie, Wyoming, to prevent a transmission line structure on the Miracle Mile-Cheyenne No. 1 transmission line from being washed out. The wood pole H-frame transmission line structure is located in the center of a small ox bow of the Little Laramie River. The river has eroded the bank on the ox bow to within a few feet of the structure. If the current rate of erosion continues, the structure could potentially fail during the year 2000 spring runoff. Per a review of the flood hazard maps for Albany County, Wyoming, Western determined that redirecting the flow of the river around the transmission line structure involves the 100-year floodplain of the Little Laramie River. In accordance with the U.S. Department of Energy's Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments on the proposed floodplain action are due to the address below no later than November 12, 1999.

ADDRESSES: Comments should be addressed to Mr. Jim Hartman, Environment Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, email hartman@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, Environmental Specialist, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, telephone (970) 490–7371, email rjones@wapa.gov.

SUPPLEMENTARY INFORMATION: The proposal to redirect the flow of the Little Laramie River to avoid potential failure of a transmission line structure would involve construction activities within the floodplain, including mechanical land excavation of a new channel that would cut across a small ox bow. The floodplain assessment will examine the construction of a new channel that would divert the river flow away from the transmission line structure. The Miracle Mile-Cheyenne No. 1 transmission line crosses the floodplain of the Little Laramie River in Albany County, Wyoming in T. 17 N., R. 74 W., Sections 7, 17, and 18. Maps and further information are available from Western from the contact above.

Dated: October 7, 1999.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 99–28180 Filed 10–27–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6465–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Title: Environmental Radiation Ambient Monitoring System (ERAMS); Subject: Environmental Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Environmental Radiation Ambient Monitoring System (ERAMS); EPA ICR No. 0877.06; OMB Control No. 2060–0015; expiration date, January 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 27, 1999.

ADDRESSES: National Air and Radiation Environmental Laboratory, 540 South Morris Avenue, Montgomery, Alabama 36115–2601. Limited number of hard copies available at this address. ICR available electronically at www.epa.gov/narel.

FOR FURTHER INFORMATION CONTACT: Charles M. Petko: TEL (334) 270–3411; FAX (334) 270–3454; and E-MAIL petko.charles@epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Sample collectors.

Title: Environmental Radiation Ambient Monitoring System (ERAMS); OMB Control No. 2060–0015; EPA ICR No. 0877.06; expiration date January 2000.

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) is a national network of stations collecting sampling media that include air, precipitation, drinking water, surface water, and milk. Samples are sent to EPA's National Air and Radiation Environ-mental Laboratory (NAREL) in Montgomery, AL, where they are analyzed for radioactivity. ERAMS provides emergency response and ambient monitoring information regarding levels of environmental radiation across the nation. All stations, usually manned by state and local personnel, participate in ERAMS voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information related to sample collection, *e.g.*, sample type, sample location, length of sampling period, and volume represented. 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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collec-tion of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 0.37 hours per response. 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.

Respondents/Affected Entities: Sample collectors, who are usually employed by state or, in a few cases, local government.

Estimated number of respondents: 313.

Frequency of Response: from twice weekly to four times annually, depending upon type of media being sampled.

Estimated Total Annual Hour Burden: 9201.8 hours.

Estimated Total Annualized Cost Burden: $178,515.20 (total refers to labor costs only).

Dated: October 22, 1999.

John G. Griggs,

Acting Director, NAREL.

[FR Doc. 99–28217 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6465–5]

CWA 303(d): Proposed Withdrawal of Total Maximum Daily Loads (TMDLs) for Copper in the Arthur Kill and the Kill Van Kull and Proposed Establishment of a TMDL for Nickel in the Hackensack River

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has has reached the following conclusions regarding certain segments of the New York-New Jersey Harbor: the applicable water quality standard for copper in the Arthur Kill and the Kill Van Kull is not likely to be exceeded (*i.e.*, the waters are not water quality-limited for copper) and, therefore, no TMDL is necessary for copper; and the Hackensack River below the Oradell Dam is water quality-limited for nickel.

Therefore, as part of this action, EPA is proposing to establish a TMDL for nickel.

EPA is hereby issuing public notice on its: proposed withdrawal of total maximum daily loads (TMDLs) for copper in the Arthur Kill and the Kill Van Kull; and, proposed establishment of a TMDL for nickel in the Hackensack River below the Oradell Dam.

DATES: Comments on the proposed action must be submitted to EPA on or before November 29, 1999.

ADDRESSES: Copies of the relevant supporting documents may be obtained by writing to Ms. Rosella O'Connor, Fate & Effects Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, 24th Floor, New York, New

York 10006–1866, oconnor.rosella@epamail.epa.gov, or by calling (212) 637–3823.

The administrative record containing background technical information is on file and may be inspected at the U.S. EPA, Region 2 office between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, except holidays. Arrangements to examine the administrative record may be made by contacting Ms. Rosella O'Connor.

FOR FURTHER INFORMATION CONTACT: Ms. Rosella O'Connor, telephone number (212) 637–3823.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action

I. Background

A TMDL, or total maximum daily load, is the maximum amount of a pollutant that a waterbody can assimilate and still meet ambient water quality standards. TMDLs are established for water quality-limited segments, which are defined as ''any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of technology-based effluent limitations* * *'' (40 CFR 130.2(j)).

On January 24, 1996, EPA established certain phased TMDLs, including waste load allocations (WLAs) and load allocations (LAs) for copper and mercury (61 F.R. 1930) for specific waters of the New York-New Jersey Harbor. The Phase I TMDLs established in January 1996 required additional data collection in the New Jersey Harbor waters before the establishment, as necessary, of revised Phase II TMDLs. Phase II TMDLs were to be established only if the additional data and/or modeling indicated that it was necessary to reduce point and/or nonpoint sources of certain metals below Phase I levels.

The New Jersey Harbor Dischargers Group (NJHDG), in cooperation with the New Jersey Department of Environmental Protection (NJDEP) and EPA, agreed to undertake the necessary additional ambient and load monitoring and modeling effort necessary to determining if copper, nickel and lead exceeded or potentially exceeded applicable water quality standards in the following New Jersey Harbor waters: Newark Bay, Hackensack River below the Oradell Dam, Passaic River below the Dundee Dam, Raritan River below the Fieldville Dam and Raritan Bay. Based on the results of the monitoring effort, it was determined that copper does not exceed the applicable water quality criteria in any of the above-mentioned waters. Therefore, the Phase I copper TMDLs, for the waters mentioned above, were withdrawn on September 19, 1997 (62 FR 49226). It was also determined that, of all of the above-mentioned waters, only the Hackensack and Passaic Rivers are potentially water quality-limited for nickel and required further assessment and, as necessary, the establishment of TMDLs for nickel. None of the above waters were water quality-limited for lead. The Arthur Kill and the Kill Van Kull were not directly included in this investigation, therefore the TMDLs for copper have remained in effect for those waters. The mercury TMDLs established in 1996 still remain in effect for those waters.

In 1997 and 1998, the NJHDG, NJDEP and EPA completed a monitoring program and water quality modeling to: (1) Determine if copper is actually water quality-limiting in the Arthur Kill and the Kill Van Kull; and, establish, as necessary, nickel TMDLs for the Hackensack and Passaic Rivers and Newark Bay. The ambient water quality data and modeling evaluation contained in the study entitled, ''Monitoring and Modeling of Nickel in The Hackensack and Passaic Rivers and Newark Bay and Monitoring and Data Analysis for Copper in The Arthur Kill and Kill Van Kull'', indicate that: (1) Copper is not water quality-limiting in the Arthur Kill and the Kill Van Kull, and therefore, the Phase I copper TMDLs (established January 24, 1996) are no longer necessary; (2) the Hackensack River is water quality-limited for nickel and requires the establishment of a TMDL for nickel; and (3) the Passaic River and Newark Bay are not water quality-limited for nickel and, at this time, do not require TMDLs for nickel. EPA is requesting comments on the first two actions.

II. Proposed Action

EPA is requesting comments on the (1) proposed withdrawal of TMDLs for copper in the Arthur Kill and Kill Van Kull because those waters are not impaired for copper and effluent limitations required of point sources under Section 301(b) of the Clean Water Act are stringent enough to implement water quality standards for copper applicable to such waters (*i.e,* these waters are not water quality-limited for copper) and (2) the proposed establishment of a TMDL for nickel in the Hackensack River. EPA is establishing the nickel TMDL in the Hackensack River at the request of the New Jersey Department of Environmental Protection. These proposed actions are appropriate given the specific circumstances, original and additional monitoring data, and management approach agreed upon by the States of New Jersey and New York and EPA, for the waters of the New York-New Jersey Harbor.

The supporting technical documentation for these actions is contained in ''Proposed Withdrawal of Total Maximum Daily Loads (TMDLs) for Copper in the Arthur Kill and Kill Van Kull and Proposed Establishment of a TMDL for Nickel in the Hackensack River (EPA, September 1999) and ''Monitoring and Modeling of Nickel in The Hackensack and Passaic Rivers and Newark Bay and Monitoring and Data Analysis for Copper in The Arthur Kill and Kill Van Kull'' (Great Lakes Environmental Center, 1998).

The determination that TMDLs for copper are no longer necessary in the Arthur Kill and Kill Van Kull is based on additional monitoring data and modeling conducted by the NJHDG's consultant, with assistance from EPA. Monitoring and modeling projections included more recent municipal plant effluent data and New Jersey storm water and combined sewer overflow data. Previous modeling projections and TMDLs were based on New York storm water and combined sewer overflow data. These data were used due to a lack of data for New Jersey storm water and combined sewer overflows. The more recent storm water and combined sewer overflow data are much lower than the original estimates. The data and modeling projections now indicate that the applicable copper criterion is not likely to be exceeded in these waters. Therefore, the Arthur Kill and Kill Van Kull are not water quality-limited for copper and do not require TMDLs. EPA is soliciting public comment on the proposed withdrawal of the copper TMDLs in the Arthur Kill and Kill Van Kull.

Analysis of ambient data and modeling projections in the Hackensack River indicate that the applicable nickel criterion of 8.2 μg/L (expressed in the dissolved form) is likely to be exceeded, and therefore, a TMDL is required. NJHDG's consultant developed a water quality model to facilitate the development of a TMDL. Modeling projections indicate that the Hackensack River is an effluent-dominated river. The ambient nickel concentration is driven by the concentration of nickel in the Bergen County Utilities Authority (BCUA) discharge. BCUA represents the largest source of nickel to the River. Other smaller sources include: North Bergen Sewage Treatment Plant,

Secaucus Sewage Treatment Plant, combined sewer overflows (CSOs), storm water, atmospheric and background (upstream sources). Using the calibrated water quality model, EPA calculated a TMDL of 4.98 lbs µg/day of nickel which will meet the applicable nickel criterion, taking into account seasonal variations and critical conditions, and including a margin of safety. The TMDL was allocated to point sources (waste load allocations) and nonpoint sources (load allocations). The existing loads of nickel, waste load (WLA), and load allocations (LA) needed to achieve the TMDL are shown below. The WLA for BCUA represents a major reduction in nickel load to the Hackensack River. This reduction will result in meeting the applicable water quality criterion for nickel. Because the other loads represent relatively small contributions, and reducing their load has little or no impact on receiving water quality, no other reductions are being proposed at this time.

TABLE—1. PROPOSED TMDL/WLAS/LAS FOR NICKEL IN THE HACKENSACK RIVER

Source	Existing load (lbs/day)	WLA/LA (lbs/day)
BCUA [NJ0020028] ..	11.3	[1] 2.2
North Bergen STP ..... [NJ0034339]	0.28	[2] 0.38
Secaucus STP .. [NJ0025038]	0.04	[3] 0.06
CSOs	0.10	0.10
Storm Water	0.81	0.81
.....	ΣWLAs	3.55
Atmospheric	1.06	1.06
Boundary (Background) [4]	0.37	0.37
.....	TMDL	4.98

[1] The WLA of 2.2 lbs/day is established at an effluent concentration of 3.6 µg/L (total recoverable) and flow of 75 mgd; if the effluent flow is 109 mgd, the WLA is 3.3 lbs/day with an effluent concentration of 3.6 µg/L.

[2] Based on design flow of 10 mgd and mean effluent concentration of 4.6 µg/L (total recoverable).

[3] Based on design flow of 5.12 mgd and mean effluent concentration of 1.5 µg/L (total recoverable).

[4] Calculated at the boundary condition of the Hackensack River upstream at the Oradell Dam.

EPA is soliciting public comment on the proposed TMDL for nickel in the Hackensack River.

Dated: September 30, 1999.

William J. Muszynski, Acting

Acting Regional Administrator, Region 2.

[FR Doc. 99–28213 Filed 10–27–99; 8:45 am]

BILLING CODE 6560–50–P 4163–18–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 22, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0526.

Expiration Date: 10/31/2002.

Title: Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities—CC Docket No. 91–141.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 13 respondents; 48 hours per response (avg.); 624 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Pursuant to Section 203 of the Communications Act, LECs are required to tariff communications service offerings with the Commission. Sections 201 and 202 of the Act require that all tariffed charges, practices, classifications, and regulations be just and reasonable and not unjustly or unreasonably discriminatory. The Commission concluded that it will allow LECs additional special access pricing flexibility for services subject to competition in any study area in which expanded interconnection offerings are operational. If they choose, LECs may file density pricing plans establishing systems of pricing zones. Rates for special access services subject to competition will be averaged within zones, but will be allowed to diverge between zones over time subject to a price cap mechanism. LECs will be permitted to lower the weighted average rate level in any zone by as much as 10 percent annually relative to the price cap index for the special access basket, or to raise the weighted average rate level in any zone by up to five percent annually relative to the price cap index for the special access basket, without triggering any of the additional cost justification or advance notice requirements contained in the price cap rules. Material supporting each LEC's density pricing plan is necessary to ensure that these plans generally reflect cost differences and foster fair competition. Absent the review of such information by the Commission, the LECs would have strong incentives to attempt to use this additional pricing flexibility in an anticompetitive manner. In the Switched Transport Expanded Interconnection Order, the Commission created a density zone pricing plan that allows some degree of deaveraging for switched transport services. The Commission concluded that relaxing the pricing rules in this manner would enable price cap LECs to respond to increased competition in the interstate switched transport market. For purposes of deaveraging services in the trunking basket, the Commission in the Fifth Report and Order issued in CC Docket No. 96–262, released August 27, 1999, eliminates the limitations inherent in its current density zone pricing plan and allow price cap LECs to define the scope and number of zones within a study area, provided that each zone, except the highest-cost zone, accounts for at least fifteen percent of the incumbent LEC's trunking basket revenues in the study area. In addition, the Commission eliminates the requirement that LECs file zone pricing plans prior to filing their tariffs. The density pricing plan information is used by the FCC staff to ensure that the tariff rates to be paid for special access services are just, reasonable, and nondiscriminatory, as Sections 201 and 202 of the Communications Act require. The filing of density pricing plans is necessary to allow review of the number of zones and how offices were assigned to the different zones. The information is used to determine if the carriers have complied with our order on zone density. Without this information, the FCC would be unable to determine whether the rates for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law. The density pricing plans are to be filed whenever a LEC voluntarily elects to implement additional special access pricing flexibility. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0760.
Expiration Date: 10/31/2002.
Title: Access Charge Reform—CC Docket No. 96–262, First Report and Order, Second Order on Reconsideration and Memorandum Opinion and Order, Third Report and Order, and Fifth Report and Order.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 14 respondents; 4165 hours per response (avg.); 58,319 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $8,000.
Frequency of Response: On occasion.
Description: In the Fifth Report and Order (Order), CC Docket No. 96–262, Access Charge Reform, released August 27, 1999, the Commission is modifying the rules that govern the provision of interstate access services by those price cap LECs subject to price regulation to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The pricing flexibility framework adopted in the Order is designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) Price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives.

a. Showings under the Market-Based Approach: In the Fifth Report and Order, the Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops. The Order grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation. The Order also provides for additional pricing flexibility, to be granted in two phases, that is contingent upon competitive showings. To obtain Phase I relief, price cap LECs must demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue. For instance, for dedicated transport and special access services, price cap LECs must demonstrate that unaffiliated competitors have collocated in at least 15 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 30 percent of the LEC's revenues from these services within an MSA. Higher thresholds apply, however, for channel terminations between a LEC end office and an end user customer. In that case, the LEC must demonstrate that unaffiliated competitors have collocated in 50 percent of the price cap LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the price cap LEC's revenues from this service within an MSA. For traffic-sensitive, common line, and the traffic-sensitive components of tandem-switched transport services, a LEC must show that competitors offer service over their own facilities to 15 percent of the price cap LEC's customer locations within an MSA. Phase I relief permits price cap LECs to offer, on one day's notice, volume and term discounts and contract tariffs for these services, so long as the services provided pursuant to contract are removed from price caps. To obtain Phase II relief, price cap LECs must demonstrate that competitors have established a significant market presence (*i.e.*, that competition for a particular service within the MSA is sufficient to preclude the incumbent from exploiting any individual market power over a sustained period) for provision of the services at issue. Phase II relief for dedicated transport and special access services is warranted when a price cap LEC demonstrates that unaffiliated competitors have collocated in at least 50 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65 percent of the LEC's revenues from these services within an MSA. Again a higher threshold applies to channel terminations between a LEC end office and an end user customer. In that case, a price cap LEC must show that unaffiliated competitors have collocated in 65 percent of the LEC's wire centers within an MSA or collocated in wire centers accounting for 85 percent of the LEC's revenues from this service within an MSA. Phase II relief permits price cap LECs to file tariffs for these services on one day's notice, free from both our Part 61 rate level and our Part 69 rate structure rules. See also 47 CFR Sections 1.774, 69.707, 69.709, 69.711, 69.713, 69.725, 69.727, 69.729. (No. of respondents: 13; hours per response: 2117; total annual burden: 27,520 hours).

b. Cost Study of Interstate Access Service That Remain Subject to Price Cap Regulation: The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. The Commission recognizes, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. The Commission also recognizes, however, that there will be areas and services for which competition may not develop. The Commission will adopt a prescriptive ''backdrop'' to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. (No. of respondents: 13; hours per response: 8; total annual burden 104 hours).

c. Tariff Filings: In the First Report and Order, the Commission requires the filing of various tariffs, with modifications. For example, the FCC directs incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for the multiplexers on the SWC side of the tandem, imposed pro-rata on the purchasers of the dedicated trunks on the SWC side of the tandem. Multiplexing equipment on the EO-to-tandem transport on a per-minute of use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998. In the Second Order on Reconsideration, the FCC clarifies that the TIC exemption for access customers using competitive transport providers only applies to that portion of the residual per-minute TIC that is related to transport facilities, and directs incumbent local exchange carriers to include, in their access tariff filing, the amount of per-minute transport interconnection charge (TIC) they anticipate will be allocated to facilities-based rate elements in the future. (No. of respondents: 13; hours per response 35 hours; total annual burden: 455 hours).

d. Third-Party Disclosure: In the Second Order on Reconsideration, the Commission requires LEC to provide IXCs with customer-specific information about how many and what type of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXC's presubscribed customers. One of the primary goals of

our First Report and Order was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. Without access to information that indicates whether the LEC is assessing a primary or non-primary residential PICC, or about how many local business lines are presubscribed to a particular IXC, the IXC will be unable to develop rates that accurately reflect the underlying costs. (No. of respondents: 14; hours per response: 35 hours; total annual burden 455 hours).

e. Contract-based Tariff Filings: Price cap LECs who have made a Phase I showing may now offer contract-based tariffs. Contract-based tariffs enable price cap LECs to tailor services to their customers' individual needs, but also prevent targeting by requiring that price cap LECs make contract tariffs available to all similarly situated customers. See 47 CFR Sections 61.55 and 69.727. (No. of respondents: 13; hours per response: 3 hours; total annual burden: 780 hours).

In the Further Notice of Proposed Rulemaking issued in CC Docket No. 96–262, released August 27, 1999, the Commission seeks comment on whether to permit incumbent LECs to deaverage common line and traffic sensitive access elements without a competitive showing. To the extent that parties advocate conditioning deaveraging upon satisfaction of a competitive showing, the Commission seeks comment on the appropriate showing and the procedure by which evidence be presented and evaluated.

f. Proposed Deaveraging of Common Line and Traffic Sensitive Access Elements: Deaveraging common line and traffic sensitive access elements would require at least one additional tariff filing and may require an additional competitive showing. (No. of respondents: 13; hours per response: 109 hours; total annual burden: 1420 hours).

g. Proposed Common line and Traffic Sensitive Phase II Showings: Incumbent LECs seeking pricing flexibility for switched services may be required to file a petition demonstrating that it has met the triggers, and make an initial tariff filing. (No. of respondents: 13; hours per response: 1984 hours; total annual burden: 25,800).

The Commission's authority to collect this information is provided under 47 U.S.C 201–205 and 303(r). The information to be collected would be submitted to the FCC by incumbent LECs for use in determining whether the incumbent LECs should receive the regulatory relief proposed in the Orders. The information collected under the Second Order on Reconsideration and Memorandum Opinion and Order would be submitted by the LECs to the interexchange carriers (IXCs) for use in developing the most cost-efficient rates and rate structures. Obligation to comply: Mandatory.

OMB Control No.: 3060–0770.

Expiration Date: 10/31/2002.

Title: Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94–1 (New Services).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 13 respondents; 10 hours per response (avg.); 130 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In the Fifth Report and Order, issued in CC Docket Nos. 96–262 and 94–1, released August 27, 1999, the Commission permits price cap LECs to introduce new services on a streamlined basis, without prior approval. The Commission modified the rules to eliminate the public interest showing required by Section 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under Sections 61.49(f) and (g). These modifications will eliminate the delays that now exist for the introduction of new services as well as encourage efficient investment and innovation. The Commission's authority to collect this information is provided under 47 U.S.C. Section 203. The information collected would be submitted to the Commission by an incumbent LEC for use in determining whether it is in the public interest for the incumbent LEC to offer a proposed new switched access service. Obligation to comply: Required to obtain or retain benefits.

OMB Control No.: 3060–0907.

Expiration Date: 04/30/2002.

Title: Universal Service Amendment Worksheets.

Form No.: FCC Form 457(M) and FCC Form 499–S(M).

Respondents: Business or other for-profit.

Estimated Annual Burden: 100 respondents; 2 hours per response (avg.); 200 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: One-time requirement.

Description: On May 8, 1997, the Commission issued the Universal Service Order, implementing the universal service provisions in Section 254 of the Communications Act of 1934, as amended and setting forth a plan to fulfill the universal service goals established by Congress. In the Universal Service Order, the Commission announced its plan for establishing a system of universal service support for rural, insular, and high cost areas that will replace the existing high-cost support mechanisms and implicit federal subsidies with explicit, competitively-neutral federal universal service support mechanisms. Pursuant to the Act, the Commission also adopted rules to ensure that quality services are available to low-income consumers at affordable rates. In addition, the Commission adopted rules creating new support mechanisms to promote universal service for eligible schools and libraries, and rural health care providers, as mandated by Congress in the Act. Finally, the Commission modified its existing funding methods, so that funding for the support mechanisms is not generated exclusively through charges on long distance carriers. Instead, as the statute requires, the new universal service rules require equitable and nondiscriminatory contributions from all telecommunications carriers that provide interstate telecommunications services, as well as other providers of interstate telecommunications to the extent that the Commission determines that their contributions would serve the public interest. On July 30, 1999, a three-judge panel of the United States Court of Appeals for the Fifth Circuit issued a decision affirming in part, remanding in part, and reversing in part the Commission's May 8, 1997 Universal Service Order. Several of the court's rulings in that decision affect the assessment and recovery of universal service contributions. In light of the court's ruling, the Commission amends sections 54.706 and 54.709 of its rules in the Universal Service Remand Order, released October 8, 1999, to provide for a single contribution base for purposes of funding all of the universal service support mechanisms. Specifically, in response to the court's determination that the Commission lacks jurisdiction to assess providers' intrastate revenues, we have eliminated intrastate revenues from the contribution base. Consistent with the court's ruling, we also reconsider the basis for assessing the international revenues of interstate providers. The Commission is requiring each contributor that qualifies for the international revenues exception adopted in the Universal Service

Remand Order to file an amendment to its March 1999 and September 1999 worksheets, identifying the amount and percentages of the contributor's interstate and international revenues. This information is to be filed on FCC Form 457(M) and/or FCC Form 499–S(M). Amendment to March 1999 Universal Service Worksheet, FCC Form 457(M) and Amendment to September 1999 Telecommunications Reporting Worksheet, FCC Form 499–S(M) simply require contributors to identify the amounts and percentages of their interstate and international revenues and will only apply to the revenue data provided on the March 1999 and September 1999 Worksheet. Contributors that qualify for the international revenues exception must file the amendment forms with USAC by December 1, 1999. Copies of the forms may be downloaded from the Commission's forms Web page, www.fcc.gov/formpage.html. The form is also available through the FCC Fax-on-Demand system. Copies may be order via fax 24 hours a day by calling 202–418–0177 from the handset of any fax machine. The document retrieval number for the FCC Form 475(M) is 0004571; the document retrieval number for the FCC Form 499–S(M) is 0004993. The files contain both the instructions and the forms. Follow the system voice prompts and enter the document retrieval number when requested. Due to the limited number of phone lines into the forms Fax-on-Demand system, callers may wish to call during non-business hours. If you have difficulty with the transmission of your fax contact Patricia Quartey at 202–418–0212. Finally, copies may be obtained from the USAC at (973) 560–4400. Obligation to comply: Mandatory. Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28204 Filed 10–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

October 12, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 29, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0900.

Title: Second Report and Order in CC Docket 94–102, Compatibility of Wireless Services with Enhanced 911.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 100.

Estimate Time Per Response: 1 to 20 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 2,190 hours.

Total Annual Costs: None.

Needs and Uses: This document creates rules that will improve the ability of cellular phone users to complete wireless 911 calls. The action is taken to improve the security and safety of analog cellular users, especially in rural and suburban areas. The primary goal of this action is to ensure that reliable, effective 911 and Enhanced E911 service is available to wireless users by approving three mechanisms any of which will result in more wireless 911 calls being completed than occurs today.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–28205 Filed 10–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–15]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled ''Affordable Housing Program'' to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on December 31, 1999.

DATES: Interested persons may submit comments on or before November 29, 1999.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board,

1777 F Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Janet M. Fronckowiak, Acting Deputy Director, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2575 or by electronic mail at fronckowiakj@fhfb.gov, or Melissa L. Allen, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2524 or by electronic mail at *allenm@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires the Federal Housing Finance Board (Finance Board) to promulgate regulations under which the 12 Federal Home Loan Banks (FHLBanks) must establish an Affordable Housing Program (AHP) to make subsidized advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j). Section 10(j) also establishes the standards and requirements for making subsidized AHP advances to FHLBank members. *Id.* Part 960 of the Finance Board's regulations implements the statutory requirements and authorizes the FHLBanks to make AHP funding decisions. *See* 12 CFR part 960.

The information collection contained in part 960 is necessary to enable and is used by the FHLBanks to determine whether an AHP applicant satisfies the statutory and regulatory requirements to receive subsidized advances or direct subsidies under the AHP. The Finance Board requires and uses the information collection, through examination of the FHLBanks, to ensure that a FHLBank's funding decisions, and the use of the funds awarded, are consistent with statutory and regulatory requirements.

The OMB number for the information collection is 3069–006. The OMB clearance for the information collection expires on December 31, 1999.

The likely respondents include applicants for AHP funding.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 7,462, with 1.33 responses per respondent. The estimate for the average hours per response is 6.5 hours. The estimate for the total annual hour burden is 64,509 hours (7,462 respondents x 1.33 responses per respondent x approximately 6.5 hours per response).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on June 30, 1999. *See* 64 FR 35158 (June 30, 1999). The 60-day comment period closed on August 30, 1999. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: October 19, 1999.

William W Ginsberg,

Managing Director.

[FR Doc. 99–28107 Filed 10–27–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., 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.: 202–011587–006.

Title: United States South Europe Conference.

Parties: A.P. Moller-Maersk Line, P&O Nedlloyd Limited, Sea-Land Service, Inc.

Synopsis: The proposed amendment revises the Agreement's voting requirements and makes other non-substantive changes.

By Order of the Federal Maritime Commission.

Dated: October 22, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28101 Filed 10–27–99; 8:45 am]

BILLING CODE 6730–01–P

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 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, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Bayani Commerical, Inc., 526 South Jackson Street, Seattle, WA 98104, Officers: Yukiyo Kistler, Managing Director, (Qualifying Individual), David O. Patacsil, President

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

R.A.V. Services Inc. d/b/a Interfreight Co., 2217 Sheridan Blvd., Inwood, NY 11096, Officers: Thomas Staub, President (Qualifying Individual), Robert Vandeventer, Vice President

Dated: October 22, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28102 Filed 10–27–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 99–20]

Gstaad, Inc. and Sergio Lemme—Possible Violations of Sections 10(a)(1) of the Shipping Act of 1984; Notice of Investigation

Notice is given that the Commission, on October 21, 1999, served an Order of Investigation and Hearing on Gstaad, Inc. (''Gstaad''), a tariffed and bonded non-vessel operating common carrier

(''NVOCC''), and Sergio Lemme, President and Treasurer of Gstaad. The Order institutes a formal investigation to determine whether Gstaad and Sergio Lemme violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. section 1709(a)(1), by knowingly and willfully obtaining or attempting to obtain transportation at less than the rates and charges shown in applicable tariffs or service contracts through the receipt of rebates and the misuse of service contracts. Should violations be found, the proceeding will determine whether to impose civil penalties, suspend Gstaad's tariff, suspend or revoke its license, and issue a cease and desist order. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–28103 Filed 10–27–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY

Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATE: Comments must be submitted on or before December 27, 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Survey of Terms of Bank Lending

Agency form number: FR 2028A, FR 2028B, and FR 2028S.

OMB control number: 7100-0061.

Frequency: Quarterly.

Reporters: commercial banks (all three reports) and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S).

Annual reporting hours: 8,095.

Estimated average hours per response: FR 2028A: 4.0; FR 2028B: 1.5; and FR 2028S: 0.1.

Number of respondents: FR 2028A: 398; FR 2028B: 250; and FR 2028S: 567. Small businesses are affected.

This information collection is voluntary (12 U.S.C. § 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The Survey of Terms of Bank Lending provides unique information concerning the price and certain nonprice terms of loans made to businesses and farmers by commercial banks. The reports are completed for the first full business week of the mid-month of each quarter (February, May, August, and November). The FR 2028A and B collect detailed data on individual loans made during the survey week. The FR 2028S collects the prime interest rate for each day of the survey. From these sample STBL data, estimates of the terms of business and farm loans extended during the reporting week at all insured U.S. commercial banks are constructed. The estimates for business loans are published in the quarterly E.2 release, ''Survey of Terms of Bank Lending,'' while estimates for farm loans are published in the quarterly E.15 release, ''Agricultural Finance Databook.''

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28119 Filed 10–27–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Imperial Credit Industries, Inc., Torrance, California; to acquire voting shares of Bay View Capital Corporation, San Mateo, California, and thereby indirectly acquire voting shares of Bay View Bank, N.A., San Mateo, California.

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28117 Filed 10–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Exchange National Bancshares, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Midcentral Bancorp, Inc., Warsaw, Missouri, and thereby indirectly acquire Osage Valley Bank, Warsaw, Missouri.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. FNB Bancorp, Layton, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Layton, Layton, Utah.

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28116 Filed 10–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-27464) published on page 56791 of the issue for Thursday, October 21, 1999.

Under the Federal Reserve Bank of Dallas heading, the entry for Texas Independent Bancshares, Inc., Texas City, Texas, is revised to read as follows:

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Independent Bancshares, Inc., Texas City, Texas; to merge with American Independent Bancshares, Inc., Santa Fe, Texas, and thereby indirectly acquire Texas First Bank, Santa Fe, Texas.

Comments on this application must be received by November 15, 1999.

Board of Governors of the Federal Reserve System, October 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28118 Filed 10–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. GB&T Bancshares Inc., Gainesville, Georgia; to merge with UB&T Financial Services Corporation, Rockmart, Georgia, and thereby indirectly acquire United Bank & Trust Company, Rockmart, Georgia.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:.

1. Peregrine Corporation, Chaska, Minnesota; to become a bank holding company by acquiring 100 percent of

the voting shares of Community Bank of Chaska, Chaska, Minnesota (a *de novo* bank).

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Community Bancshares of Chanute, Inc., Chanute, Kansas; to merge with Edna Bancshares, Inc., Edna, Kansas, and thereby indirectly acquire First State Bank, Edna, Kansas.

Board of Governors of the Federal Reserve System, October 25, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28243 Filed 10–27–99; 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 November 12, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Hometown Bancorp, Ltd., St. Cloud, Wisconsin; to engage *de novo* through its subsidiary, Hometown Mortgage Services, Inc., Fond du Lac, Wisconsin, in extending and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; in collection agency services, pursuant to § 225.28(b)(2)(iv) of Regulation Y; and in real estate settlement services, pursuant to § 225.28(b)(2)(viii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 25, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–28244 Filed 10–27–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Survey of Opinions of Principal Investigators on Managing a Biomedical Research Laboratory—NEW—The Office of Research Integrity is proposing an informal survey of principal investigators to obtain anecdotal information on experiences associated with the management of a biomedical research laboratory. This information will be shared with the research community to promote good laboratory management practices. *Respondents:* Principal Investigators; *Number of Respondents:* 200; *Average Burden per Response:* 3.5 hours; *Total Burden:* 700 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address; Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 15, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–28142 Filed 10–27–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations—HHSAR Part 352 Solicitation Provisions and Contract Clauses- 0990–0130—Extension—The Key Personnel clause for HHSAR 352.27–5 requires contractors to obtain approval before substituting key personnel which are specified in the contract. *Respondents:* State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses, *Total Number of Respondents:* 1921; *Frequency of Response:* one time; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 3842 hours.

2. HHS Acquisition Regulations HHSAR Part 370 Special Programs Affecting Acquisition—0990–0129—Extension—HHSAR Part 370 establishes requirements for the accessibility of meetings, conferences, and seminars to persons with disabilities; establishes requirements for Indian Preference in employment, training and subcontracting opportunities. *Respondents:* State or local governments, Businesses or other for-profit, non-profit institutions, Small businesses; *Burden Information about Accessibility of Meetings—Annual Number of Respondents:* 335; *Annual Frequency of Response:* one time; *Average Burden per Response:* 10 hours; *Total Annual Burden:* 3,350 hours—*Burden Information about Indian Preference—Annual Number of Respondents:* 932; *Annual Frequency of Response:* one time; *Average Burden per Response:* 8 hours; *Total Annual Burden:* 7,456 hours—*Total Burden:* 10,806 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: October 15, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–28143 Filed 10–27–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

October 22, 1999.

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 13⅜% for the quarter ended September 30, 1999. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: October 22, 1999.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 99–28144 Filed 10–27–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Injury Research Grant Review Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through August 20, 2001.

For further information, contact John Finklea, M.D., Executive Secretary, Injury Research Grant Review Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE, M/S D–32, Atlanta, Georgia 30333, telephone 770/488–4821 or fax 770/488–1467.

The Director, Management and 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: October 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–28136 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1:30 p.m.-4:30 p.m., November 16, 1999; 8:30 a.m.-3:15 p.m., November 17, 1999.

Place: Holiday Inn Select Atlanta-Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: The purpose of the November 16 meeting is for the Science and Program Review Work Group (SPRWG) to review program oversight issues which include discussions on the biomechanics review; non-Office of Research Grants/ National Center for Injury Prevention and Control (NCIPC) extramural fiscal year 1999 awards; BioCAD and whiplash projects; Injury Control Research Center request for proposals; and NCIPC research agenda. At the November 17 meeting of the full Committee, following introduction of the new NCIPC Acting Director, and the Acting Director's update on NCIPC, discussions will include (1) A strategic planning update; (2) NCIPC Division of Violence Prevention update on youth violence and suicide prevention efforts; reports from the November 16 meetings of the (3) Subcommittee on Family and Intimate Violence Prevention and (4) SPRWG; and (5) NCIPC Research priorities.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Mr. Wayne Stephens, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1465.

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: October 21, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28135 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee for Injury Prevention and Control (ACIPC): Family and Intimate Violence Prevention Subcommittee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: ACIPC Family and Intimate Violence Prevention Subcommittee.

Time and Date: 8:30 a.m.–4:30 p.m., November 16, 1999.

Place: Holiday Inn Select-Atlanta Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30033.

Status: Open to the public, limited only by the space available.

Purpose: To provide and make recommendations to ACIPC and the Director, National Center for Injury Prevention and Control (NCIPC), regarding feasible goals for prevention and control of family and intimate violence sexual assault. The Subcommittee will make recommendations regarding policies, strategies, objectives and priorities.

Matters to be Discussed: The Subcommittee will discuss and provide recommendations to the CDC on future directions for program activities, evaluation, and research related to the National Resource Council Report, Understanding Violence Against Women.

Agenda items are subject to change as priorities dictate.

Contact Person for more Information: Lemyra DeBruyn, Ph.D., Acting Team Leader, Family and Intimate Violence Prevention Team, Division of Violence Prevention, NCIPC, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341, telephone 770/488–4410.

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: October 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–28137 Filed 10–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2549]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 29, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Cosmetic Product Voluntary Reporting Program—21 CFR 720.4, 720.6, and 720.8(b) (OMB Control Number 0910–0030—Extension)

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products (§ 720.4). Ingredient statements for new submissions (§ 720.1) are reported on Form FDA 2512 entitled ''Cosmetic Product Ingredient Statement,'' and Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514 entitled ''Discontinuance of Commercial Distribution of Cosmetic Product Formulation'' (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's data base also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise harmful to the general public health. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch-test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

The Cosmetic Product Voluntary Reporting Program was suspended during fiscal year (FY) 1998 because of a lack of funding and was reinstated at the beginning of FY 1999. Participation returned to the previous level. Thus, FDA estimates that the burden of this collection of information will remain the same as the estimate presently on file with OMB.

In the **Federal Register** of August 9, 1999 (64 FR 43188), the agency requested comments on the proposed

collections of information. One comment was received in support of the continuation of the program.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720.4 (New submissions)	FDA 2512/ FDA 2512a	550	4.2	2,310	0.5	1,155
720.6 (Amendments)	FDA 2512/ FDA 2512a	550	1.4	770	0.33	254
720.6 (Notices of discontinuance)	FDA 2514	550	4.5	2,500	0.1	250
720.8 (Requests for confidentiality)		2	1.0	2	1.5	3
Total						1,662

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: October 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–28111 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–4373]

Engelhard Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Engelhard Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a solid solution of 2-naphthalenesulfonic acid, 5-[(5-chloro-4-methyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[(4-chloro-5-ethyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) (C.I. Pigment Red 276) as a colorant for polymers intended for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4698) has been filed by Engelhard Corp., Pigments and Additives Group, 3400 Bank St., Louisville, KY 40212. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of a solid solution of 2-naphthalenesulfonic acid, 5-[(5-chloro-4-methyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[(4-chloro-5-ethyl-2-sulfophenyl)azo]-6-hydroxy]-, strontium salt (1:1) (C.I. Pigment Red 276) as a colorant for polymers intended for food-contact applications.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 30, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–28114 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2335]

Medical Gloves; Draft Guidance Manual; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 27, 2000, the comment period for the draft guidance entitled ''Medical Glove Guidance Manual.'' FDA published a notice of availability of the draft guidance in the **Federal Register** of July 30, 1999 (64 FR 41744). The agency is taking this action to harmonize the comment period for the draft guidance with the extension of the comment period for the proposed rule on the reclassification of surgeon's and patient examination gloves (64 FR 41710, July 30, 1999). The document announcing the extension of that comment period for the proposed rule is published elsewhere in this issue of the **Federal Register**. The draft guidance is a proposed special control for that reclassification. This extension of the comment period is intended to allow interested persons additional time to submit comments on the draft guidance.

DATES: Written comments by January 27, 2000.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Arthur K. Yellin, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 800–638–2041, ext. 146 or 301–443–6597, ext. 146.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

In the **Federal Register** of July 30, 1999, FDA published a notice of availability of the draft guidance entitled ''Medical Glove Guidance Manual.'' The draft guidance is intended to provide current information to assist manufacturers and others in obtaining marketing clearance, applying manufacturing and design controls, and properly labeling medical gloves. FDA also proposes to use the ''Medical Glove Guidance Manual'' as a special control in its proposed reclassification of surgeon's and patient examination gloves (64 FR 41710 at 41714).

Elsewhere in this issue of the **Federal Register**, FDA is announcing an extension of the comment period for the proposed rule on the reclassification of surgeon's and patient examination gloves. Because FDA has proposed that the ''Medical Glove Guidance Manual'' be a special control in that proposed reclassification, FDA wanted to harmonize the comment periods. Consequently, FDA is extending the comment period on the draft guidance for 90 additional days.

II. Comments

Interested persons may, on or before January 27, 2000, submit to the Dockets Management Branch (address above) written comments regarding the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 21, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–28110 Filed 10–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request NIH Intramural Research Training Award, Program Application

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: NIH Intramural Research Training Award, Program Application; *Type of Information Collection Request:* Revision/OMB No. 0925–0299; 4/30/2000; *Need and Use of Information Collection:* The proposed information collection activity is for the purpose of collecting data related to the availability of Training Fellowships under the HIH Intramural Research Training Award Program. This information must be submitted in order to receive due consideration or an award and will be used to determine the eligibility and quality of potential awardees. *Frequency of Response:* On occasion. *Affected Public:* Individuals seeking Intramural Training award opportunities. *Type of Respondents:* Postdoctoral, Predoctoral, Post-baccalaureate, Technical, and Student IRTA applicants. *Estimated Number of Respondents:* 15779. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Requested:* .53. *Estimated Total Annual Burden Hours Requested:* 8422.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs of report.

Type of respondent	Estimated number for respondents	Estimated numbers of respondents per respondent	Average burden hours per response	Estimated total annual burden hours requested
Postdoctoral IRTA	1089	1	1	1089
Predoctoral IRTA	6	1	1	6
Postbaccalureate IRTA	290	1	1	290
Technical IRTA	27	1	1	27
Student IRTA	3,386	1	1	27
References for all IOTA categories	10,981	.....	.33	3,624
Total	15779	1	.53	8,422

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Edie Bishop, Human Resource Consultant, Office of Human Resource Management, OD, NIH, Building 31, Room B3C07, 31 Center Drive MSC. 2203, Bethesda, MD 20892–2203.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 27, 1999.

Dated: October 20, 1999.

Stephen C. Benowitz,

Director, Office of Human Resource Management.

[FR Doc. 99–28270 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Contraception and Infertility Research Loan Repayment Program (CIR–LRP)

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development, (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information on collection listed below. This proposed information collection was previously published in the **Federal Register** on July 30, 1999, page 41445 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow and additional 30 days for public comment.

5 CFR 1320.5 (General requirements) Reporting and Recordkeeping Requirements: Final Rule requires that the agency inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed Collection

Title: Contraception and Infertility Research Loan Repayment Program. Type of Information Collection Request: Revision (OMB No. 0925–0440, Exp. 12/31/99). Form Number: NIH 2756–1, NIH 2756–2. Need and Use of Information Collection:

The information proposed for collection will be used by NICHD to determine an applicant's eligibility for participation in the CIR–LRP. It will enable the NICHD to select qualified individuals for participation in the program, and to deliver eligible benefits. Frequency of Response: On occasion. Affected Public: Individuals or households, business or other for-profit, Not-for-profit institutions, and State, Local and Tribal government. Type of Respondents: Qualified health and allied health professional such as physicians, physician assistants, scientists, nurses, graduate students and postgraduate fellows.

The annual burden estimates are as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicants	40	6	1.306	314
Lender	160	1	0.334	53
State/Other Entity	8	1	0.334	3
Total	.....	.....	.....	370

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden to the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Office for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Louis V. DePaolo, Ph.D., Director, Contraception and Infertility Research Loan Repayment Program, Center for Population Research, NICHD, NIH, Building 61E, Room 8B01, Bethesda, Maryland 20892–7510, or call (301) 435–6970 or E-mail your request to: 1d38p@nih.gov. Information can also be obtained via the World Wide Web at http://www.nichd.nih.gov/about/cpr/rs/rs.htm.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before November 29, 1999.

Dated: October 15, 1999.

Michael Rosenthal,

Executive Officer, NICHD.

[FR Doc. 99–28269 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: November 19, 1999.

Time: 8 am to 5 pm.

Agenda: National Cancer Program: Then, Now, and in the Future.

Place: University of Utah, Huntsman Cancer Institute, 2000 Circle of Hope, Salt Lake City, UT 84112.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28257 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

Name of Committee: National Cancer Institute Special Emphasis Panel, Early Detection Research Network Biomarkers Validation Laboratories.

Date: November 12, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Gerald G. Lovinger, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28258 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Quick Trails for Prostate Cancer Therapy.

Date: October 29, 1999.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd., 6th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Brian E. Wojcik, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6130 Executive Boulevard, Room 611D, Bethesda, MD 20892, 301/402–4408.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc 99–28263 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Nutrition Academic Award.

Date: November 4, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National institutes of Health, HHS)

Dated: October 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28255 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project (P01).

Date: November 30, 1999.

Time: 3 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Rockledge 2 Center, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anthony M Coelho, PhD, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Review Branch, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–28256 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel

Date: November 5, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28253 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARMTENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institutes of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF MENTAL HEALTH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: November 17, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 4N230, Bethesda, MD 20892.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–3501.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28254 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Pharmacology.

Date: November 9, 1999.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Irene B. Glowinski, Scientific Review Administrator, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892–6200, (301) 594–3663, glowinsi@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28261 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 3–4, 1999.

Time: 7:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Town Center Hotel, 8727 Colesville Rd, Silver Spring, MD 20910.

Contact Person: Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 19, 1999.

Time: 8:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Paul A. Sheehy, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28262 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, October 12, 1999, 1:00 pm to October 12, 1999, 6:00 pm, NIAID, NIH (Room 1202), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610 which was published in the **Federal Register** on October 6, 1999, 64 FR 54341.

The meeting will be held on October 27, 1999, from 10 a.m. to 5 p.m. The meeting is closed to the public.

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–28265 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Pulmonary Effects of Environmental Oxidant Pollutants.

Date: November 3, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Nat'l Institute of Environmental Health Sciences, PO Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28266 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: November 8, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31; Room 4C32, NIAMS Conference Room, Bethesda, Maryland 20892.

Contact Person: Peter E. Lipsky, MD, Scientific Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Bldg. 10; Room 9N228, Bethesda, MD 20892, (301) 496–2612.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28267 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M8

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of such would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: October 22, 1999.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Resort and Spa, 250 Racquet Club Road, Fort Lauderdale, FL 33326.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28268 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1, 1999.

Time: 9 am to 10 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela M. Pattatucci, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 1, 1999.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 4, 1999.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 5, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 5, 1999.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 5, 1999.
Time: 9 am to 2 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopa Rakhit, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel R01 application.
Date: November 5, 1999.
Time: 12 pm to 3 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 1999.
Time: 8 am to 6 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.
Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharma, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X (18).
Date: November 8, 1999.
Time: 8 am to 4 pm.
Agenda: To provide concept review of proposed grant applications.
Place: Holiday Inn Central, 1501 Rhode Island Ave, NW, Washington, DC 20005.
Contact Person: Lee Rosen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 1999.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.
Contact Person: Patricia H. Hand, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 8–9, 1999.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Michael Micklin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Respiratory and Applied Physiology Study Section.
Date: November 8–9, 1999.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, DC 20037.
Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–8 (01).
Date: November 8–9, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Samuel Rawlings, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Hematology Subcommittee 2.
Date: November 9–10, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6710 Rockledge Drive, Room, 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 9–10, 1999.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Governor's House Hotel, Washington, DC 20036.
Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 9–10, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Central, 1143 New Hampshire Avenue, Washington, DC 20037.

Contact Person: Ranga V. Srinivas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28259 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Oral Biology and Medicine Subcommittee 2, October 25, 1999, 8:30 am to October 26, 1999, 5:00 pm, Holiday Inn Hotel & Suites, 625 First Street, Alexandria, VA, 22314 which was published in the **Federal Register** on October 15, 1999, 64 FR 55954.

The meeting will be held at the Holiday Inn, Select, Old Town Alexandria. The dates and times remain the same. The meetings is closed to the public.

Dated: October 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28260 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW, Washington, DC 20007.

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel—Harbor Building, 1000 29th Street, NW, Washington, DC 20007.

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–11, 1999.

Time: 9:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–1175, bakerh@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10, 1999.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–1FCN1 (03).

Date: November 10, 1999.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10, 1999.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kathryn Meadow-Orlans, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 10–12, 1999.

Time: 8:30 pm to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: Argonne Guest Hotel, Argonne National Laboratory, 9700 South Cass Avenue—Bldg. 460, Argonne, IL 60439.

Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–9 (24).

Date: November 11–12, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bill Bunnag, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 11–12, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Nadarajen A. Vydelingum, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Geriatrics and Rehabilitation Medicine.

Date: November 11–12, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate applications.

Place: Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701.

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 11–12, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 11, 1999.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 12, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ranga V Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN7–2.

Date: November 12, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–16, 1999.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, 301–435–1159, ameros@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–2 (02) B.

Date: November 15, 1999.

Time: 8:00 am to 8:30 am.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–16, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel, VISA.

Date: November 15, 1999.

Time: 11 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15–16, 1999.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Shirley Hilden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 15, 1999.

Time: 12:00 pm to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nabeeh Mourad, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1999.
Time: 8:30 am to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16–17, 1999.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Angela M. Pattatucci, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1999.
Time: 11 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1999.
Time: 1 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892.
Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1999.
Time: 1 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 16, 1999.
Time: 12 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2 Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nabeeh Mourad, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17–18, 1999.
Time: 8 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM. 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, sipej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17–18, 1999.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17, 1999.
Time: 8:30 am to 6:30 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17, 1999.
Time: 9 am to 6 pm.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW, Washington, DC 20037.
Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17, 1999.
Time: 11 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17, 1999.
Time: 1 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 17, 1999.
Time: 1 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BIO3.
Date: November 17, 1999.
Time: 3 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 21, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–28264 Filed 10–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–13]

Notice of Proposed Information Collection for Public Comment: Evaluation of the Housing Opportunities for Persons With AIDS (HOPWA) Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451–7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Marge Martin, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8120, Washington, DC 20410–6000, telephone 202–708–1520, extension 5925 (this is not a toll free number). A copy of the proposed forms and other available documents to be submitted to OMB may be obtained from Ms. Martin.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Evaluations of the Housing Opportunities for Persons with AIDS (HOPWA) Program.

Description of the need for information and proposed use: The Department is conducting, under contract to ICF, Consulting, a 1-year study to evaluate the Housing Opportunities for Persons With AIDS (HOPWA) program. The purpose of the study is to examine the effectiveness of the HOPWA program in assisting persons living with HIV/AIDS and their families. Additionally, the study will describe the types of local programs funded and the characteristics of the clients served in more detail than is available through the program's Annual Progress Report. The intent is to understand how well States and localities have used HOPWA resources to further the statutory purpose of the program of devising long-term comprehensive strategies for meeting the housing needs of persons with AIDS. To that end, this study will examine the extent to which HOPWA grantees have used and developed local or State planning and implementation mechanisms.

Agency Form Numbers, if Applicable: None.

Members of the affected public: Government officials in 97 formula grant jurisdictions, 1,200 organizations serving as HOPWA project sponsors, and a sample of 25 to 50 individual clients receiving support through the HOPWA program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The researchers will administer a one-time, mail survey to 97 formula grantees and 1,200 project sponsors. The completion of the mail surveys is expected to take 30 minutes for a total burden hour estimate of 650 hours. Additionally, the researchers will administer a telephone survey to 25 to 50 program clients. The completion of the client survey is expected to last 15 minutes for a total burden hour estimate of 6.5 to 12.5 hours. Total burden hour estimate for all three surveys is 656.5 to 662.5 hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 18, 1999.

Lawrence L. Thompson,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 99–28120 Filed 10–22–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4541–N–02]

Notice of Proposed Information Collection: Comment Request

Implementation of the Housing for Older Persons Act of 1995

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: the proposed information collection requirement established under the final rule implementing the Housing for Older Persons Act of 1995 (HOPA) will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the information collection requirement.

DATES: *Comments Due Date:* December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection requirement. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Turner Russell, Department of Housing and Urban Development, 451 7th Street, SW, Room 5210, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Juan E. Milanés, Acting Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Room 5206, 451 Seventh Street, SW, Washington, DC 20410, telephone: (202) 707–0836 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection requirement to the OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the

burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Regulation: 24 CFR Part 100, Implementation of the Housing for Older Persons Act of 1995; final rule.

OMB Control Number, if applicable: 2529–0046.

Description of the need for the information and proposed use: In The Fair Housing Amendments Act of 1988 (the Act) [42 U.S.C. § 3601 et seq.], Congress prohibited discrimination in the sale or rental of housing based on familial status (families with children under 18 years of age). However, at § 3607(b)(2) of the Act, Congress exempted 3 categories of ''housing for older persons'' from liability for familial status discrimination: (1) housing provided under any State or program which the Secretary of HUD determines is specifically designed and operated to assist elderly persons; (2) housing intended for, and solely occupied by, persons 62 years of age or older; and (3) housing intended and operated for occupancy by at least one person 55 years of age or older per until (''55 or older'' housing). In December 1995, Congress passed the ''Housing for Older Persons Act of 1995 (HOPA) [Public Law 104–76]. The HOPA modified the ''55 or older'' housing'' exemption provided under the Act by eliminating the requirement for ''significant facilities and services specifically designed to meet the physical or social needs of older persons.'' The HOPA still requires that at least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older; and that housing providers must publish and adhere to policies and procedures that demonstrate the intent to provide housing for persons 55 years of age or older. In addition, the HOPA mandates compliance with ''rules issued by the Secretary for verification of occupancy, which shall * * * provide for [age] verification by reliable surveys and affidavits.''

The final rule does not significantly increase the record keeping burden. It describes in greater detail the documentation that HUD will consider when determining whether or not a community or facility qualifies for the ''55 or older'' housing exemption. Further, § 100.305(e)(5) of the final rule provides a non-extendible one-year transition period [May 3, 1999–May 3, 2000] for existing communities or facilities that wish to qualify for the ''55 or older'' housing exemption. An existing community or facility that fails to complete the transition by the expiration of that period must stop reserving vacant units for ''55 or older'' residents; market available housing to the general public regardless of familial status; and rescind all policies, practices, and procedures that discriminate against residents with minor children. By definition, such communities would no longer need to collect or maintain occupancy/age verification information for purposes of the ''55 or older'' housing exemption.

The information collection requirements contained in §§ 100.306 and 100.307 of the final rule are necessary to satisfy the criteria for the ''55 or older'' housing exemption under the HOPA. The information required under the Act, the HOPA, and the HOPA final rule will be collected in the normal course of business in connection with the sale, rental or occupancy of dwelling units within a ''55 or older'' hosing community or facility. The statutory and regulatory requirement to publish and adhere to age verification policies and procedures for current and prospective occupants is the usual and customary practice of the ''senior housing'' industry without regard to the requirements of the Act or the HOPA. The procedures for verifying ages of current residents may require an initial survey and periodic review and update of existing records. The creation of such records should occur in the normal course of sale of rental transactions and should require minimal time.

Three types of information would be collected under the final rule. The publication of a community's housing policies and procedures is not confidential by nature of the fact that such policies and procedures must be disclosed to current and prospective residents, and to residential real estate professionals. The occupancy survey results must be available for public inspection. The survey summary need not contain confidential information because it may simply indicate the total number of dwelling units occupied by persons 55 years of age or older. The supporting age verification records may contain some private information which would need not be disclosed unless the community or facility claims the ''55 or older'' housing exemption as a defense to a jurisdictional familial status discrimination complaint filed with HUD.

HUD's Office of Fair Housing and Equal Opportunity will request disclosure of this information by a housing provider when HUD investigates a jurisdictional familial status discrimination complaint, and the housing provider claims the ''55 or older'' housing exemption as an affirmative defense to the complaint.

Agency form number(s), if applicable: None.

Members of affected public: Both the HOPA and the HOPA final rule require that small businesses and other small entities that operate housing intended for occupancy by persons 55 years of age or order to routinely collect and update age verification information necessary to meet the eligibility criteria for the ''55 or older'' housing exemption. The record keeping requirements are the responsibility of the housing provider that wishes to qualify for the exemption.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The information collection requirements of the HOPA final rule are the responsibility of the community or facility that claims eligibility for the ''55 or older'' housing exemption provided under the HOPA. Since the HOPA does not require HUD certification or registration for ''55 or older'' communities or facilities, it is difficult to estimate the number of communities or facilities that intend to collect this information in order to qualify for the exemption. When the proposed rule was published for public comment in January 1997, HUD estimated that approximately 1,000 communities or facilities would seek the exemption. HUD also estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the community or facility, and that the number of such transactions per year might vary significantly depending on the size and nature of the community. HUD estimated the average number of housing transactions per year at ''10 per community.'' HUD concluded that the publication of policies and procedures ''* * * is likely to be a one-time event and in most cases will require no additional burden beyond what is done in the normal course of business. The estimated total annual burden for the three collections is 5,500 hours.''

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 21, 1999.

Juan E. Milanés,

Acting Director, Office of Enforcement.

[FR Doc. 99–28250 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4541–N–01]

Notice of Proposed Information Collection: Comment Request; Fair Housing Initiatives Program SuperNOFA Application Kit

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the *Fair Housing Initiatives Program* will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW, Room 5228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Department of Housing and Urban Development, 451 7th Street, SW, Room 5228, Washington, DC 20410. Telephone number (202) 708–0800 (This is not a toll free number). Hearing or speech-impaired individuals my access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Notice of Submission of Proposed Information Collection to OMB

Title: Fair Housing Initiatives Program SuperNOFA Application Kit and Reporting/Recordkeeping Requirements.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: The information required by the application kit will assist projects and activities that increase compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In addition, it will help the Department to provide funds to public and private agencies involved in administering programs to prevent or eliminate discriminatory housing practices. This program (FHIP) will carry out these fair housing enforcement and/or education and outreach activities under the following initiatives: Administrative Enforcement, Private Enforcement, Education and Outreach, and Fair Housing Organizations. The information collected from quarterly and final reports and enforcement logs will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices. These grants are authorized under Section 561 of the Housing and Community Development Act of 1967 (42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) and the implementing regulations are found at 24 CFR part 125.

Agency form numbers: SF–269A, SF–424/A/B/M: SF–LLL, HUD 2880, HUD 2992, HUD–50070, HUD–50071:

Members of affected public: 400.

Reporting Burden: The Department estimates that the application kit, quarterly report, final report, and enforcement log, will have the following reporting burdens:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application development	400		1		53		21,200

The number of respondents is based on the total number of applications received under all initiatives. The number of hours per response is an average based on grantee estimates of time to review instructions, search existing data sources, prepare required responses to the application kit, and assemble exhibits.

Quarterly Report	70	4	12	3,360
Enforcement Log	35	4	7	980
Final Report	70	4	20	5,600

Estimates are based on 70 of 400 applications funded, thus, 70 respondents will report 4 times annually on program performance and financial status. Approximately half of applicants funded include enforcement activities requiring completion of the enforcement log. Hours per response are averages based on grantee estimates of time to review instructions, search existing data sources, gather and maintain the data needed, and complete or respond to and review the collection of information. Actual time may vary because of differences in activity, size, or complexity of grant, and depending on whether grantee automates format.

Status of the proposed information collection: Extension.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 20, 1999.

Ivy L. Davis,

Deputy Director, Office of Programs.

[FR Doc. 99–28251 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–50]

Submission for OMB Review: New Questions for the Supplement to the December 1999 Current Population Survey: Effects of Disclosure on Public Awareness of Lead Paint Hazards

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Notice.

SUMMARY: This is a request for OMB's approval to add eight new items to the supplement to the December 1999 Current Population Survey (CPS), that is concerned with Lead-based Paint Hazard Awareness. Most of additional items will be administrated to narrow subpopulations, with a minimal effect on overall respondent burden. This proposal has been submitted to Office of Management and Budget for emergency review and approval.

DATES: *Comments Due Date:* November 4, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number 2539–0006 and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 1999.

Wayne Eddins,

Departmental Reports, Management Office of Investment Strategies, Policy and Management.

Title of Proposal: New Questions for the Supplement to December 1999 Current Population Survey: Effects to Disclosure on Public Awareness of Lead Paint Hazards.

Office: Office of Lead Hazard Control.

OMB Control Number: 2539–0006.

Description of the Need for the Information and its Proposed Use: This is a request to add questions to an existing data collection instrument, that will improve understanding of disclosure and childhood lead poisoning.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	48,000		1		.136		6,640

Total Estimated Burden Hours: 6,640.

Status: Revision.

Contact: Wayne Eddins, HUD, (202) 708–5221 Ext. 121 or Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–28252 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–03]

Draft Environmental Impact Report/ Environmental Impact Statement (DEIR/EIS); City of Monterey Park, CA; Section 108 Loan Guarantee/Economic Development Initiative Grant (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of availability of DEIR/ DEIS.

SUMMARY: The Department of Housing and Urban Development gives this notice to the public that the City of Monterey Park, California has prepared a joint Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) for the Monterey Park Towne Plaza Project, which, among other components includes the development of a 515,382-square foot retail center including a home improvement store with a garden center, three restaurants, and various other retail uses, in the City of Monterey Park, California.

This notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Interested individuals, government agencies and private organizations are invited to comment on the EIR/EIS concerning the project to the specified person or address listed below. Particularly solicited are comments on the Draft EIR/ EIS and the major issues identified below.

Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the final EIR/EIS effort.

EFFECTIVE DATES: Effective Date: This notice shall be effective on October 20, 1999.

Comment Due Date: Written comments must arrive by December 3, 1999 at the address given below. We will consider all comments received in preparing the Final EIR/EIS.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the Draft EIR/EIS to: Ray Hamada, City of Monterey Park, Community Development Department, 320 West Newmark Avenue, Monterey Park, California, 91754 (626) 307–1463.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hamada (see address and phone number above).

SUPPLEMENTARY INFORMATION: A combined Draft EIR/EIS has been completed and accepted for the proposed action described below. Comments on the Draft EIR/EIS are

requested and will be accepted by the contact person until December 3, 1999.

Title of Action: Monterey Park Towne Plaza Section 108 Loan Guarantee/ Economic Development Initiative Grant (EDI) Project.

Description of Proposed Action: The City of Monterey Park, acting on behalf of the U.S. Department of Housing and Urban Development, has prepared a Draft EIR/EIS to analyze potential impacts of developing a triangular-shaped, 47.1-acre piece of property, located in the southeast portion of the City of Monterey Park immediately north of the Pomona Freeway (State Route 60) and west of Paramount Boulevard. The proposed project would consist of a 515,382-square foot retail center including a home improvement store with a garden center, three restaurants, and various other retail uses. The project site includes a net 0.1-acre land dedication to Caltrans that results from an approximately 1-acre land trade. The proposed project would also include roughly 4.4-acres of Southern California Edison property to the northwest and east of the site to be used for surface parking and an access road. The new access road would require realignment of the intersection of Paramount Boulevard/Neil Armstrong Street. An existing berm located along the southern boundary of the site would also be leveled.

Approximately 10 acres of the western portion of the site contain a historic landfill (''North Parcel Landfill''), that received municipal solid waste between 1948 and 1975. Due to the past landfill operations, the project site is currently designated as a Superfund site. A leachate treatment plant (LTP) is also located on the site and currently processes collected groundwater (leachate) from a landfill located just south of the Pomona Freeway (''South Parcel Landfill''), which stopped accepting waste in 1984. The LTP will continue to operate on-site in this capacity following the closure of the South Parcel Landfill in the year 2000. The North Parcel Landfill is currently being remediated based upon guidance from the U.S. Environmental Protection Agency.

Other businesses that currently occupy the site include Ecology Auto Wrecking, Aman Brothers Pavement Crushing, Manhole Adjustment Inc., and Recycled Wood Products. Other than the LTP, all of the tenants will vacate the project site prior to development of the site.

The Draft EIR/EIS analyzes potential environmental effects of three alternative projects. The alternative projects described here are illustrative of varying options for development, enabling an evaluation of the full range of impacts identified within the EIR/EIS alternative.

The No Action Alternative would not implement the proposed Monterey Park Towne Plaza Project, and the environmental effects from implementation of the Proposed Action or the other alternatives would not occur. The existing on-site tenants would remain on the project site and the LTP would continue to treat leachate from the South Parcel Landfill.

Under the Reduced Density Alternative, all land uses associated with the Proposed Action would be reduced by 25 percent. As such, this alternative would involve approximately 386,538 square feet of commercial retail development. The site plan for the Reduced Density Alternative would be similar to that of the Proposed Action in terms of location and orientation of buildings, parking lots, and internal roadways. Buildings would be the same height as the Proposed Action but the building pads would be slightly smaller. This alternative would also involve the same site improvements as the Proposed Action, including: (1) New utility infrastructure; (2) leveling of the freeway berm; and (3) provision of a new access road from Paramount Boulevard. The LTP would remain on the project site under this alternative.

Under the Existing Zoning Alternative, Retail Buildings ''G,'' ''H,'' ''I,'' and Restaurant 3 associated with the Proposed Action would be replaced with a 126,000-square foot theatre and a 186,300-square foot parking structure. Excluding the parking structure, the Existing Zoning Alternative would involve approximately 656,742 square feet of commercial retail development. The site plan for the Existing Zoning Alternative would be similar to that of the Proposed Action and the Reduced Density Alternative in terms of location and orientation of buildings, parking lots, and internal roadways. Building heights under this alternative would also be the same as the Proposed Action but the building pads for some retail uses (*i.e.*, Retail ''A'' and Pad 2) would be slightly larger. This alternative would involve the same site improvements as the Proposed Action, including: (1) New utility infrastructure; (2) leveling of the freeway berm; and (3) provision of a new access road from Paramount Boulevard. The LTP would remain on the project site under this alternative.

Location: City of Monterey Park, Los Angeles County, California.

Potential Environmental Impacts: Transportation/circulation; air quality; noise; geology/seismicity; human health hazards; hydrology/water quality; land use; aesthetics/views; light and glare; population, employment and housing; public services; utilities; and cumulative effects. Most of these impacts would be reduced to a level of insignificance following implementation of proposed mitigation measures.

The Draft Environmental Impact Report/Environmental Impact Statement will be published on or about October 14, 1999 and will be on file at the City of Monterey Park, Community Development Department, 320 West Newmark Avenue, Monterey Park, California, 91754 and available for public inspection, or copies may be attained at the same address, upon request to Mr. Ray Hamada, Planning Manager (626) 307–1463.

Dated: October 20, 1999.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 99–28121 Filed 10–27–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Issue the Final Comprehensive Conservation Plan, Associated Environmental Assessment, and Finding of No Significant Impact for the Deep Fork National Wildlife Refuge in the Southwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a Final Comprehensive Conservation Plan (CCP), associated Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) for the Deep Fork National Wildlife Refuge (National Wildlife Refuge), Okmulgee, Oklahoma pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations. The Regional Director, Southwest Regional Office, upon issuing a FONSI for the Deep Fork National Wildlife Refuge EA considered ranges of alternatives for that document.

Approval of the Deep Fork National Wildlife Refuge CCP formalizes ten goals which will result in: (1) Protection and enhancement of wetlands; (2) Protection, restoration, and maintenance of the bottomland hardwood forest

community; (3) Protection and enhancement of habitat for migratory birds; (4) Protection and enhancement of Refuge habitat to sustain healthy populations of native fish and wildlife in addition to migratory birds; (5) Restoration of native threatened and endangered species on Refuge lands; (6) Development of a database of pertinent scientific information regarding Refuge habitats and wildlife; (7) Provision of quality consumptive and non-consumptive wildlife-dependent public use; (8) Development of education and outreach programs that enable the public to 1—understand, enjoy and value the fish and wildlife resources found on and off the Refuge, 2—understand events and issues related to these resources, and 3—act to promote fish and wildlife conservation; (9) Compliance with historic and archaeological resource protection laws and regulations; and (10) Institution of an efficient administration that supports accomplishment of Refuge objectives. Some of the specific actions proposed to achieve these goals include but are not necessarily limited to the following strategies:

- Acquire lands within the proposed refuge boundary as they become available from willing sellers;
- Restore bottomland hardwood forest in floodplain areas previously converted to pecan orchard, cropland or pasture;
- Control excessive or prolonged flooding in bottomland forests through the installation of water control structures in existing beaver dams and/or control of problem beaver populations;
- Develop green tree reservoirs, moist soil units and other managed wetlands where conditions support their creation to enhance habitat for waterfowl;
- Develop a recreational trail and visitor contact center;
- Map and monitor wildlife habitats;
- Establish three waterfowl sanctuaries closed to all public entry (2,500 acres total);
- Convert all exotic grass pastureland to bottomland hardwood, wetland or tallgrass prairie conditions that originally existed on the sites.

Based on a review and evaluation of the information contained in the CCP and EA for Deep Fork National Wildlife Refuge, the Regional Director, Southwest Region, U.S. Fish and Wildlife Service, has determined that the approval of the individual or cumulative approaches reflected in the Proposed Alternative and CCP Goals, Objectives and Strategies, is not deemed to constitute a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act (NEPA). Therefore, an Environmental Impact Statement is not required. However, it is the intent of the Service to revisit questions of potential significant environmental consequences in accordance with NEPA upon consideration of the implementation of site specific proposals called for and discussed in the final plan document.

ADDRESSES: Copies may be obtained by writing to: Mr. John Slown, AICP, Biologist/Conservation Planner, Division of Refuges, U.S. Fish and Wildlife Service, P. O. Box 1306, Albuquerque, NM 87103–1306.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of these documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge and how the Service will implement management strategies.

The Service considered comments and advice generated in response to a draft document issued April 1999. The Service is furnishing this notice in compliance with Service CCP policy to advise other agencies and the public of the availability of the final documents.

Dated: October 7, 1999.

Stephen W. Perry,

Acting Regional Director, Albuquerque, NM.

[FR Doc. 99–28124 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permit issuance.

On June 3, 1999, a notice was published in the **Federal Register**, vol. 64, no. 106 and FR 29873, that an application was filed with the Fish and Wildlife Service by Douglas County, Colorado, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in Douglas County, Colorado, pursuant to the terms of Maytag Trail Habitat Conservation Plan.

Notice is hereby given that on October 12, 1999, as authorized by the provisions of the Act, the Service issued a permit (PRT–TE018090) to the above named party subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the threatened species, and that it was consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on this permit action may be requested by contacting the Field Supervisor, Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215, telephone (303) 275–2370, between the hours of 8:00 a.m. and 4:00 p.m. weekdays.

Dated: October 20, 1999.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–28140 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AF63

Proposed Policy on General Conservation Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces a proposed policy to enhance the use of permits as conservation tools by granting general conservation permits under a number of wildlife and plant laws and treaties. The policy recognizes scientific and conservation professionals and institutions as partners in resource conservation and management and provides incentives for them to work with protected species and their habitats. It establishes a framework for us to evaluate permit applications based on a risk assessment and grant a general conservation permit under certain circumstances to professionals conducting scientific, management, and conservation activities. This proposed policy is intended to complement the current system used to process permit applications.

The development of this policy is the first step in an ongoing review of our permits programs. We also are developing a long-term implementation plan for permits reform, will be conducting a study of existing successful permits programs and practices, and anticipate forming a permits process advisory committee.

DATES: Send public comments on this notice by December 27, 1999.

ADDRESSES: Send comments to the Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Management Authority.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, at the above address, telephone (703) 358–2093 or fax (703) 358–2280.

SUPPLEMENTARY INFORMATION:

Background

We implement a number of wildlife and plant laws and treaties, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Migratory Bird Treaty Act (MBTA), Lacey Act, Bald and Golden Eagle Protection Act (BGEPA), Wild Bird Conservation Act (WBCA), Endangered Species Act (ESA), and Marine Mammal Protection Act (MMPA). Each of these laws and treaties provides for permits to be issued for otherwise prohibited activities under specific circumstances. Permits are a means of regulating human activities that can have an impact on populations of protected wildlife and plants, thereby conserving these species and their habitats for future generations. Our goal in administering the permits programs is to foster conservation of protected species and their habitats, while imposing the least possible burden on the affected public.

Over the past several years, certain wildlife and plant professionals and conservation organizations have raised concerns about our permits programs. Their concerns have centered on the need for a better approach to programmatic permitting and the need to recognize scientific and conservation organizations conducting work with protected species as partners in resource conservation. These individuals and organizations believe that our current permits system is a disincentive to working with protected species, and at times even impedes scientific investigation, conservation, and endangered and threatened species recovery efforts.

Last year, we established a Permits Work Group to review concerns raised about our permits programs and to make recommendations on how to address the concerns. Members of the work group include representatives from our permits programs in the Washington Office and in each of the seven regions. They include managers of permits programs, as well as legal instruments examiners and biologists who review permit applications.

On August 10, 1998, we published a scoping notice in the **Federal Register** (63 FR 42639). We described the four programs that administer permits—Office of Management Authority, Office of Law Enforcement, Division of Endangered Species, and Office of Migratory Bird Management—and summarized the permits initiatives currently being undertaken within the four programs. We also asked for comments on the development of a policy that would approach permits as conservation tools and provide a more efficient permits process that would be consistently implemented Service-wide, with a focus on scientific research and scientific and conservation institutions that meet certain high biological and legal standards (i.e., paragraph C of the proposed policy outlines these standards).

Summary of Comments

We received 135 comments from 4 Federal agencies, 57 individuals (including 30 form letters from individuals who rehabilitate migratory birds), 6 foreign entities, 8 State or county government agencies, 17 museums, and 43 organizations. There was a wide range of comments that addressed not only policy development for scientific and conservation permits, but the permits process as a whole for all types of applicants.

Members of one organization were strongly opposed to our specific proposal to identify cooperators from scientific and conservation institutions, streamline the approval of permits for these cooperators, and/or issue general permits. They considered the current permits process to be ''extraordinarily'' easy and expected to see a high threshold of proof applied to ensure that permits are granted in a precautionary manner. They did not believe that permit decisions could be generalized. They asserted that, while an institution may be noteworthy for its contribution to conservation of one particular species, it may have no expertise in the conservation of another. They also believed that any kind of pre-approval process would limit public access to information on applicants and their proposed activities.

Other commenters generally supported the development of a new permits policy and either identified problems and/or made suggestions on changes that could improve the current permits programs. The following briefly summarizes these other general comments and suggested solutions received from the public and/or identified by the Permits Work Group. The identified problems and suggested solutions are not given in any priority order, nor is the inclusion of a problem or suggestion an indication that we agree with it or will be able to implement it. We have reviewed all the comments, incorporated some ideas into this proposed policy, and are considering others in the ongoing review of our permits programs.

Problem Identified: Sometimes permit applications, amendments, and renewals are not processed in a timely manner, and there are no regulatory time limits for processing such actions.

Suggested Solutions: Establish mandatory time frames for processing permit applications; specify review due dates for low-risk transactions; evaluate staffing needs; establish time frames/guidelines for reviewing offices; notify the public of any anticipated delays in processing permits; use the new computer system, Service Permit Issuance and Tracking System (SPITS), for more efficient permits processing; use general advices, findings, and biological opinions, where appropriate; streamline the renewal process and reporting requirements; allow electronic/faxed submission of applications; develop a system to check the status of an application by phone or internet; and allow payment of fees by credit card.

Problem Identified: The permit process is too complex. It is difficult to understand how our programs process applications and what office to contact for a specific type of permit. Applicants must submit duplicate information for each permit.

Suggested Solutions: Evaluate whether permits are being issued by the appropriate office or program; establish a single point of contact for permits; conduct a study of successful permit programs; establish an electronic species query for all wildlife and plant laws; provide on the internet general information on our permits programs and whom to contact; harmonize CITES and ESA species listings; simplify application forms with clear guidance on what is needed and why; establish an applicant master file for baseline

information that can be accessed by all permits offices to reduce duplication; register captive-breeding or plant propagation facilities to expedite issuance of permits; and issue or renew permits even if the project is not currently funded.

Problem Identified: Permit regulations are not clear, are out of date, or take too long to develop. Policies and procedures are unclear and not available to the public. There is confusion about terms we use.

Suggested Solutions: Establish time frames to update regulations, internal practices, and policies; establish a cross-program team to coordinate review and ensure consistency; convert regulations to plain English; involve constituents by establishing a task force or advisory council to assist in formulating regulations and policies and in discussions of permit issues; notify permittees of changes in a timely manner; develop guidance, policy, or regulations on the following: development of special rules under section 4(d) of the ESA; use of euthanasia; import of sport-hunted trophies; rehabilitation of wildlife; use of ESA-listed species in educational programs; and placement of salvaged, incidentally taken, deceased, or seized wildlife and plants.

Problem Identified: Applicants have no specific guidelines on how to submit a successful application. The public is unfamiliar with laws and regulations that apply to their proposed activities and the multitude and complexity of the different permit application requirements and issuance criteria. Experts in conservation are not always experts in dealing with the permit process.

Suggested Solutions: Create a permits clearinghouse and/or toll-free hotline; develop a handbook for applicants; develop more fact sheets to assist the public in understanding the laws and permit procedures; test effectiveness of current application forms and continue to simplify the forms as appropriate; create one Service permits web page and fax retrieval system; develop a permits outreach plan; and publicize improvements in the permits system.

Problem Identified: Permits need to be combined. A single transaction may require multiple permits with differing effective dates, reporting requirements, and conditions.

Suggested Solutions: Review current permit types to develop combined terms and conditions so one permit can be issued for multiple authorizations; issue permits for longer periods of time, if appropriate; consolidate annual reporting requirements; expedite process to add new species or activities to an existing permit; and allow other Department of the Interior (DOI) agencies to act as subpermittees under regional permits.

Problem Identified: Too many permits are required at different levels of government (i.e., State, Federal, and foreign). It is difficult to comply with foreign law.

Suggested Solutions: Coordinate with State and other Federal permitting agencies; link our web site to other sites that contain information on State, Federal, and foreign permitting programs, including copies of foreign and State wildlife and plant laws and addresses of foreign and State conservation agencies; and work with other countries to standardize permits procedures.

Problem Identified: Port clearance needs to be simplified. People would like to import or export wildlife through any Customs port. Some believe that the import and export clearance of non-protected wildlife is burdensome.

Suggested Solutions: Register all permanently marked museum specimens and require no further permits (if existing laws and treaties allow) or clearance to transfer them; allow the clearance of low-risk specimens at Customs ports; increase the number of designated ports and inspectors at border ports; eliminate the filing of a Wildlife Declaration form for non-protected insects; and allow the electronic filing of the Wildlife Declaration form.

Problem Identified: Weaknesses in the Service's internal communication and coordination have created inconsistencies in interpreting and implementing policies and regulations from region to region and among programs.

Suggested Solutions: Establish one-stop shopping through one Service-wide permits program or one permits office in each region; create a Washington office permits coordinator for each program; create a national permits team; develop permits handbooks and national internal guidance; hold annual internal permits training and workshops; use SPITS to share data and improve coordination; harmonize permit applications across programs; review permit terms and conditions to make them consistent and reasonable; and establish a Washington office ombudsman to referee regional inconsistencies and consider complaints.

Problem Identified: The Service neither recognizes the efforts or contributions of partners (including State agencies, research institutions, conservation organizations, non-Federal recovery team members, range states) and other NGOs, nor utilizes the expertise available in scientific and conservation institutions. We need to give greater recognition to the inherent value of research.

Suggested Solutions: Include individuals, zoos, and landowners as partners; increase communication and outreach; utilize experts and peer review; increase collaboration with State wildlife and plant agencies in permit decisions; establish electronic links with institutional databases for tracking specimens; give public recognition to conservation partners; and develop incentive programs for private landowners.

Problem Identified: The current system serves as a disincentive to engage in conservation activities or work with protected species; impedes scientific investigation, conservation, and endangered and threatened species recovery efforts; and exists first to enforce regulations and only secondly to conserve wildlife and plants and their biodiversity. Current regulations and their implementation focus on each action and animal, rather than assisting in scientific or conservation efforts. The Service does not view the import of sport-hunted trophies as a conservation tool and needs to be more supportive of foreign range countries' conservation programs.

Suggested Solutions: Open up discussion of systemic shortcomings before moving forward with permit reform; issue programmatic permits; identify low-, medium-, and high-risk activities; allow for low-risk, non-specified activities; involve external conservation and research professionals in developing criteria for permit issuance; base decisions on good science; consider cumulative effects; simplify process for obtaining permits; expedite the processing of permits, especially for captive-bred animals; and establish a monitoring program for Safe Harbor Agreements.

Problem Identified: The Service does not use risk management in administering the permits programs and micro-manages low-risk specimens (e.g., pre-CITES, accessioned museum specimens).

Suggested Solutions: Evaluate program-based or general permits for activities and species within the scientific scope of a research project under all laws and across our programs; consider the following options: (1) For scientific and conservation institutions, develop standardized criteria for excellence that qualify them for general permits and pre-approve such

cooperators to receive individual CITES permits on a streamlined basis; (2) develop a two-tiered, risk-based system that would not require people to obtain individual permits for research activities for low-risk species (i.e., species other than ones listed under the ESA as endangered or threatened or migratory birds of special concern); (3) develop an accreditation system that would allow legitimate members of the scientific community to conduct their research programs without intensive oversight; and (4) allow multiple-use permits for low-risk activities.

Problem Identified: The current process places too much emphasis on preventing unqualified persons from getting permits, not on facilitating conservation by qualified persons. There are no policies outlining factors to be considered for the issuance of program-based or general permits.

Suggested Solutions: Criteria for issuing permits should be flexible and consider principles of adaptive management; factors to be considered should include: (1) The types of activities (e.g., ecosystem-level activities; conservation efforts; import and export of tissue samples; activities and species that are the same or similar to those previously approved; and activities with SSP (Species Survival Plan) species); (2) qualifications of person or institution (e.g., a specific person based on their research; a master permit holder who designates subpermittees; an individual with demonstrated successful conservation activities; members accredited by a professional organization such as the American Museum Association; or an institution registered under CITES); (3) record of compliance with wildlife and plant laws; (4) resources available to accomplish the project; (5) record of compliance with permit terms and conditions; (6) permit terms and conditions that require permittees to submit annual reports that allow us to spot check activities and records, and to re-qualify periodically; and (7) revocation of permits if requirements are not met.

Problem Identified: There has been an increase in the complexity of permit issues and numbers of permits without a corresponding increase in staff.

Suggested Solutions: Analyze workload, issues, and priorities of permits programs; allocate resources between management of generally harmless activities (e.g., import of research samples collected ancillary to species' conservation programs and education) versus activities that are potentially harmful (e.g., lethal take of ESA-listed species); and develop an ongoing approach to identify permit problems and dialogue to resolve them.

Future Steps

This proposed policy is the first step in a series of actions we will undertake to make the processing and administration of permits more effective. It also serves as a model for us to evaluate other types of permit activities, the risks to a species and its habitat associated with those activities, and how we can look at them differently.

In addition to considering the concerns we have heard to date, we believe we need to work to a greater extent with others to find innovative solutions to the increasingly complex issues associated with species management and conservation, and human activities. Thus, we are developing a long-term implementation plan, will be conducting a study to see what successful approaches to permitting are in place by other private organizations and public agencies, and will consider forming an advisory committee that would establish a forum for continuous dialogue on creative approaches to permitting and ensure that we hear diverse points of view.

At the same time, we will proceed with the permits initiatives undertaken in the last few years. These initiatives are in various stages of development and implementation. It is worth noting that many overlap with suggestions listed in the Summary of Comments section. They include efforts to:

Make the Process More Efficient and User Friendly

- Review permit application forms under the Paperwork Reduction Act. (Such a review was completed on January 31, 1998, resulting in redesigned, simplified forms that are tailored, where possible, to a particular type of activity or species. Since we formally review the information collected by application forms every 3 years, we intend to incorporate changes identified by the ongoing permits reform at the next review in 2001.)
- Develop a new computer system to allow for more efficient tracking and issuance of permits. (SPITS went online nationwide for permit issuance in 1998 and will be online for species tracking by the end of 1999.)
- Provide better access to permit information through the development of new fact sheets, a faxback system that allows application forms to be ordered by using a toll-free number, and the internet (our web site—http://www.fws.gov).
- Increase the number of ports designated for the import and export of wildlife and the number of wildlife inspectors to clear shipments, including an increase in wildlife inspectors at Canadian and Mexican border ports.

Ensure Consistent and Fair Implementation

- Develop permits handbooks to assist in training persons reviewing permit applications and ensure consistency by them in interpretation of laws and treaties and the processing of permit applications.
- Draft new policies and permit regulations to clarify permit procedures and issuance criteria.
- Share data and improve coordination between offices within programs and between programs through SPITS.

Foster Partnerships for Wildlife and Plant Conservation

- Increase outreach through conferences and meetings.
- Use program-based permits to expedite the issuance of specific import or export permits for conservation activities.
- Lessen import and export requirements for accredited scientific institutions by eliminating the requirement to obtain an Import/Export License and allowing the use of U.S. Customs ports and international mail for shipment of non-protected scientific specimens.

Focus on Risk Management and Conservation

- Expand SPITS to track and analyze cumulative wildlife and plant data for species management.
- Re-assign law enforcement wildlife inspectors to ports with high numbers of shipments.

Examples of Potential Applications for General Conservation Permits

Although many of the permits initiatives outlined above affect all types of permits, we are narrowing our focus at this time in this proposed policy to general conservation permits. After giving careful consideration to the concerns raised and suggestions given on programmatic or general permits, we are proposing that general conservation permits be issued only under specific circumstances. We would combine permit requirements of all laws and treaties across our programs, when appropriate, into one permit that authorizes multiple transactions for approved species and activities and allows for expedited processing of individual import and export permits

under CITES. In most cases, an applicant wishing to conduct activities on multiple species and/or with multiple cooperators must obtain a separate permit from each affected program. Under the proposed policy, a single general conservation permit could be issued in lieu of a number of individual permits. The scope of activities allowed under such a permit would be based on potential risk to the conservation of the species and its habitat. A general conservation permit would only be available to individuals and institutions that have outstanding professional credentials (i.e., has demonstrated expertise over time to conduct the activities with the same or similar species) and that are conducting scientific, management, and conservation activities.

This proposed policy provides an opportunity for us to work closely with the scientific and conservation community, to test the concept of a general permit that is similar to a State scientific collecting permit, to establish general factors to be considered in approving these broader-based permits, and to better coordinate with existing State programs. Some components of this proposed policy come from approaches we currently apply to the processing of permits. However, the proposed policy should clarify our procedures, streamline them for applicants who want to conduct activities that will benefit species' conservation, and provide consistency in administering permits. The proposed policy also lets us try a risk-driven system, which will allow us to apply our limited resources toward those species considered to be at the greatest conservation risk and that can receive the maximum benefit from our enhanced attention. We believe that the use of general conservation permits will provide benefits not only to the permittees but also to the resource.

A potential example with ESA-listed species and their habitats might be to issue a general conservation permit that allows qualified consultants to perform a wide variety of actions, such as the survey and salvage of several mussel species, over several States and across several regions.

The following describes two types of permits we recently issued that could also fall into potential applications for the general conservation permit. The first example involves a permit issued to an organization based on its conservation program in foreign countries for a species listed under the ESA, WBCA, and CITES. The application was published in the **Federal Register** to notify the public and receive comment on the program's activities for 5 years. The permit authorizes multiple imports of live birds for rehabilitation, imports of injured birds for captive breeding, and imports of biological samples for scientific research. It also authorizes the export of live birds for reintroduction, re-export of rehabilitated birds, and export or re-export of biological specimens. Although CITES limits the issuance of import permits to 1 year and requires a separate original export permit for each shipment, these permits can be issued expeditiously since the scientific and legal findings have already been made for the program as a whole for 5 years.

The second example involves the import and export of biological samples for scientific and conservation purposes. We issued a permit to an applicant authorizing imports of unlimited quantities of biological samples from any species listed under CITES or the ESA. As with the previous example, the findings are valid for 5 years and successive import permits will be issued for 1 year to meet the requirements of CITES. The permit was conditioned based on the risk associated with the activity or/and with the species. For example, samples collected invasively must be collected by the permittee's staff or by other appropriately trained personnel who are pre-approved in writing by the permittee. The permittee must retain a record of whom it approves. These conditions do not apply to samples that are collected non-invasively. Samples from wild animals of CITES Appendix-I species can only be collected in cooperation with local management authorities. Separate permits are required for each export or re-export because of CITES requirements, but issuance of these permits can be done quickly since all the required findings were made for both import and export at the time the import permit was issued.

Public Comments Solicited

We invite interested organizations and the public to comment on this proposed Policy on General Conservation Permits. We particularly seek comments on factors to consider in evaluating applications for general conservation permits and how we could by the issuance of these permits foster partnerships for wildlife and plant conservation; focus permits on risk management and conservation; reduce paperwork, streamline the permit process, and provide user-friendly service; and implement the process fairly and consistently while still focusing on our conservation mission. At this time, we are seeking comments on this proposed policy, not on other types of permits or steps in our ongoing permits reform efforts.

Required Determinations

This proposed policy has not been reviewed by OMB under Executive Order 12866.

A review under the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) has revealed that this proposed policy would not have a significant economic effect or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The groups affected by this rule are a relatively small number of wildlife and plant professionals and conservation organizations who will be eligible to apply for general conservation permits that combine authorizations under various wildlife and plant laws and treaties into one permit while meeting the existing permit regulations and fulfilling our conservation mission. The primary economic impact is the reduction in burden hours for applicants applying for multiple permits. We estimate these benefits are less than $700,000 annually.

Similarly, this proposed policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, and will not negatively affect the economy, consumer costs, or US-based enterprises.

We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed policy will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Under Executive Order 12630, the proposed policy does not have significant takings implications for the same reasons as described above under the Regulatory Flexibility Act.

Under Executive Order 12612, this proposed policy does not have significant Federalism implications. We have evaluated possible effects on Federally recognized Tribes and determined that there will be no adverse effects to any Tribe.

Under Executive Order 12988, the Office of the Solicitor has determined that the proposed policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

The proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Information collection is covered by existing OMB approvals and assigned clearance numbers 1018–0092, 1018–0093, 1018–

0094, and 1018–0022 with an expiration date of February 28, 2001. We will use the information to review permit applications and make decisions, according to criteria established in statutes and regulations, on the issuance or denial of permits.

We have also determined that this proposed policy is categorically excluded under the DOI's procedures for complying with the National Environmental Policy Act (NEPA) (516 DM 2, Appendix 1.10).

Executive Order 12866 requires us to write regulations that are easy to understand. We invite your comments on how to make this proposed policy easier to understand, including answers to the following questions: (1) Are the requirements in the proposed policy clearly stated; (2) does the proposed policy contain technical language that interferes with its clarity; and (3) what else could we do to make this proposed policy easier to understand?

Policy on General Conservation Permits

A. Why approach permits as conservation tools?

The purpose of this policy is to encourage greater involvement of qualified individuals and institutions in protected species' conservation through the issuance of general conservation permits. Our goals in administering the permits programs are to: (1) Create incentives to foster partnerships for the conservation of species and their habitats while meeting our basic statutory responsibilities of species' protection and management, (2) focus on risk management when processing permit applications, (3) impose the least possible burden on the affected public, and (4) implement permits fairly and consistently.

We are committed to carrying out our statutory obligations and will apply Federal authorities in a manner to ensure sound resource decisions while understanding the importance of partnerships in wildlife and plant conservation. We are only one component of a greater conservation community and acknowledge that teamwork among Federal, Tribal, State, local, international, and private stakeholders is an essential ingredient for the management and conservation of wildlife and plants. Thus, this policy recognizes scientific and conservation professionals and institutions as partners with us in resource conservation and management and provides incentives for them to work with protected species and their habitats.

B. What is the scope of a general conservation permit?

This policy establishes a framework for us to use in evaluating permit applications and deciding whether or not to issue a general conservation permit. These general conservation permits are available to approved individuals or institutions conducting non-commercial scientific, management, and conservation activities when the provisions of all applicable wildlife and plant laws are met and when the benefits gained from the proposed activities counter any potential harm to the affected species and its habitats.

We will, as appropriate, consolidate authorizations under the various wildlife and plant laws listed in section H of this policy and issue one general conservation permit, rather than separate permits. This permit may cover most or all of the regulated activities in a program described by an individual or institution. In the case of ESA-listed species, a general conservation permit would only be available for activities under section 10(a)(1)(A) that involved intentional take of species for the purposes of scientific research, management, or conservation, excluding Safe Harbor and Candidate Conservation Agreement with Assurances permits. It does not include permits issued under section 10(a)(1)(B) of the ESA which authorize take that is incidental to otherwise lawful activities (which in this context means economic development or the use of land or water). Nor does it replace the need to develop a Habitat Conservation Plan under the incidental take permit regulations.

The scope of the activities authorized in the permit will vary depending on the risk assessment as outlined below. A general conservation permit may authorize multiple transactions, depending on the applicant's program and the species involved, and allow for streamlined issuance of specific CITES permits for import and export. We will explore the feasibility of providing a single point of contact in each regional office, across regional and programmatic boundaries, for the processing of applications and administration of the general conservation permit.

C. What factors will we consider in evaluating permit applications for general conservation permits?

Because general conservation permits may authorize a broader scope of activities, we will consider the following factors in evaluating applications for such permits:

(1) Whether any potential risk to the species in the wild or its habitat and/or to the captive population, if applicable, is appropriate for the conservation benefits to be gained from the proposed activities.

(2) Whether the purpose of the activity is for non-commercial scientific research, management, or the conservation of the species or its habitat. The proposal must provide clear biological goals and the means by which the goals will be achieved, including proposed time frames as appropriate. Through the permits process, we will discuss with you, the applicant, the proposed activities in view of species' biological and management needs, provide technical assistance, and resolve issues to ensure species' conservation.

(3) Whether you have adequate resources to accomplish the proposed activities.

(4) Whether you have the biological and legal qualifications, including whether you have been a permittee in good standing with a long-term record of compliance in the use of similar Federal wildlife and plant permits. You should provide copies of any publications that demonstrate your biological expertise to conduct the proposed activities. We also would consider the qualifications of an individual acting as your subpermittee and your ability to retain oversight over the actions of that individual.

(5) If the activities involve holding live wildlife and plants, whether the facilities are adequate to accomplish the goals, including your prior record of care and maintenance of the same or similar wildlife and plants.

(6) Whether you and your proposed activities meet statutory requirements. The proposed policy is intended to complement the current permits processing system and not supersede or alter any Federal law or regulation related to species' conservation.

D. How do we calculate potential risk?

Our basic statutory responsibility under the various wildlife and plant laws and treaties is to conserve fish, wildlife, plants, and the ecosystems upon which they depend for future generations. The scope of the activities and the species authorized in a general conservation permit will be based on an evaluation of the degree of conservation benefit to the wild and captive populations of the species and its habitat versus the degree of potential risk posed by the proposed activities outlined in the application. The evaluation will be based on the best scientific information available and the

conservation needs of the species and its habitat. The proposed policy limits these permits to scientific, management, and conservation activities. Some actions generally may have such low risk to the conservation of the species and its habitat that we may grant a permit for a broader scope of activities. On the other hand, some actions with some species may have such a high degree of risk that we may limit the scope of activities or terms and conditions of the permit, or we may deny a permit for the proposed activity.

Within this framework, we will look at a number of factors to perform a risk assessment. Each of these factors (outlined below) has a continuum of risk associated with it. The factors are not listed in any order of priority. Neither is the list meant to be an exhaustive list of the factors used in performing a risk assessment, nor to be a rigid hierarchy since other aspects of the proposed activities and species status may affect the degree of risk.

(1) *Level of species protection.* We will look at how the species is protected. For example, if a species is listed under the ESA, there is a continuum based on the risk of extinction recognized by the law from high risk to low risk as follows:

Endangered;

Threatened;

Threatened with a special rule (often referred to as a 4(d) rule);

Experimental population; and

Similarity of appearance.

This same recognition of differences in risk exists in programs under other laws and treaties. Each law and treaty outlines the purposes for which the fish, wildlife, plants, and their ecosystems may be used and standards for making decisions on whether to allow the proposed activity. When a species is regulated under more than one law or treaty, all the requirements are evaluated.

(2) *Potential effect of the proposed activities.* We will review the intended purpose of the proposed activities in relation to their potential effect on the species' biological, ecological, and management needs (e.g., population status, best management practices, available scientific information). Again, there will be a continuum of risk, depending on how the proposed activities may affect the species' population status, habitat, or management. For example, risks associated with the source or type of specimen in general have a continuum from high risk to low risk such as:

Intentional killing of wild animals;

Permanent removal of live animals and plants from the wild;

Removal from the wild as part of a recovery effort or reintroduction program;

Death or permanent removal from an essential captive population;

Invasive collection of tissue samples from wild animals;

Non-invasive collection of tissue samples with captive or wild specimens;

Culled or surplus specimens; and

Salvaged dead specimens when not intentionally killed for the purpose of collecting.

We will conduct this review using our own scientists (e.g., the Office of Scientific Authority), outside experts, and peer review as needed. We will take into consideration the level of biological uncertainty in the available scientific information and management strategies. The degree of risk may be higher when there are significant gaps in the biological data about the species' ecology, management techniques, or potential effects of the proposed activities on the species and its habitat. You may want to anticipate these uncertainties and design your activities to provide for flexibility by outlining alternative methods or strategies to achieve your biological goals. This may allow us to issue a permit with specific terms and conditions in response to the proposed alternatives and anticipated changing circumstances.

(3) *Benefits.* At the same time, we will consider net or overall benefits to the species and its habitat that may be gained by the activities.

(4) *Part of a management plan or strategy.* We will consider if the activity is part of a recognized management plan or strategy. For ESA-listed species, we will consider whether the activity is a task identified in a final recovery plan or outline.

(5) *Level of pressure on the species.* This would include the degree of risk associated with whether the transaction would encourage or allow for commercial use.

(6) *Potential cumulative effects.* We would look at cumulative effects on the species' wild and captive populations and its habitat.

(7) *Safeguards.* Terms and conditions of general conservation permits, including monitoring of activities through reports and field visits, will be based on the degree of risk to the species and its habitat. For example, permits to conduct activities with threatened or endangered species, and migratory birds of management concern are more likely to have closer and more frequent monitoring and more restrictive permit terms and conditions.

For high-risk activities, we may accompany the permittee when take activities are being conducted. This allows us to develop closer partnerships with researchers; check information on species, habitat, and techniques; identify unanticipated deficiencies or benefits associated with the activities; help prevent accidental violations of the terms and conditions of the permit; and work out any adjustments that may be needed in the permit.

Generally through the use of annual reports, we will periodically review the activities to ensure the terms and conditions of the permit are being implemented; to look at the level and impacts of authorized take; and to determine if the activities are producing the desired results. We will use the information to assess cumulative trends in species' populations or changes in its habitat.

E. What are the benefits of these permits?

The granting of general conservation permits generally offers benefits in four broad areas. We will take the identified actions to help further these benefits.

(1) *Foster partnerships for wildlife and plant conservation.*

- Issue general conservation permits that consolidate the terms and conditions for multiple activities. This will enhance our existing partnerships, and may encourage new partnerships, by reducing the paperwork burden on our conservation partners and simplifying the permit process.
- Reach out to current and potential partners by providing permit information at scientific meetings and conferences, in newsletters, etc.
- Use our own scientists and outside experts and encourage peer review to obtain the best available scientific information when evaluating permit applications. The results of any external review will be entered into the administrative record of the decision and made available for public review consistent with provisions of the Freedom of Information Act and the Privacy Act.

(2) *Focus permits on risk management and conservation.*

- Continue to base our permit decisions on the best available scientific information within the bounds of the laws and treaties.
- Consider cumulative effects of permit issuance over time. Use the computer system, Service Permit Issuance and Tracking System (SPITS), to analyze cumulative wildlife and plant data.
- Base our permits programs on conservation risk management to ensure

that our limited resources are directed toward species at the greatest conservation risk and that can benefit from our enhanced attention.

(3) *Reduce paperwork, streamline the permit process, and provide user-friendly service.*

- Explore the feasibility of providing a single point of contact in each regional office for the processing of permit applications and administration of the general conservation permit.
- Develop and use harmonized permit application forms to consolidate the information needed to apply for a permit under multiple wildlife and plant laws and actively seek comments from the public during the Office of Management and Budget (OMB)-approval process for forms under the Paperwork Reduction Act.
- Develop and use general findings (e.g., no-detriment advices under CITES, programmatic biological opinions under the ESA) to decide when an application meets the permits issuance criteria.
- Issue and track the processing of permits through SPITS.
- Issue general conservation permits for up to 5 years for ongoing activities, depending on the results of the risk assessment.
- Consolidate annual reporting requirements and, when possible, tailor the report due date to the activities conducted. This would allow the permittee to submit a single report and meet the requirements of more than one law or treaty.

(4) *Implement the permit process fairly and consistently.*

- Develop standardized permit conditions for activities with the same species or related groups of species.
- Use the computer system SPITS to share data and ensure use of consistent permit terms and conditions.

F. What if I don't qualify for a general conservation permit?

Individuals or organizations that do not qualify for permits under this policy may apply for individual permits under existing regulations, just as they do now.

G. What is the scope of this policy?

This policy applies Service-wide to programs that process permit applications for all species of wildlife and plants under the law and treaties listed in section H of this policy.

H. Authority

The authorities for this action are the Bald and Golden Eagle Protection Act (16 U.S.C. 668a); Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 U.S.T. 1087); Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Lacey Act (18 U.S.C. 42); Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*); Migratory Bird Treaty Act (16 U.S.C. 703–712); and Wild Bird Conservation Act (16 U.S.C. 4901–4916).

Dated: August 30, 1999.

John G. Rogers,

Acting Director.

[FR Doc. 99–28232 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

Emergency Closure and Restriction of Certain Uses of Public Lands Within the Dillon Field Office, Montana

AGENCY: Dillon Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Emergency Closure and Restriction Order.

SUMMARY: Effective immediately, all newly acquired public lands that lie within sections 1, 2, 11, 12, and 13 of Township 9 South, Range 10 West, PMM; and the South East corner of section 35 in Township 8 South, Range 10 West, PMM; will be restricted to certain uses. The closure and restriction order is being implemented to prevent conflicts with waterfowl management, which is one of the primary reasons for the acquisition. Travel restrictions are necessary to prevent the spread of noxious weeds and to prevent resource damage to the area. In addition restriction of certain uses are necessary for public safety.

Vehicle Travel

All public land in sections 1, 2, and 11 (Township 9 South, range 10 West, PMM) that lie East of the I–15 frontage road and West of the Union Pacific Rail Road right of way will be closed to all motorized vehicle travel. Motorized vehicle travel will be allowed from the point where the road crosses the Union Pacific Railroad tracks at the SW¼ of the NW¼ of section 11 (Township 9 South, Range 10 West, PMM) and continues parallel to the north east of the tracks, until the point where Gallagher Creek meets it. At this point the road will be closed to further motorized vehicle travel through the creek bed. This closure is necessary to prevent further damage to the Gallagher Creek stream bed, to prevent the spread of noxious weeds, and to reduce erosion. Motorized vehicle travel in the remaining area will be limited to existing roads and trails unless otherwise designated.

Hunting

Hunting on those public lands in sections 1, 2, and 11 (Township 9 South, Range 10 West, PMM) that lie East of the I–15 frontage road and West of the Union Pacific Rail Road right of way will be restricted to archery, shotgun, traditional handgun, and muzzleloader only. Definitions of legal archery, shotgun, traditional handgun, and muzzleloader are contained within the State of Montana regulations for hunting.

The authority for this closure and restriction order is 43 CFR 8364.1. The order will remain in effect until a Management Plan for the area is completed.

ADDRESSES: Copies of the closure and restriction order, and maps showing the location of the affected lands are available from the Dillon Field Office, 1005 Selway Drive, Dillon, Montana, 59725.

FOR FURTHER INFORMATION CONTACT: Scott Powers, Field Manager, Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725.

Scott Powers,

Field Manager, Dillon Field Office, Dillon, Montana 59725.

[FR Doc. 99–28225 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–MT–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1020–00]

Salt Lake Field Office Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of availability

SUMMARY: The Utah Bureau of Land Management, Salt Lake Field Office, has completed an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for a Proposed Plan Amendment to the Box Elder Resource Management Plan (RMP) (1986). The proposed plan amends the RMP by eliminating domestic livestock grazing from the Newfoundland Mountains upon relinquishment of the current sheep permit. This action is needed to eliminate future conflicts between domestic livestock and bighorn sheep.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of publication of this notice. Protests must be submitted on or before November 29, 1999.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, Resource Planning Team, 1849 C Street, NW., Washington, DC 20240, within 30 days after the date of publication of this notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Bureau of Land Management, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah, telephone (801) 977–4317. Copies of the Proposed Plan Amendment are available for review at the Salt Lake Field Office.

SUPPLEMENTARY INFORMATION: Any person who participated in the planning process and has an interest which is or may be adversely affected by the Proposed Plan Amendment may protest to the Director of the Bureau of Land Management. The protest must be in writing and filed within 30 days of the date of publication of this Notice of Availability in the **Federal Register**. The protest must be specific and contain the following information:

—The name, mailing address, telephone number and interest of the person filing the protest;
—A statement of the issue(s) being protested;
—A statement of the part(s) of the proposed amendment being protested;
—A copy of all documents addressing the issue(s) that were submitted by the protestor during the planning process; and
—A concise statement explaining why the BLM State Director's proposed decision is believed to be in error.

In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–28138 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–XU;GPO–0011]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District Office.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; December 9 and 10, 1999.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on December 9 from 8:00 a.m. to 5:00 p.m. and on December 10 from 7:30 a.m. to 3:00 p.m. at the Red Lion (formerly Doubletree) Inn, 304 SE Nye Avenue, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 10:00 a.m. on December 10. Topics to be discussed by the Council will include: social and economic training; John Day River Plan update and Hells Canyon NRA Comprehensive Plan review; reports from the Forest Health Subgroup; ICBEMP update; and a 15 minute round table for general issues.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: October 19, 1999.

James L. Hancock,

District Manager and Designated Federal Official; John Day-Snake Resource Advisory Council.

[FR Doc. 99–28226 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–240–1050–00–24–1A]

Collection, Storage, Preservation and Scientific Study of Fossils From Federal and Indian Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that a review period on the Draft Report of the Assessment of Fossil Management on Federal and Indian Lands is open for 30 days.

DATES: Submit comments by November 29, 1999.

ADDRESSES: Written comments may be sent to Sara Pena, Bureau of Land Management, 1849 C St., NW, LS–204, Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Sara Pena, Bureau of Land Management at (202) 452–5040.

SUPPLEMENTARY INFORMATION: The United States Senate (Senate Report 105–227) requested that the Secretary of the Interior, in consultation with appropriate scientific, educational, and commercial entities, prepare a report assessing the need for a unified federal policy on the collection, storage, and preservation of fossils. The draft report, ''Assessment of Fossil Management on Federal and Indian Lands,'' provides some information on current federal policies on paleontology. A copy of the Draft Report is available on the Interior Department web site at *http://www.fs.fed.us/geology* or by contacting Sara Pena, Bureau of Land Management, 1849 C. St., NW, LS–204, Washington, DC, 20240, telephone: (202) 452–5040.

Dated: October 22, 1999.

John Douglas,

Acting Group Manager, Cultural Heritage, Wilderness, Special Areas and Paleontology, Bureau of Land Management.

[FR Doc. 99–28106 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–06; WYW 132601]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw 4943.13 acres of public land in Fremont County, to protect and preserve significant recreation, scenic, riparian, historic, and wildlife resources along segments of the Sweetwater River. This notice closes the land for up to 2 years from surface entry and mining. The lands are not available for mineral leasing in accordance with the Bureau of Land Management's Green River Resource Management Plan.

DATE: Comments and requests for a public meeting must be received by January 26, 2000.

ADDRESS: Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124, or Stan McKee, BLM Rock Springs Field Office Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0256.

SUPPLEMENTARY INFORMATION: On October 5, 1999, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 28 N., R. 102 W.,

Sec. 3, lots 2–4, SW¼, W½SE¼, SE¼SE¼;
Sec. 4, lots 1–4, N½SW¼, E½SW¼SW¼, SE¼SW¼, SE¼;
Sec. 5, lot 1, NE¼SE¼;
Sec. 9, NE¼NW¼, NE¼SE¼NW¼, N½NE¼SE¼, W½NE¼, SE¼NE¼;
Sec. 10, S½NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, N½SW¼, N½SE¼SW¼, N½SE¼, E½SW¼SE¼, SE¼SE¼;
Sec. 11, SW¼NW¼, NW¼SW¼, SW¼SE¼NW¼, W½NE¼SW¼.
T. 29 N., R. 102 W.,
Sec. 5, lots 3 and 4, S½NW¼, N½SW¼, SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 6, lot 1, SE¼NE¼;
Sec. 8, NE¼, NE¼NW¼, E½SE¼NW¼, E½E½SW¼, SE¼;
Sec. 9, W½W½NW¼, W½NW¼SW¼, SW¼SW¼;
Sec. 17, N½NE¼, E½SW¼NE¼, SE¼NE¼, NE¼SE¼;
Sec. 27, SW¼NE¼, E½SW¼, W½NE¼SE¼, W½SE¼;
Sec. 34, NW¼NE¼, S½NE¼, NE¼NE¼NW¼, N½SE¼;
Sec. 35, W½W½.
T. 30 N., R. 102 W.,
Sec. 19, lots 1–4, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 30, W½NE¼, W½SE¼NE¼, E½NW¼, E½SW¼, W½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 31, NE¼, E½NW¼, E½NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 32, SW¼.

The area described contains 4943.13 acres in Fremont County.

The purpose of the proposed withdrawal is to protect and preserve significant recreation, scenic, riparian, historic, and wildlife resources along segments of the Sweetwater River pending further study and possibly longer-term actions.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the plant habitat may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: October 21, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–28139 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of currently approved information collection (1010–0059).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by November 29, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0059), 725 17th Street, N.W., Washington, D.C. 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart H, Oil and Gas Production Safety Systems.

OMB Control Number: 1010–0059.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*) gives the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. To carry out these responsibilities, we established regulations at 30 CFR 250, subpart H, Oil and Gas Production Safety Systems. In addition, we also issue Notices to Lessees and Operators (NTL) to clarify and provide additional guidance on some aspects of the regulations.

We collect information under subpart H of the regulations to evaluate equipment and/or procedures that lessees propose to use during production operations. Information is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. The MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements. In the Pacific OCS Region, respondents submit Emergency Action Plans (EAP) to their local air quality agencies in response to California air quality laws to protect public health during exceptional air pollution episodes. We review these plans prior to the event of an air pollution episode to ensure that abatement measures do not jeopardize safe platform operations.

If we did not collect the information, we could not carry out the mandate of the OCS Lands Act to ensure safe operations in the OCS. Specifically, MMS could not review safety system designs prior to installation to ensure that minimum safety standards will be met; review records of erosion control to ensure that erosion control programs are effective; review plans for simultaneous operations to ensure safety of operations when more than one activity is being conducted simultaneously on a production facility; review records of safety devices to ensure proper maintenance during the useful life of that equipment; and verify proper performance of safety and pollution prevention equipment (SPPE).

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, ''Data and information to be made available to the

public.'' No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

The PRA provides that 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.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on August 12, 1999 (64 FR 44044).

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion and annual.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 5,204 burden hours, averaging approximately 40 hours per respondent. See following chart.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart H	Reporting and recordkeeping requirement	Annual number	Burden	Annual burden hours
800; 801(a), (d), (e)(1), (f), (g), (h)(3); 802(e); 803(b)(1)(iii), (2)(ii)(A), (4)(ii), (7)(iii),(8).	Application and approvals for design, installation, and operation of subsurface safety devices and surface production-safety systems and related requirements.	176 Submissions	4 hours	704
800; 804(a)(11)	Notify MMS prior to production when ready to conduct pre-production test and inspection.	152 Notices	.5 hour	76
801(g)	Submit annual verification of no-flow condition of well.	35 Verifications	2 hours	70
801(h)(1)	Form MMS–124, Sundry Notices and Reports on Wells.	Burden covered under 1010–0045 for this form.		0
801(h)(2); 803(c)	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service.	Usual/customary safety procedures for removing or identifying out-of-service safety devices.		0
802	Submit statement verifying final surface production safety system installed conforms to approved design.	150 Statements	3 hours	450
803(b)(8)(iv)	Post diagram of firefighting system	75 Postings	2 hours	150
804; related NTL	Submit copy of state-required EAP containing test abatement plans in the Pacific OCS Region.	8 Plans	1 hour	8
806(c)	Request evaluation and approval of other quality assurance programs covering manufacture of SPPE.	1 Request	2 hours	2
Reporting—Subtotal		597		1,460
801(h)(2); 802(e); 804(b)	Maintain records on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, etc.	130 Recordkeepers	12 hours	1,560
803(b)(1)(iii), (2)(i)	Maintain pressure-recorder charts	130 Recordkeepers	10 hours	1,300
803(b)(4)(iii)	Maintain schematic of the emergency shutdown which indicates the control functions of all safety devices.	130 Recordkeepers	4 hours	520
803(b)(11)	Maintain records of wells that have erosion-control programs and results.	130 Recordkeepers	2.8 hours	364
Recordkeeping—Subtotal.		130		3,744
Reporting & Recordkeeping Total Hour Burden.		727		5,204

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no information collection cost burdens for this collection of information.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 29, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 30, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–28234 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of currently approved information collection (1010–0057).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by November 29, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0057), 725 17th Street, N.W., Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*) gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act also requires the Secretary to administer the provisions of this subchapter relating to the leasing of the OCS, and to prescribe such rules and regulations as may be necessary ''for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State.'' The OCS Lands Act directs the Secretary to ''establish regulations requiring all materials, equipment, tools, containers, and all other items used on the OCS to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.''

To carry out the responsibilities, we issued regulations at 30 CFR 250, subpart C, Pollution Prevention and Control. These regulations collect information related to new facilities and modifications to existing facilities with respect to pollution prevention and control. In addition, we also issue Notices to Lessees and Operators to clarify and provide additional guidance on some aspects of the regulations.

We collect information under subpart C to ensure that:

- There is no threat of serious, irreparable, or immediate damage to the marine environment and to identify potential hazards to commercial fishing caused by OCS oil and gas exploration, development, and production activities;
- The location of items lost overboard is recorded to aid in recovery by the operator during site clearance activities on the lease;
- Operations are conducted according to all applicable regulations, permit conditions and requirements, and conducted in a safe and workmanlike manner;
- OCS oil and gas operations minimize air pollution of the OCS and adjacent onshore areas and comply with the emission levels specified in the MMS Development and Production Plan approval conditions;
- A data baseline is established for the meteorological, oceanographic, and sea-ice conditions in frontier areas of the OCS to determine that offshore facilities and operational practices can withstand the expected environmental forces in an area;
- Discharge or disposal of drill cuttings, sand, and other well solids, including those containing naturally occurring radioactive materials (NORM), are properly handled for the protection of OCS workers and the environment; and
- Facilities are inspected daily for the prevention of pollution, and problems observed have been corrected.

If we did not collect the information, we could not carry out the mandate of the OCS Lands Act to ensure safe and environmentally sound operations in the OCS. We could not determine if operations comply with standards to minimize air pollution of the OCS and adjacent onshore areas.

Beginning January 1, 2000, we will conduct a 1-year information collection of meteorological data and air pollutant emissions for production facilities in the Breton National Wildlife Refuge/Wilderness Area (BWA). The information will be submitted on a monthly basis. We will use the information collected from the affected lessees/operators to determine whether emissions from OCS activities may be significantly affecting the air quality of the BWA, a Prevention of Significant Deterioration Class I Area as defined by the Clean Air Act. In addition, the Environmental Protection Agency has promulgated new, more stringent ambient air quality standards for ozone and is drafting regulations dealing with regional haze. It is anticipated that these regulations will require State agencies to perform modeling for ozone and regional haze for their State Implementation Plans (SIPs). The States will require information for the year 2000 on OCS activities in the central and western Gulf of Mexico (GOM). In preparation, we are requiring the affected respondents to collect and report facility, equipment, fuel usage, and other information beginning January 1, 2000. The information will be submitted for the entire year, sometime during March 2001. We will use the information collected from the affected lessees/operators to calculate air pollutant emissions that may significantly impact onshore areas. The emissions inventory will be available for State agencies to help them in preparing the SIPs for the coastal parishes/counties that have been declared as non-attainment areas for ozone.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that 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.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on August 12, 1999 (64 FR 44043).

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion, monthly, or annual.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 194,311 burden hours, averaging approximately 1,495 hours per respondent. See following chart.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart C	Reporting and recordkeeping requirement	Annual number	Burden	Annual burden hours
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM..	130 Lessees	3 hours	390
300(c)	Mark items that could snag or damage fishing devices..	130 Lessees	.5 hour	65
300(d)	Report items lost overboard.	130 Lessees	1 hour	130
303(a), (b), (c), (d), (i), (j); 304(a), (f).	Submit or revise Exploration Plans and Development and Production Plans..	Burden covered under 1010–0049		0
303(k); 304(g)	Monitor emissions air quality and submit monthly report (1-year study of selected sites in the BWA area)..	350 Platforms	4 hrs per mo×12 mos=48 hrs.	16,800
303(k); 304(a), (g)	Monitor and submit basic emission data to MMS or to a State (1-year study of sites in the western/central GOM area on ozone and regional haze air quality). Submit one-time annual report..	1,500 Platforms	2 hrs per mo×12 mos=24 hrs.	36,000
		130 Reports	8 hours	1,040
303(l); 304(h)	Collect and submit meteorological data	Not routinely collected; see item A.13 for discussion of special study		0
304(a), (f)	Request by a State to MMS for basic emission data from existing facilities to update State's emission inventory.	5 Requests	40 hours	200
304(e)(2)	Submit compliance schedule for application of best available control technology.	10 Schedules	40 hours	400
304(e)(2)	Apply for suspension of operations	Burden covered under 1010–0030		0
Reporting—Subtotal		2,385		55,025
300(d)	Record items lost overboard	130 Recordkeepers	1 hour	130
301(a)	Inspect drilling/production facilities daily for pollution; maintain inspection/repair records 2 years.	1,525 Facilities	.25 hour per day×365 days=91.25 hours.	139,156
Recordkeeping—Subtotal.		1,655		139,286
Reporting & Recordkeeping Total Hour Burden.		4,040		194,311

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: Meteorological data will be collected for 1 year from selected sites pursuant to §§ 250.303(l) and 250.304(h) to determine cumulative impacts of air quality within the 100-kilometer radius of the BWA. The Offshore Operators Committee (OOC) has agreed to undertake this project. The OOC estimates this one-time data collection effort will cost approximately $750,000.00, which will be expensed to the OCS lessees.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 29, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 30, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–28235 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 19, 1999.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—October 1, 1999
3. Reports of Officers
4. Subcommittee Reports, Personal Watercraft
5. Superintendent's Report:
   Introduce Nancy Finley
   Highlands Center
   Americorps
   Community-oriented policing
   News from Washington
6. Old Business:
   Head of the Meadow Gas Station—Commercial Certificate

Motion to clarify the respective roles of the Cape Cod National Seashore Advisory Commission and the Friends of the Cape Cod National Seashore in the administration of the Joshua A. Nickerson Conversation Fund:

''That henceforth any materially significant disbursements or disposition of the income and/or assets of the Joshua A. Nickerson Conversation Fund will be made only upon the recommendation of the Cape Cod National Seashore Advisory Commission with the authorization of the Board of the Friends of the Cape Cod National Seashore.''

7. New Business
8. Agenda for next meeting
9. Date for next meeting—January 7, 2000
10. Public comment
11. Adjournment

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 19, 1999.

Maria Burks,

Superintendent.

[FR Doc. 99–28229 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR Part 870, Abandoned mine reclamation fund—fee collection and coal production reporting; and for three OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative). These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 29, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR Part 870, Abandoned mine reclamation fund—fee collection and coal production reporting; and for three OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program Narrative). OSM is requesting a 3-year term of approval of each information collection activity.

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 number for Part 870 is 1029–0090. Grant form OSM–49 is currently approved under OMB control number 1029–0059. The collection request being sent to OMB for review will include OSM Forms OSM–47 and OSM–51 under 1029–0059 since they are all grant forms.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 2, 1999 (64 FR 41946). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Budget information, financial reporting, and performance reporting forms.

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Number: OSM–47, OSM–49 and OSM–51.

Frequence of Collection: Semi-annually and annually.

Description of Respondents: State and Tribal regulatory and reclamation authorities.

Total Annual Responses: 131.

Total Annual Burden Hours: 655 hours.

Title: 30 CFR Part 870—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–0090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be used by OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: quarterly.

Description of Respondents: Coal mine operators.

Total Annual Responses: 1,000.

Total Annual Burden Hours: 750.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0059 for the three grant forms, and 1029–0090 for Part 870 in your correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: October 22, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–28231 Filed 10–27–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 21, 1999.

The Department of Labor (DOL) has submitted the following public information collection request (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills, ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 79.

OMB Number: 1220–0109.

Frequency: Biennially.

Affected Public: Individuals or households.

Form	Total number of respondents	Total annual response	Average minutes per response	Total estimated annual burden hours
Prestest	50	50	60	50
Young Adults	8,300	8,300	60	8,300
Reinterview	1,250	1,250	6	125
Children of Female Respondents	6,390	6,390	52	5,538
Totals	14,740	15,990	.....	14,013

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information provided in this survey will be used by the Department of Labor and other government agencies to help understand the dynamics of career development and family formation as well as the cognitive, social, emotional and motor development of children.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–28203 Filed 10–27–99; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections; Comment Request.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). These information collection are published to obtain comments from the public.

DATES: Comments will be accepted until December 27, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0155.
Form Number: CLF 8705.
Type of Review: Extension of a currently approved collection.
Title: Central Liquidity Facility Prepayment, Security and Credit Reporting Agreement (Agent Member).
Description: Form used in conjunction with agent member's request for facility advances.
Respondents: Credit unions.
Estimated No. of Respondents/ Recordkeepers: 36.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Reporting; once.
Estimated Total Annual Burden Hours: 36.
Estimated Total Annual Cost: None.

OMB Number: 3133–0156.
Form Number: NCUA–7005.
Type of Review: Extension of a currently approved collection.
Title: Central Liquidity Facility Agent Request for Funds.
Description: Form used by agent member requesting a facility advance.
Respondents: Credit unions.
Estimated No. of Respondents/ Recordkeepers: 40.
Estimated Burden Hours Per Response: .25 hours.
Frequency of Response: Reporting; estimated 3 times.
Estimated Total Annual Burden Hours: 30.
Estimated Total Annual Cost: None.

OMB Number: 3133–0157.
Form Number: CLF–8706.
Type of Review: Extension of a currently approved collection.
Title: Central Liquidity Facility Repayment, Security and Credit reporting Agreement (Agent Group Representative).
Description: Form used in conjunction with agent member's request for facility advance.
Respondents: Credit unions.
Estimated No. of Respondents/ Recordkeepers: 36.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Reporting; once.
Estimated Total Annual Burden Hours: 36.
Estimated Total Annual Cost: None.

OMB Number: 3133–0158.
Form Number: CLF–8700.
Type of Review: Extension of a currently approved collection.
Title: Central Liquidity Facility Application and Agreement for Agent Membership.
Description: Used to request agent membership in central liquidity facility.
Respondents: Credit unions.
Estimated No. of Respondents/ Recordkeepers: 36.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Reporting; once.
Estimated Total Annual Burden Hours: 36.
Estimated Total Annual Cost: None.

OMB Number: 3133–0159.
Form Number: CLF–10.
Type of Review: Extension of currently approved collection.
Title: Central Liquidity Facility Needs Loan Application.
Description: Establishes terms of relationship between credit unions, agent members and agent group representatives.
Respondents: Credit unions.
Estimated No. of Respondents/ Recordkeepers: 100.
Estimated Burden Hours Per Response: .25 hours.
Frequency of Response: Reporting.
Estimated Total Annual Burden Hours: 25 hours.
Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on October 21, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–28134 Filed 10–27–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Dance section (Heritage & Preservation, Education and Access categories), to the National Council on the Arts will be held from November 8–10, 1999 in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. The Panel will meet from 9:00 a.m. to 6:00 p.m. on November 8th and 9th and from 9:00 a.m. to 4:30 p.m. on November 10th. A portion of the meeting, from 3:30 p.m. to 4:30 p.m. on November 10th, will be open to the public for policy discussion.

The remaining portions of this meeting, form 9:00 a.m. to 6:00 p.m. on November 8th and 9th and from 9:00 a.m. to 3:30 p.m. on November 10th, are for the purpose of Panel review, discussion evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained form Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment of the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 13, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–28132 Filed 10–27–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date/Time: November 17 and 18, 1999; 8:30 a.m.–5:00 p.m.

Place: Room Picasso/Devinci, Hilton Arlington & Towers, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research and Special Projects Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28149 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Act 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date/Time: November 22 and 23, 1999; 8:30 a.m.—5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research and Special Projects Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters even exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28150 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking and Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date/Time: December 9 and 10, 1999; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Darleen Fisher and Karen Sollins, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1905.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals submitted to the Networking Research and Special Projects Programs as part of this selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28151 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: November 3–5, 1999, 8:30 a.m. 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. James P. Wright, Program Director, Education, Human Resources, and Special Programs, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1030, Arlington, VA 22230. (703) 306–1819.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Career Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28152 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: December 2–3, 1999; and December 9–10, 1999: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Terry Oswalt, Program Director, Stellar Astronomy and Astrophysics, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1825.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Stellar Astronomy and Astrophysics Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28153 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis panel in Astronomical Sciences (#1186).

Date/Time: December 7–8, 1999, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1826.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Galactic Astronomy Program in the area of Astronomical Sciences.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28154 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: January 19–20, 2000, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Susan Simkin, Program Director, Extragalactic Astronomy and Cosmology, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1826.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Extragalactic Astronomy and Cosmology Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28155 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences (#1186).

Date/Time: February 23–24, 2000, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Vernon L. Pankonin, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. (703) 306–1826.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Planetary Astronomy Program in the area of Astronomical Sciences.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28156 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Infrastructure (#1215).

Date/Time: November 15–17, 1999, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Place: Closed.

Contact Person: Dr. William R. Gordon, Program Director, Research Experiences for Undergraduate, Division of Biological Infrastructure, National Science Foundation, 4201 Wilson Boulevard, Room 615, Arlington, VA 22230. (703) 306–1469.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Experience for Undergraduate Sites proposals as part of the selection process for awards.

Reason for Closing: the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28160 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis in Biological Sciences (#1754).

Date/Time: February 24, 2000, 8:00 a.m.–5:00 p.m. and February 25, 2000, 8:00 a.m.–Adjourn.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Sam Schiener and Dr. Edward T. Elliott, Program Officers, Mrs.

Elizabeth Behrens, Coordinating Program Assistant, Ecological Studies, National Science Foundation. Telephone: (703) 306–1479.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals to the National Science Foundation (NSF) for financial support.

Agenda: To review and evaluate proposals submitted in response to the Doctoral Dissertation Improvement Grants in the Directorate for Biological Sciences (NSF 98–151).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28166 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: November 19–20, 1999, 8:00 a.m. to 5:00 p.m.

Place: Hyatt Regency New Orleans, 500 Padras Plaza, New Orleans, LA 70113–1805.

Type of Meeting: Closed.

Contact Person: Dr. John Foss, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY99 Fluid, Dynamics & Hydraulics Career Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28157 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: November 30, 1999, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. M.C. Roco, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY99 Career Panel proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28158 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Advisory Panel for Cognitive, Psychological and Language Sciences (#1:758):

1. *Date and Time:* October 31, 1999; 3:00 p.m.–7:30 p.m.; November 1, 1999; 7:30 a.m.–6:15 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Contact Person: Dr. Diane Scott-Jones, Program Director for Child Learning and Development, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: To review and evaluate child learning and development proposals as part of the selection process for awards.

2. *Date and Time:* November 8–10. 1999; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Contact Person: Dr. Rodney R. Cocking, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: To review and evaluate human cognition and perception proposals as part of the selection process for awards.

3. *Date and Time:* November 16–18, 1999; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 880, Arlington, VA.

Contact Person: Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1723.

Agenda: To review and evaluate social psychology proposals as part of the selection process to awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to other NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28159 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Advisory Panel for Economics, Decision, Risk and Management Sciences (#1759):

1. Date/Time: November 12–13, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Daniel H. Newlon, Program Director for Economics, National Science Foundation. Telephone: (703) 306–1753.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

2. Date/Time: November 11–12, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person: Dr. Hal Arkes, Program Director for Decision, Risk and Management

Science (DRMS), National Science Foundation. (703) 306–1757.

Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc 99–28165 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (1196).

Date/Time: November 8–9, 1999; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; November 8—Room 630 and November 9—Room 880.

Type of Meeting: Closed.

Contact Person: Dr. Kishan Baheti, Program Director, Control, Networks, and Computational Intelligence, Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230 (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals in the Control, Networks, and Computational Intelligence program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28146 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date/Time: November 8–9, 1999; 8:30 a.m.—5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 770, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Usha Varshney, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230 (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28147 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (#1196).

Date and Time: November 15–16, 1999, 8:30 a.m. to 5:00 p.m.

Place: Comfort Inn, 1211, North Glebe Road, Arlington, VA 22201.

Type of Meeting: Closed.

Contact Persons: Dr. Rajinder Khosla, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230; Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning Biosystems at Nanoscale proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Electronics, Photonics, and Device Technologies program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28148 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date/Time: December 2, 1999; 6:00 pm to 10:00 pm; December 3, 1999; 8:00 am to 6:00 pm; December 4, 1999; 8:00 am to 3:00 pm.

Place: Metro Marriott, 775 12th Street, NW, Washington, DC.

Type Meeting: Closed.

Contact Person: Dr. Gerhard L. Salinger, Program Director, Division of Elementary, Secondary and Informal Education, The National Science Foundation, Room 885, 4201 Wislon Boulevard, Arlington, VA, 22230. (703) 306–1620.

Purpose of Meeting: To provide advice and recommendations concerning formal proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Advanced Technological Education Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28162 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meetings:

Name: Advisory Panel for Social and Political Science (#1761).

Date/Time: November 15–16, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA.

Contact Person: Dr. Frank Scioli and Dr. Marianne Stewart, Program Directors for Political Science, National Science Foundation. (703) 306–1761.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Name: Advisory Panel for Social and Political Science (#1761)

Date/Time: November 5–6, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

Contact Person: Dr. D. Marie Provine, Program Director, Law and Social Science, National Science Foundation. (703) 306–1762.

Agenda: To review and evaluate the Law and Social Science Proposals as a part of the selection process for awards.

Name: Advisory Panel for Social and Political Science (#1761)

Date/Time: December 2–3, 1999; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA.

Contact Person: Dr. Patricia White and Dr. Murray Webster, National Science Foundation; Telephone (703) 306–1756.

Agenda: To review and evaluate the Sociology proposals as a part of the selection process for awards.

Type of meetings: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28161 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education (#1214).

Date/Time: December 2, 1999 (7:30 pm–9:00 pm). December 3, 1999 (8:00 am–5:00 pm). December 4, 1999 (8:00 am–1:00 pm).

Place: Metro Marriott Hotel at Metro Center, 775 12th Street NW, Washington, DC 20005. (202) 737–2200.

Type of Meeting: Closed.

Contact Person: Elizabeth J. Teles, Program Director, Division of Undergraduate Education, Room 835, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1668.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF's ATE Program.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for FY2000 Advanced Technological Education.

Summary Minutes: May be obtained from the contact person listed above.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28163 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education (#1214).

Date/Time: November 8, 1999, (7:30 PM–9:00 PM.

November 9, 1999 (8:00 AM–5:00 PM).

November 10, 1999 (8:00 AM–1:00 PM).

Place: Double Tree Hotel, 300 Army-Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Persons: Marilyn J. Suiter, Program Director, Division of Undergraduate Education Room 835, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. (703) 306–1616.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF's CSEMS Program.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for FY2000 Computer Science, Engineering and Mathematics Scholarships.

Summary Minutes: May be obtained from the contact person listed above.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–28164 Filed 10–27–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit No. 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 (MP3), located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the analysis for the design basis loss-of-coolant accident (LOCA) to include the dose contribution from a previously unevaluated radioactivity release pathway to the environment. The licensee identified a potential pathway for post accident back-leakage of highly radioactive containment sump water from the Recirculation Spray System (RSS) to the Refueling Water Storage Tank (RWST). Since the RWST is

vented to the atmosphere, this pathway could contribute to an inadvertent release of radioactivity not previously accounted for in offsite dose calculations. Previously, the licensee had assumed no radiological consequences due to back-leakage. This revision adds the dose from RWST back-leakage to the LOCA analysis, as documented in the Final Safety Analysis Report (FSAR).

The proposed action is in accordance with the licensee's application for amendment dated May 7, 1998, as supplemented by letter dated January 22, 1999.

The Need for the Proposed Action

Pursuant to 10 CFR 50.59 licensees are required to obtain prior NRC approval of changes to the facility that involve an unreviewed safety question. The licensee determined that the back-leakage from RSS to the RWST involves an unreviewed safety question. Therefore, the licensee was required to obtain prior NRC approval for changes to the LOCA analysis and the FSAR to incorporate the dose consequences of the potential for back-leakage from the RSS to the RWST that had not been previously accounted for in offsite dose calculations.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concluded that the contribution to the LOCA dose to the thyroid (most limiting organ) from the RWST back-leakage as calculated by the licensee is small (2.1 rem at the Low Population Zone (LPZ) and 0.9 rem at the Control Room). When added to the licensee's previously calculated doses, the affected LOCA doses to the thyroid are 11 rem at the LPZ and 12 rem at the Control Room. The increase are small when compared to, and these results continue to meet the acceptance criteria in, 10 CFR Part 100 for the offsite dose consequences and in 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19 for the control room. All other offsite and control room doses were unchanged. On this basis the staff determined there is no significant radiological environmental impact.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action the staff considered requiring the licensee to maintain zero back-leakage from the RSS to the RWST. Since this is the original analysis condition, this alternative is the same as the staff denying the proposed action (*i.e.*, the ''no-action'' alternative). Zero back-leakage cannot be ensured for the valves between the RSS and the RWST; therefore, this alternative is impractical. Denial of the proposed action would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Operation of Millstone Nuclear Power Station, Unit No. 3,'' dated December 1984 (NUREG–1064).

Agencies and Persons Consulted

In accordance with its stated policy, on September 23, 1999, the staff consulted with the Connecticut State official, Mr. Fred Scheuritzel of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 7, 1998, as supplemented by letter dated January 22, 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 rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 22nd day of October 1999.

For the Nuclear Regulatory Commission.

John A. Nakoski, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–28228 Filed 10–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Selection of Sample Rate and Computer Wordlength in Digital Instrumentation and Control Systems, Availability of Draft NUREG for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of Draft NUREG–1709, ''Selection of Sample Rate and Computer Wordlength in Digital Instrumentation and Control Systems,'' dated August 1999.

ADDRESSES: Draft NUREG–1709, is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington DC 20555–0001. A free single copy of Draft NUREG–1709, to the extent of supply, may be requested by writing to Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Terry Jackson, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–6486.

SUPPLEMENTARY INFORMATION: Digital sampling of analog signals adds two types of errors, aliasing and finite wordlength error, to the sampled version of the signal. Aliasing is characterized by high frequency components misrepresented as low frequency components in the sampled signal. It is greatly influenced by the sample rate, and may lead to degraded performance in monitoring, alarm, control, and protection systems. Since

computer wordlengths are finite in length, digital systems are limited in their capability to represent real number values. Finite wordlength errors related to round-off, truncation, and data conversion have the potential to adversely impact the performance of digital instrumentation and control (I&C) systems.

The Office of Nuclear Regulatory Research has investigated the technical bases and review guidance regarding aliasing and finite wordlength errors in nuclear facilities. Hazards associated with these errors are minimized through proper design and selection of sample rates and computer wordlengths. Draft NUREG–1709 provides the regulatory background, theoretical information, practical issues, best engineering practices, review guidance, and examples associated with sample rate and computer wordlength selection. This information is used by NRC staff to identify proper treatment of aliasing and finite wordlength error in digital I&C systems.

While draft NUREG–1709 is intended for NRC staff use, the NRC realizes that licensees and vendors may reference the NUREG for their particular I&C development. Because of its impact on I&C development, the NRC is requesting comments on draft NUREG–1709. The comment period will last until March 1, 1999, at which time the NRC will consider the comments and pursue a final version. To send comments on draft NUREG–1709, refer to the comment instructions at the front of the report. Comments may also be sent to the NRC Home page, as detailed below.

Electronic Access

Draft NUREG–1709, is available electronically by visiting NRC's Home Page (http://www.nrc.gov) and choosing ''Reference Library,'' then ''NRC (NUREG) report number,'' then ''NRC Staff Reports,'' and then ''NUREG–1709.'' Instructions for sending comments electronically are included with the document at the web site.

Dated at Rockville, Maryland, this 24th day of August, 1999.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Engineering Research Applications Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 99–28227 Filed 10–27–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–24106; File No: 812–11514]

JNL Variable Fun LLC; Notice of Application

October 21, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section (c) of the Investment Company Act of 1940 (''1940 Act'' or ''Act'').

SUMMARY OF APPLICATION: Applicant seeks an order under Section 6(c) of the 1940 Act exempting Applicant and its series and any other open-end investment company or series thereof advised or managed by Jackson National Life Insurance Company (''JNL''), Jackson National Financial Services, LLC, or their affiliates, or any entities controlled by or under common control with JNL, and that follows an investment strategy that is the same as the JNL/First Trust Dow Target 5 Series (''DJIA 5 Series''), the NJL/First Trust Dow Target 10 Series (''DJIA 10 Series''), the JNL/First Trust Global Target 15 Series (''Target 15 Series''), or the JNL/First Trust S&P Target 10 Series (''S&P Target 10 Series'') (''Future Companies''), from the provisions of section 12(d)(3) of the 1940 Act to the extent necessary to permit them to establish and maintain series which may invest up to 10.5% of their total assets (the DJIA 10 Series) or up to 20.5% of their total assets (the DJIA 5 Series) or up to 7⅙% of their total assets (the Target 15 Series) or up to 10.5% of their total assets (the S&P Target 10 Series), in securities of issuers that derive more than (15%) of their gross revenues from securities related activities.

APPLICANT: JNL Variable Fund LLC.

FILING DATE: The application was filed on February 12, 1999, and amended on April 28, 1999, and September 3, 1999.

HEARING OR NOTIFICATION OF HEARINGS: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving Applicant with a copy of the request personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 15, 1999, and must be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyer, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicant, c/o Amy D. Eisenbeis, Esq., Jackson National Life Insurance Company 5901 Executive Drive, Lancing, Michigan 48911–5389.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, 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, NW, Washington, D.C. 20549–0102 [tel (202) 942–8090].

Applicant's Representations

1. JNL is a stock life insurance company organized under the laws of the State of Michigan. JNL is licensed to transact life insurance and annuity business in the District of Columbia and all states except New York. JNL's ultimate parent is Prudential Corporation plc, a British financial services group.

2. Applicant is a Delaware limited liability company registered with the Commission as an open-end investment company. Applicant's 12 series, including the DJIA 5 Series, the DJIA 10 Series, the Target 15 Series and the S&P Target 10 Series (the DJIA 5 Series and the DJIA 10 Series, the ''DJIA Series'' together with the Target 15 Series and S&P Target 10 Series, ''Series''), serve as underlying investment vehicles for variable annuity contracts offered by JNL through Jackson National Separate Account I (''JNL Account I''), a registered unit investment trust.

3. Jackson National Financial Services, LLC (the ''Manager''), a wholly owned subsidiary of JNL, serves as applicant's investment adviser and in such capacity has responsibility for the overall management of the investment strategies and policies of Applicant and its series. The Manager has retained First Trust Advisers L.P. (''Sub-adviser'') as sub-adviser for each of Applicant's series.

4. The DJIA 5 Series will invest approximately twenty percent (20%) of its total assets in the common stock of each of the five companies with the lowest per share stock price of the ten companies in the Dow Jones Industrial Average (the ''DJIA'') that have the highest dividend yield as of the close of

business on or about the last business day prior to the initial investment date and annually, on the anniversary of said initial investment date, thereafter (each a ''Stock Selection Date'').

5. The DJIA 10 Series will invest approximately ten percent (10%) of its total assets in the common stock of each of the ten companies in the Dow Jones Industrial Average (''DJIA'') with the highest dividend yield as of each Stock Selection Date.

6. The Target 15 Series will invest approximately six and two-thirds percent (6⅔%) of its total assets in the common stock of each of fifteen companies which are components of the DJIA, the Financial Times Industrial Ordinary Share Index (''FT Index'') and the Hang Seng Index. Such companies will have the five lowest per share stock prices of the ten companies in each respective index which have the highest dividend yield in such respective index at the close of business on or about the last business day prior to each applicable Stock Selection Date.

7. The S&P Target 10 Series will invest approximately ten percent (10%) of its total assets in the common stock of each of the ten companies with the greatest one year appreciation of the one hundred and twenty-five companies in the S&P 500 Index that have the lowest price to sales ratio as of the close of business on or about the last business day prior to each Stock Selection Date. Such one hundred and twenty-five companies will be selected from two hundred and fifty companies that have the largest market capitalization in the S&P 500 Index as of the close of business on or about the last business day prior to each applicable Stock Selection Date.

8. The DJIA is comprised of thirty stocks chosen by the editors of The Wall Street Journal. The DJIA is the property of the Dow Jones & Company, Inc., which is not affiliated with JNL, JNL Account I or Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

9. The FT Index is comprised of thirty stocks chosen by the editors of The Financial Times as representative of the British industry and commerce. The FT Index is the property of The Financial Times and is not affiliated with JNL, JNL Account-1 or Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

10. The Hang Seng Index consists of thirty-three of the three hundred fifty-eight stocks and represents approximately 70% of the total market capitalization of the stocks listed on the Hong Kong Stock Exchange. The Hang Seng Index is the property of HSI Services Limited and is not affiliated with JNL, JNL Account-1 or Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

11. The S&P 500 Index consists of 500 stocks chosen for market size, liquidity and industry group representation. It is a market-value weighted index with each stock's weight in the index proportionate to its market value. the S&P 500 Index is the property of The McGraw-Hill Companies, Inc. which is not affiliated with JNL, JNL Account I or the Applicant and does not participate in any way in the creation of any Series or the selection of their stocks.

12. The objective of each Series is to provide an above-average total return through a combination of dividend income and capital appreciation. On each Stock Selection Date, each Series will allocate or reallocate its investments so that its assets are invested, in substantially equal amounts, in the common stock of the companies meeting each Series respective investment criteria (as held in a Series, such common stock is referred to as the ''Common Shares''). A percentage relationship among the Common Shares held in each Series will be established for each Series as of the Stock Selection Date. When funds are deposited into or withdrawn from a Series during the year, Common Shares will be purchased or sold for said Series, as appropriate, to duplicate, as nearly as practicable, the percentage relationship of the number of Common Shares established on the immediately preceding Stock Selection Date for said Series. Applicant states that the percentage relationship among the number of Common Shares in each Series therefore should remain stable until the next Stock Selection Date.

13. Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), provides that in order for a variable contract which allocates funds to a Series to qualify as an annuity contract under the Code, the investments underlying the variable contracts must be adequately diversified in accordance with regulations issued by the United States Department of the Treasury (''Treasury''). To be adequately diversified, each Series must have (a) no more than 55% of the value of its total assets represented by any one investment; (b) no more than 70% of the value of its total assets represented by any two investments; (c) no more than 80% of the value of its total assets represented by any three investments; and (d) no more than 90% of the value of its total assets represented by any four investments (the ''Section 817(h) diversification requirements'').

14. The Series intend to comply with the Section 817(h) diversification requirements. The Manager has entered into an agreement with the Sub-adviser that requires the Series to be operated in compliance with the Treasury regulations including the Section 817(h) diversification requirements. Therefore, the Sub-adviser may depart from a Series' applicable investment strategy, if necessary, in order to meet the Section 817(h) diversification requirements.

15. Applicant represents that, except in order to meet the Section 817(h) diversification requirements, the Common Shares purchased for each Series will be chosen solely according to the formula described above, and will not be based on the research opinions or buy or sell recommendations of the Sub-adviser. During each year, the Sub-adviser will invest additional amounts received from JNL Account I in additional Common Shares or arrange sales of Common Shares to meet redemption or transfer requests, so that the proportion relationship among the number of shares of each stock in the Series established on the immediately preceding Stock Selection Date is maintained, to the extent practicable. The Sub-adviser has no discretion as to which Common Shares are purchased. However, the Sub-advisor will have limited discretion with respect to the short-term investment of any cash that may exist in a Series following: (a) the purchase or sale of the appropriate portion of Common Shares based on the formulas noted herein, to the extent that all of the cash can not be used to purchase such securities or more securities need to be sold than that necessary to meet redemption needs, due to round-lot purchase and sale requirements; or (b) a default by an issuer of Common Shares in the payment of its outstanding obligations, a decrease in the price of the security or other credit factors such that in the opinion of the Sub-advisor the retention of the applicable Common Share would be detrimental to the applicable Series.

16. Securities purchased for each of the Series may include securities of issuers in the DJIA, the FT Index, the Hang Seng Index or the S&P 500 Index that derived more than fifteen percent of their gross revenues in their most fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the 1940 Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a

broker, dealer, underwriter or investment adviser. Rule 12d3–1 under the 1940 Act exempts purchases by an investment company of securities of an issuer (except its own investment adviser, promoter or principal underwriter or their affiliates) that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer.

2. Section 6(c) of the 1940 Act provides that the Commission may exempt any person, transaction or class of transactions from any provisions of the 1940 Act or any rule thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicant requests that the Commission exempt the Applicant from the provisions of Section 12(d)(3) in order to permit the Series to acquire securities of an issuer that derives more than 15% of its gross revenues from securities related activities, provided that; (a) those securities are included in the DJIA, the FT Index, the Hang Seng Index or the S&P 500 Index as of the applicable Stock Selection Date; (b) with respect to the DJIA 5 Series, the securities represent one of the five companies with the lowest per share stock price of the ten companies in the DJIA that have the highest dividend yield as of Stock Selection Date; (c) with respect to the DJIA 10 Series, the securities represent one of the ten companies with the lowest per share stock price of the ten companies in the DJIA that have the highest dividend yield as of each Stock Selection Date; (d) with respect to the Target 15 Series, the securities represent the fifteen companies which reflect the five lowest per share stock prices of the ten companies in each of the DJIA, the FT Index and the Hang Seng Index and which have the highest dividend yield in such respective index as of each Stock Selection Date; (e) with respect to the S&P Target 10 Series, the securities represent the ten companies with the greatest one year price appreciation of the one hundred and twenty-five companies in the S&P 500 Index that have the lowest price to sales ratio as of each Stock Selection Date. The one hundred and twenty-five companies will be selected from two hundred and fifty companies that have the largest market capitalization in the S&P Index as of each Stock Selection Date; and (f) as of the first business day after each Stock Selection Date, with respect to the DJIA 5 Series, the value of the Common Shares of each securities related issuer represents approximately 20%, but not more than 20.5% of the value of the DJIA 5 Series total assets, with respect to the DJIA 10 Series, the value of the Common Shares of each securities related issuer represents approximately 10%, but not more than 10.5% of the value of the DJIA 10 Series' total assets, with respect to the Target 15 Series, the value of the Common Shares of each securities related issuer represents approximately 6⅔%, but not more than 7 1/16% of the value of the Target 15 Series total assets, and with respect to the S&P Target 10 Series, the value of the Common Shares of each securities related issuer represents approximately 10%, but not more than 10.5% of the value of the S&P Target 10 Series total assets. The 20%, 5%, 10.5% and 7 1/16% respective standards will be based on the prices of the Common Shares as of the first business day after the applicable Stock Selection Date.

4. Applicant and each Series undertake to comply with all of the requirements of Rule 12d3–1, except the condition prohibiting an investment company from investing more than five percent of the value of its total assets in securities of a securities related issuer.

5. Applicant asserts that Section 12(d)(3) was intended: (a) to prevent investment companies from exposing their assets to the entrepreneurial risk of securities related business; (b) to prevent potential conflicts of interest; (c) to eliminate certain reciprocal practices between investment companies and securities related businesses; and (d) to ensure that investment companies maintain adequate liquidity in their portfolios.

6. A potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant maintains that this concern does not arise in this situation because the Sub-adviser does not have discretion in choosing the Common Shares or the amount purchased. The stock must first be included in the DJIA, the FT Index, the Hang Seng Index, or the S&P 500 Index, as applicable, (none of which are affiliated with the Applicant, the Manager or the Sub-adviser). In addition, the securities must also qualify based on applicable arithmetic formula for each Series, as of the applicable Stock Selection Date.

7. Applicant states that prior Section 12(d)(3) relief has been granted to applicants which were unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolio securities to the extent necessary to meet redemptions. Additionally, relief has also been granted to an applicant which was a managed investment company issuing variable annuities which resulted in continuing new premiums that needed to be invested on a continual basis, and where such continuing investments were made based on the ratios of the number of shares established at the beginning of each year, using an investment strategy similar to that proposed by the Applicant, and not based on the advisers discretion.

8. The Sub-adviser is permitted to deviate from the applicable formula for the respective Series where circumstances are such that the investment of the particular Series would fail to meet the Section 817(h) diversification requirements and would thus cause the annuity contracts to fail to qualify as an annuity contract under the Code. Applicant maintains that, in such a situation, the Sub-adviser must be permitted to deviate from the investment strategy of the applicable Series, but only in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Additionally, the Sub-adviser has limited discretion with respect to the short-term investment of any cash that may exist in a Series due to round-lot purchase and sale requirements and certain defaulted security situations. Applicant states that this limited discretion does not raise the concerns that Section 12(d)(3) is designated to prevent.

9. Applicant submits that the liquidity of the Series' portfolios is not a concern because the shares of common stock selected are each included in the DJIA, FT Index, Hang Seng Index or S&P 500 Index and traded on the New York Stock Exchange, the American Stock Exchange, the London Stock Exchange, the Hong Kong Stock Exchange, or over-the-counter markets and are among the most actively traded securities in their respective markets.

10. Applicant also submits that the investment policies of the Series will not lead to reciprocal practices between the Applicant and issuers involved in securities related businesses since purchases by the Series will have no significant effect on these issuers. The common stocks of securities related issuers represented in the DJIA, the FT Index, the Hang Seng Index and the S&P

500 Index are widely held and have active markets and potential purchases by a Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of those issuers.

11. Applicant states that a conflict of interest could occur if broker-dealers are influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. However, because of the large market capitalization of the DJIA, the FT Index, the Hang Seng Index and the S&P 500 Index issuers, and the small portion of these issuers common stock and trading volume that would be purchased by the Series, Applicant finds that it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that JNL Account I or one of the Series would be invested in the broker-dealer or parent thereto.

12. Applicant states that another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealers profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of the application, that no company held in any Series portfolio, or any affiliate of such company, will act as broker for any Series in the purchase or sale of any security for their portfolios.

13. Finally, Applicant represents that any Future Companies will comply with the terms and conditions for the Series. Applicant submits that without class relief, exemptive relief for any Future Companies would have to be requested and obtained separately and would present no issues under the 1940 Act not already addressed in the application. Applicant states that if it were to repeatedly seek exemptive relief with respect to the same issues, investors would not receive additional protection or benefit, and investors and the Applicant could be disadvantaged by increased costs from preparing such additional requests for relief. Applicant asserts that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

Applicant's Conditions

The Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. As to the DJIA Series, the Common Shares are of issuers included in the DJIA as of the applicable Stock Selection Date;

2. As to the DJIA 10 Series, the Common Shares represent one of the ten companies in the DJIA that has the highest-dividend yield as of the applicable Stock Selection Date;

3. With respect to the DJLA 5 Series, the Common Shares represent one of the five companies with the lowest dollar per share price of the ten companies in the DJIA that has the highest dividend yield as of the applicable Stock Selection Date;

4. With respect to the DJIA 10 Series, on the first business day after each Stock Selection Date, the value of the Common Shares of each securities related issuer represents approximately ten percent (10%) of the value of the DJIA 10 Series total assets, but in no event more than ten and one-half percent (10.5%) of the value of the DJIA 10 Series total assets;

5. With respect to the DJIA 5 Series, on the first business day after each Stock Selection Date, the value of the Common Shares of each securities related issuer represents approximately twenty percent (20%) of the value of the DJIA 5 Series total assets, but in no event more than twenty and one-half percent (20.5%) of the value of the DJIA 5 Series total assets;

6. As to the Target 15 Series, the Target Stocks are of issuers included in the DJIA, FT Index and the Hang Seng Index as of the applicable Stock Selection Date;

7. As to the Target 15 Series, the Target Stocks represent one of the ten companies in each of the DJIA, FT Index and Hang Seng Index that has the highest dividend yield as of the applicable Stock Selection Date;

8. With respect to the Target 15 Series, the Target Stocks represent one of the five companies with the lowest per share price of the ten companies in each of the DJIA, FT Index or the Hang Seng Index that has the highest dividend yield as of the applicable Stock Selection Date;

9. With respect to the Target 15 Series, on the first business day after each Stock Selection Date, the value of the Target Stocks of each securities related issuer represents approximately six and two-thirds percent (6⅔%) of the value of the Target 15 Series total assets, but in no event more than seven and one-sixth percent (7⅙%) of the value of the Target 15 Series total assets;

10. As to the S&P Target 10 Series, the S&P Target Stocks are of issuers included in the S&P 500 Index as of the applicable Stock Selection Date;

11. As to the S&P Target 10 Series, the S&P Target Stocks represent one of the ten companies with the greatest one year price appreciation of the one hundred and twenty-five companies in the S&P 500 Index that have the lowest price to sales ratio as of the applicable Stock Selection Date. The one hundred and twenty-five companies will be selected from two hundred and fifty companies that have the largest market capitalization in the S&P 500 Index as of the applicable Stock Selection Date;

12. With respect to the S&P Target 10 Series, on the first business day after each Stock Selection Date, the value of the S&P Target Stocks of each securities issuer represents approximately ten percent (10%) of the value of the S&P Target 10 Series total assets, but in no event more than ten and one-half percent (10.5%) of the value of the S&P Target 10 Series total assets; and

13. As to any Series, no issuer whose securities are held by any Series, nor any affiliate thereof, will act as broker for such Series in the purchase or sale of any security for such Series.

Conclusion

For the reasons summarized above, Applicant asserts that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28197 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Agency Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [64 FR 57499, October 25, 1999

STATUS: . Open meetings.

PLACE: 450 Fifth Street NW, Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 20, 1999.

CHANGE IN THE MEETING: Cancellation.

The open meeting scheduled for Wednesday, October 27, 1999 at 10:00 a.m., has been canceled. The subject of this meeting was an appeal by the

Division of Enforcement from an administrative law judge's initial decision. The law judge dismissed an administrative proceeding against Russell Ponce.

The open meeting scheduled for Wednesday, October 27, 1999 at 2:00 p.m. has been canceled. The subject of this meeting was consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee.

At time, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 25, 1999.

[FR Doc. 99–28316 Filed 10–26–99; 11:41 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42039]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

October 20, 1999.

Notice is given that the Securities and Exchange Commission (''Commission'') intends To issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] cancelling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Gregory J. Dumark, Special Counsel, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

Background

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. Accordingly, at any time after November 29, 1999, the Commission intends to issue an order cancelling the registrations of any or all of the transfer agents listed in the Appendix.

The Commission has made efforts to locate and determine the status of each of the transfer agents listed in the Appendix. In some cases, the Commission was unable to locate the transfer agent, and in other cases, the Commission learned that the transfer agent was no longer in existence or had ceased doing business. Based on the facts it has, the Commission believes that the transfer agents listed in the Appendix are no longer in existence or have ceased doing business as a transfer agent.

Any transfer agent listed in the Appendix that believes its registration should not be cancelled must notify the Commission in writing prior to November 29, 1999. Written notifications must be mailed to: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, or be sent by facsimile to Gregory J. Dumark at (202) 942–9695.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

Appendix

Registration No.	Name
(84–5767)	American Transfer & Registrar Inc.
(84–5394)	First Federal Savings & Loan Association of Montana.
(84–5779)	Franklin American Corp.
(84–5686)	Selena T. Jackson.
(84–5562)	Stephen Rudolph Jones, d/b/a New York Stock Transfer.
(84–1864)	Library Bureau, Inc.
(84–1606)	Mt. Olive Church of God in Christ-United Mission, Inc.
(84–1960)	Odenton Federal Savings & Loan Association.

[FR Doc. 99–28200 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] 17 CFR 200.30–3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42043; File No. SR–NASD–98–14]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 4, 5, and 6 to the Proposed Rule Change Relating to Sales Charges and Prospectus Disclosure for Mutual Funds and Variable Contracts

October 20, 1999.

I. Introduction

On March 12, 1998,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 2820 (the ''Variable contracts Rule'') and Rule 2830 (the ''Investment Company Rule'') of the Conduct Rules of the NASD. The Investment Company Rule would be amended to: (1) provide maximum aggregate sales charge limits for fund-of-funds arrangements; (2) permit mutual funds to charge installment loads; (3) prohibit loads on reinvested dividends; (4) impose redemption order requirements for shares subject to contingent deferred sales loads

[1] NASD Regulation initially submitted the proposed rule change on February 17, 1998; however, the submission failed to provide a statutory basis section. Because proposed rule changes are not deemed filed until all necessary components, such as a statutory basis section, are provided, the proposed rule change was deemed filed when the Commission received NASD Regulation's amendment providing the statutory basis for the proposed rule change (''Amendment No. 1''). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated March 12, 1998. NASD Regulation submitted another amendment on June 11, 1998, making certain technical corrections (''Amendment No. 2''). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated June 10, 1998. Amendment No. 2, however, was insufficient in form. As a result, on July 13, 1998, NASD Regulation filed another amendment, superseding and replacing all previous versions of the filing (''Amendment No. 3''). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated July 10, 1998. The substance of Amendment No. 3 was published in the **Federal Register**.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

(''CDSLs''); and (5) eliminate duplicative prospectus disclosure. The Variable Contracts Rule would be amended to eliminate the specific sales charge limitations in the rule and a filing requirement relating to changes in sales charges.

The proposed rule change was published for comment in the **Federal Register** on August 17, 1998.[4] The NASD subsequently filed amendments to the proposed rule change on August 13, 1998, June 4, 1999, and September 13, 1999, respectively.[5] The Commission received 8 comments on the proposal.[6] This order approves the proposed rule change, as amended.

II. Description

A. Proposed Amendments to the Investment Company Rule

1. Fund-of-Funds

The National Securities Market Improvement Act of 1996 (the ''1996 Amendments'') amended the Investment Company Act of 1940 (''1940 Act'') to, among other things, broaden the ability of mutual fund sponsors to establish ''fund-of-funds'' arrangements.

The Investment Company Rule currently does not take into account two-tier fund-of-funds structures in which asset-based sales charges are imposed at both the acquiring and underlying fund levels. The proposed amendments would amend the Investment Company Rule to ensure that, if a fund-of-funds charges distribution fees at both levels, the combined sales charges do not exceed the maximum percentage limits currently contained in the rule. The amended rule would permit an acquiring fund, an underlying fund, or both, to charge an asset-based sales fee that in the aggregate may not exceed .75 percent of average net assets and a service fee that in the aggregate does not exceed .25 percent of average net assets. Consistent with the current rule, aggregate front-end and deferred sales charges would be limited in any transaction to 7.25 percent, or 6.25 percent if the contract includes a service fee.

2. Deferred Sales Loads

In September 1996, the Commission amended Rule 6c–10 under the 1940 Act to permit new types of deferred stocks, such as back-end and installment loads. The proposed amendments to the Investment Company Rule also would permit these types of deferred sales charges. The amendments would conform the definition of ''deferred sales charge'' in the Investment Company Rule to the definition of ''deferred sales load'' in Rule 6c–10 under the 1940 Act (*i.e.*, ''any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption'').

3. Loads on Reinvested Dividends

The proposed amendments would prohibit loads on reinvested dividends. When NASD Regulation proposed to prohibit loads on reinvested dividends in Notice to Members 97–48, commenters representing unit investment trust (''UIT'') sponsors objected to the proposed amendments. Although NASD Regulation does not believe that this practice is prevalent, it continues to believe that it is appropriate to prohibit loads on reinvested dividends for all investment companies, including UITs. It asserts that loads on reinvested dividends constitute excessive compensation, regardless of the type of investment company that imposes them. NASD Regulation proposes to defer implementation of this prohibition until April 1, 2000, to address the commenters' Y2K concerns.[7]

4. CDSL Calculations

The proposed amendments would prohibit members from selling fund shares that impose a CDSL unless the method used by the fund to calculate CDSLs in partial redemptions requires that investors be given full credit for the time they have invested in the fund. Because a CDSL declines over the period of a shareholder's investment, a first-in-first-out (''FIFO'') redemption order requirement generally would ensure that transactions are subject to the lowest applicable CDSL. The proposed amendments, however, also would expressly provide that if a redemption order other than FIFO (*e.g.*, last-in-first-out, or ''LIFO'') would result in a redeeming shareholder paying a lower CDSL, the other method could be used.

5. Prospectus Disclosure

The Investment Company Rule currently prohibits a member from offering or selling shares of a fund with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by the rule. In March 1998, the Commission adopted significant revisions to prospectus disclosure requirements for mutual funds. Included in the amendments is a requirement that the prospectuses of funds with asset-based sales charges include disclosure regarding Rule 12b–1 plans that is similar to the type of disclosure required by the Investment Company Rule. Accordingly, the proposed amendments would eliminate the prospectus disclosure requirement in the Investment Company Rule.

B. Proposed Amendment to the Variable Contracts Rule

In Notice to Members 97–48, NASD Regulation proposed to amend the Variable Contracts Rule to eliminate the maximum sales charge limitations. The commenters to NTM 97–48 strongly supported the proposed amendment because they viewed specific sales charge limits in the Variable Contracts Rule as unnecessary and inconsistent

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[4] *See* Exchange Act Release No. 40310 (August 7, 1998), 63 FR 43974 (August 17, 1998).

[5] *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 12, 1998 (''Amendment No. 4''). Amendment No. 4 made grammatical and technical changes to the proposed rule language. NASD Regulation asserted that the changes contained in Amendment No. 4 were non-substantial, and that Amendment No. 4 superseded and replaced the previous filing and amendments thereto. *See* Letter from Thomas M. Selman, Vice President, Investment Companies/Corporate financing, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 19, 1999 (''Amendment No. 5''). Amendment No. 5 provided certain changes, discussed below, in response to commenters' concerns. *See* Letter from Thomas M. Selman, Vice President, Investment Companies/ Corporate Financing, NASD Regulation, to Christine Richardson, Division of Market Regulation, Commission, dated September 13, 1999 (''Amendment No. 6''). As discussed below, Amendment No. 6 provides clarification with respect to certain issues.

[6] *See* Letters from Kathleen H. Moriarty, Carter, Ledyard & Milburn, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 (''Carter Letter''); Felice R. Foundos, Chapman & Cutler, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 (''Chapman & Cutler Letter''); Michael R. Rosella, Battle Fowler, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 (''Battle Fowler Letter''); Nora M. Jordan, Davis Polk & Wardwell, dated September 8, 1998 (''Davis Polk Letter''); Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 (''ICI Letter''); Nathalie P. Maio, Senior Vice President, Deputy General Counsel, Prudential, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 (''Prudential Letter''); Philip A. Heimowitz, Cahill Gordon & Reindel, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 (''Cahill Letter''); and Mark J. Mackey, President and Chief Executive Officer, National Association for Variable Annuities, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 (''NAVA Letter'').

[7] *See* Amendment No. 5. NASD Regulation originally proposed to include a ''grandfather provision'' that would exempt from the operation of the prohibition all investment companies that currently impose such fees. The grandfather clause provision has since been eliminated. *See* Amemdment No. 6.

with the ''reasonableness'' standard enacted in the 1996 Amendments. Consistent with these comments, the proposed amendments would eliminate the maximum sales charge limitations in the Variable Contracts Rule. The proposed amendments also would make a conforming change to eliminate the requirement in the rule to file with the Advertising/Investment Companies Regulation Department the details of any changes in a variable annuity's sales charges.

III. Summary of Comments

A. Proposed Amendments to the Investment Company Rule

1. Fund-of-Funds

NASD Regulation proposed to amend the Investment Company Rule to ensure that the combined sales charges of a fund-of-funds that charges a distribution fee at both the acquiring and underlying fund levels, do not exceed the maximum percentage limits that are currently permitted by the rule. Under the proposed amendment, the aggregate asset-based sales charges of an acquiring fund and an underlying fund would not be subject to the cumulative sales limits that apply to other investment companies with asset-based sales charges. Instead, any asset-based fee charged by the acquiring fund and the underlying fund could not, in the aggregate, exceed .75% of average net assets. In addition, any service fee charged by the acquiring fund and the underlying fund could not, in the aggregate, exceed .25% of average net assets. The acquiring and underlying funds in a fund-of-funds structure, however, would remain individually subject to the cumulative limits in the Investment Company Rule.

The Commission received comment on the proposed definition of ''fund-of-funds.'' As proposed, ''fund-of-funds'' would have been defined as ''an investment company that invests any portion of its assets in the securities of registered open-end investment companies or registered unit investment trusts.'' Chapman & Cutler and the ICI believed this definition was too broad and might include funds that invest only a small portion of their assets in other funds. They suggested that the definition of ''fund-of-funds'' be modified to more closely reflect traditional fund of funds, such as those companies relying on Sections 12(d)(1)(F) and 12(d)(1)(G) of the 1940 Act.[8] In the alternative, the ICI suggested that the definition include only funds whose investments in other funds exceed the limits permitted under Section 12(d)(1)(A) of the 1940 Act.[9]

NASD Regulation has modified the definition of ''fund-of-funds'' by narrowing its scope to include only investment companies that acquire securities issued by other investment companies in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act.[10]

2. Deferred Sales Loads

NASD Regulation proposed to conform the definition of ''deferred sales charge'' in the Investment Company Rule to the definition in Rule 6c–10 under the 1940 Act (*i.e.*, ''any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption''). The Commission did not receive comment on this aspect of the proposal.

3. Loads on Reinvested Dividends

NASD Regulation proposed to prohibit NASD members from imposing front-end or deferred sales loads on the shares purchased through reinvested dividends. Several commenters objected to this prohibition.[11] In particular, the commenters believed that the prohibition would be especially disadvantageous to UITs. Although the prohibition contained a ''grandfather clause'' for existing UITs so that it would only apply to investment companies, including UITs, registered after a certain date, commenters believed that it would disrupt the reinvestment options for those UITs that were not eligible for the ''grandfather clause.'' [12] Some commenters asserted that such a prohibition was not justified because UIT investor does not pay a sales charge twice on the same assets when he or she purchases shares through reinvested dividends.[13] Moreover, some commenters pointed out that unlike mutual fund underwriters, UIT sponsors are not permitted to receive fees pursuant to Rule 12b–1 under the 1940 Act. Commenters believe that UIT sponsors should be permitted to recoup their expenses through sales charges imposed on reinvested dividends.[14]

Several commenters asserted that prohibiting such sales charges would be inconsistent with Commission exemptive orders that permit certain UIT sponsors to impose sales charges on reinvested dividends, subject to certain conditions.[15] Other commenters asserted that this prohibition would require certain UITs that offered deferred sales load structures to create multiple classes of shares, which could raise issues under the 1940 Act and the federal tax laws.[16]

Commmenters also believed that the prohibition would require UITs to develop expensive new computer systems to separate reinvestment shares when deferred sales charges are deducted.[17] Davis Polk questioned the Commission's authority to approve this portion of the rule change, given the Commission's moratorium on the implementation of new Commission rules that require major reprogramming of regulated entities' computer systems between June 1, 1999, and March 31, 2000.[18]

NASD Regulation responded to these comments by stating that it continues to believe that loads on reinvested dividends constitute excessive compensation, regardless of the type of investment company that imposes them. NASD Regulation believes that the proposed rule is not inconsistent with exemptive relief granted to UITs under the 1940 act, as that relief does not refer to any dividend reinvestment program, and that the exemptive orders provide no relief from the application of NASD Conduct Rules.[19]

NASD Regulation asserted that the proposed rule would not require UITs to adopt a multiple class structure, but provided no rationale to support this belief. Instead, it deferred to the Commission's Division of Investment Management for its expertise on the matter. In contrast to commenters' interpretation of the potential effect of the rule change, NASD Regulation believes that, whether an investment

[8] *See* Chapman & Cutler Letter; and ICI Letter.

[9] *See* ICI Letter.

[10] *See* Amendment No. 5.

[11] *See* Carter Letter; Chapman & Cutler Letter; Battle Fowler Letter; Davis Polk Letter; ICI Letter; Prudential Letter; and Cahill Letter. NASD Regulation has since eliminated the ''grandfather clause.'' *See* Amendment No. 6. Instead, NASD Regulation proposes to defer the prohibition until April 1, 2000. *See* Amendment No. 5.

[12] *See* Carter Letter; and Davis Polk Letter.

[13] *See* Carter Letter; Davis Polk Letter; Prudential Letter; and Cahill Letter.

[14] *See* Chapman & Cutler Letter; Prudential Letter; and Cahill Letter.

[15] *See* Carter Letter; ICI Letter; Prudential Letter; and Cahill Letter.

[16] *See* Battle Fowler Letter; and Chapman & Cutler Letter.

[17] *See* Carter Letter; and Davis Polk Letter.

[18] *See* Davis Polk Letter.

[19] NASD Regulation asserts that although the exemptive relief ''permitted UIT sponsors to charge installment loads, it does not appear to refer to any dividend reinvestment program. Indeed, we understand that at least two of these orders applied to fixed portfolio UITs that offered dividend reinvestment only into no-load mutual funds.'' *See* Amendment No. 5.

company's loads on reinvested dividends are excessive, is unrelated to whether the investment company charges Rule 12b–1 fees. NASD Regulation stated that the prohibition on charging front-end or deferred sales loads on shares purchased through reinvested dividends would apply to investment companies that have no Rule 12b–1 plan just as it would apply to investment companies that have such plans. It notes that, under the proposed rule change, UITs would not be prohibited from imposing sales charges on the initial purchase of UIT shares, which UITs may set at a level to adequately compensate them for their distribution costs.

NASD Regulation responded to the commenters' Y2K concerns by amending the proposed rule change to delay implementation of the prohibition until April 1, 2000.[20]

4. CDSL Calculations

NASD Regulation also proposed to reinstate requirements previously applicable under Rule 6c–10 under the 1940 Act concerning the order in which fund shares subject to a CDSL must be redeemed when an investor redeems some, but not all, of his fund shares. Chapman & Cutler commented that some investors, for business or tax reasons, may want to apply a different order of redemption than the one specified by the proposed rule (FIFO), and that the proposed rule therefore should be modified to allow investors to dictate a different order of redemption.[21] The ICE commented that, while it does not object to the provision, it believes that the rule language should be modified to specify that it applies to partial redemptions. The ICI also recommended that the proposed rule language be modified to provide that an order of redemption other than FIFO may be used if such an order ''could'' (rather than ''would'') result in the shareholder paying a lower CDSL.[22]

NASD Regulation indicated that it does not intend to modify the proposed rule. NASD Regulation stated that it was not aware of any significant problems that had arisen as a result of identical requirements that were previously imposed on the investment company industry by Rule 6c–10 under the 1940 Act. NASD Regulation also is concerned that if investors were permitted to consent to a different order of redemption, investment company account agreements could include standard language that effectively would allow a fund sponsor to determine the order of redemption. Further, NASD Regulation does not believe it is necessary to modify its proposal to reflect that it applies only to partial redemptions because, if all shares are redeemed, the issue of redemption order becomes moot.[23]

5. Prospectus Disclosure

NASD Regulation proposes to eliminate a prospectus disclosure requirement in the Investment Company Rule that is already required by Commission rules. The Commission did not receive comment on this aspect of the proposal.

B. Proposed Amendment to the Variable Contracts Rule

NASD Regulation proposes to amend the Variable Contracts Rule to eliminate sales charge limits for variable annuity contracts, as well as to eliminate the requirement in the rule to file the details of any changes in a variable annuity's sales charges. NAVA strongly supported eliminating the sales charge limits on variable annuity sales loads. NAVA also believed that the imposition of sales charge restrictions on variable annuities would be inconsistent with the purpose and intent of the ''reasonableness'' standard adopted in the 1996 Amendments.[24]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6).[25] Section 15A(b) requires that the rules of the Association, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change will further these requirements by adapting the Investment Company Rule and the Variable Contracts Rule to take into account recent legislation, regulations promulgated by the Commission, and new distribution arrangements.[26]

A. Amendments to the Investment Company Rule

1. Fund-of-Funds

The Commission finds that the proposed application of aggregate sales charge limits on fund-of-funds that charge distribution fees at both levels to be consistent with the Act. Specifically, the Commission believes that the proposed amendment clarifies that the Investment Company Rule applies to two-tier fund-of-funds structures in which asset-based sales charges are imposed at both the acquiring and underlying fund levels. The application of these sales charge limits should help to ensure that charges remain reasonable and do not become excessive for investors.

The Commission also believes that the definition of ''fund-of-funds'' being adopted is consistent with the common understanding of the type of investment company that constitutes a fund-of-funds. As proposed, ''fund-of-funds'' would have been defined as ''an investment company that invests any portion of its assets in the securities of registered open-end investment companies or registered unit investment trusts.'' The commenters indicated that the proposed definition was broader than the traditional understanding of what constitutes a fund-of-funds. In response to public comment, NASD Regulation revised this definition to include only those investment companies that acquire securities issues by another investment company in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act. Section 12(d)(1)(A) of the 1940 Act permits an investment company to purchase a limited amount of the total outstanding voting stock of another investment company.[27] Therefore, the definition of fund-of-funds will exclude investment companies that invest only a small portion of their assets in other funds' shares. The Commission believes that the definition being adopted

[20] *See* Amendment No. 5.

[21] *See* Chapman & Cutler Letter.

[22] *See* ICI Letter.

[23] *See* Amendment No. 5.

[24] *See* NAVA Letter.

[25] 15 U.S.C. 78o–3(b)(6).

[26] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[27] Section 12(d)(1)(A) generally prohibits any registered investment company and companies controlled by it (the ''acquiring company'') from acquiring securities of any other investment company (the ''acquired company''), and any investment company and companies controlled by it (the ''acquiring company'') from acquiring any security issued by a registered investment company (the ''acquired company'') if, after the acquisition, the acquiring company would own in the aggregate (i) more than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the acquiring company; or (iii) securities issued by the acquired company and all other investment companies (other than treasury stock of the acquiring company) having an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

sufficiently addresses the concern that a fund-of-fund might assess unlimited sales loads (*i.e.*, excessive layering of sales loads) by clarifying that the Investment Company Rule applies to those fund-of-funds that invest more than a *de minimis* amount of their assets in the shares of other investment companies. The Commission further believes that NASD Regulation's modification to its proposed definition of fund-of-funds will make it more manageable for investment companies in a fund-of-funds structure to monitor and enforce compliance with the requirements of the Investment Company Rule.

2. Deferred Sales Loads

The Commission finds it appropriate to amend the definition of ''deferred sales charge'' in the Investment Company Rule to conform to the definition in Rule 6c–10 under the 1940 Act (*i.e.*, ''any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption''). The Commission believes that conforming the definition in this manner will allow for more flexibility in structuring deferred sales loads (*e.g.*, by permitting installment loads), as taken into account by the 1996 Amendments to Rule 6c–10. The Commission also notes that the conforming definition will prevent possible confusion and compliance burdens that could result from inconsistent definitions in Commission and NASD rules.

3. Loads on Reinvested Dividends

NASD Regulation proposed to prohibit NASD members from imposing front-end or deferred sales loads on shares purchased with reinvested dividends. As noted above, the Commission received substantial comment on this aspect of the proposal, all of it critical. Specifically, commenters believed that the proposed prohibition included in NASD Rule 2830(d)(6) would create a disadvantage for UITs by restricting only front-end and deferred sales loads, but not asset-based sales charges, *e.g.*, Rule 12b–1 fees, which UIT's are not permitted to charge. Commenters believe that UITs would be disadvantaged because non-UIT funds would be permitted to charge Rule 12b–1 fees on reinvested dividends, and therefore recoup their distribution costs, while UITs would not. As noted by the NASD, UITs may set the sales charge on the initial purchase at a level to adequately compensate them for their distribution costs.

Commenters further asserted that the proposed rule change would require UITs to create two classes of units with different characteristics, which would result in each class representing a different pool or specified securities, and would therefore raise issues under the 1940 Act and federal tax law. NASD Regulation asserted its view that ''complying with the proposed amendments should not require UITs to adopt a multiple class structure.'' NASD Regulation also consulted with staff in the Commission's Division of Investment Management on the matter, and the staff agrees that complying with the proposed amendments should not result in the creation of multiple classes.[28] The Commission believes that the proposed rule change is consistent with the Act in that it should prevent sales charges from exceeding the appropriate limits, thereby benefiting investors and the public interest.

4. CDSL Calculations

The Commission believes that it is consistent with the Act to reinstate requirements previously applicable under Rule 6c–10 under the 1940 Act, concerning the order in which fund shares subject to a CDSL must be redeemed when an investor redeems some, but not all, of his fund shares. Although commenters asserted that investors should be able to choose the order of redemption used in calculating the CDSL applied to their shares, the Commission agrees with NASD Regulation that such discretion could result in investment companies incorporating standard language into account agreements, effectively allowing a fund sponsor to determine the order of redemption. The Commission believes that the provision provides sufficient flexibility as proposed. Specifically, the provision provides that if a redemption order other than FIFO (*e.g.*, LIFO) would result in a redeeming shareholder paying a lower CDSL, the other method may be used. This approach should benefit investors by permitting them to pay the lowest CDSL when partially redeeming shares.

5. Prospectus Disclosure

The Commission finds it appropriate to eliminate a prospectus disclosure requirement currently included in the Investment Company Rule in light of the Commission's 1998 revisions to the prospectus disclosure requirements for mutual funds. Specifically, the Commission requires that mutual funds with asset-based sales charges include disclosure in their prospectuses regarding Rule 12b–1 plans that is similar to the disclosure required in the Investment Company Rule. The adoption of this prospectus disclosure requirement made the prospectus disclosure requirement in the Investment Company Rule duplicative and unnecessary.

B. Proposed Amendment to the Variable Contracts Rule

The Commission believes that the elimination of the maximum sales charge limitations from the Variable Contracts Rule is appropriate in light of the ''reasonable'' standard adopted in the 1996 Amendments. Specifically, in 1996, the 1940 Act was amended to exempt variable annuity (as well as variable life insurance) contracts from the specific charge restrictions contained in Sections 26 and 27. In place of the specific charge restrictions, the 1996 amendments added a section to the 1940 Act[29] to regulate variable contract charges by requiring that the fees and charges under a variable contract, in the aggregate, be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.[30] The Commission believes eliminating the maximum sales charge limitations from the Variable Contracts Rule is appropriate in light of the 1996 amendments.

Because Rule 2820 provisions regulating sales charges for variable annuities are being eliminated, NASD Regulation also proposed to eliminate the requirement to file with the Advertising/Investment Companies Regulation Department the details of any changes in a variable annuity's sales charges.[31] The Commission believes the elimination of this filing requirement is appropriate in light of the concurrent elimination of the maximum sales charge limitations in the Variable Contracts Rule.

The Commission finds good cause to approve Amendment No. 4 to the proposed rule change prior to the 30th days after the date of publication of notice filing thereof in the **Federal Register**. Amendment No. 4 makes grammatical and technical changes to the proposed rule language and supersedes and replaces the previous filing and amendments thereto. It does not substantive modify the proposal. Accordingly, the Commission believes that it is consistent with Sections

[28] *See* Amendment No. 5.

[29] *See* Section 26(e)(2) of the 1940 Act.

[30] Insurance companies issuing variable contracts are required to represent in the contract registration statements that fees and charges are reasonable.

[31] *See* Amendment No. 6.

15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 4 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 5 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 5 does two things. First, in response to commenters, Amendment No. 5 modifies the definition of ''fund-of-funds'' so that it includes only those investment companies that acquire securities issued by any other investment company in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act. This definition is narrower than the one originally proposed and should make clear that the combined sales charge limits apply only to those structures traditionally understood to be funds-of-funds. Second, also in response to commenters, Amendment No. 5 delays the implementation of the prohibition of sales loads on reinvestment dividends until April 1, 2000. This addresses commenters concerns regarding Y2K and the computer systems changes that the proposed rule change will necessitate. Accordingly, the Commission believes that is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 5 to the proposed rule change on an accelerated basis.

The Commissions finds good cause to approve Amendment No. 6 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 6 clarifies that the prohibition of front-end or deferred sales charges on shares of investment companies purchased with reinvested dividends is not meant to apply to investment companies whose registration statements became effective under the Securities Act of 1933 prior to April 1, 2000. Amendment No. 6 also clarifies that the definition of ''fund-of-funds'' is intended only to cover an investment company that invests in the securities of another registered investment company. Accordingly, the Commission believes that it is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 6 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, 5, and 6 including whether the proposed rule changes are 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–14 and should be submitted by November 18, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NASD–98–14) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28199 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42050; File No. SR–PCX–99–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Adoption of a Continued Listing Fee

October 21, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to adopt a new $500 per month/per issue fee that will apply to Options Market Makers and Lead Market Makers (''LMMs'') who want to continue trading certain low-volume option issues.

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discusses any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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 is proposing to adopt a new Continued Listing Fee for option issues. The purpose of the new fee is two-fold. First, it is designed to facilitate the delisting of inactive or low-volume option issues that are currently listed and traded on the PCX. The Exchange recognizes the industry-wide need to reduce the overall amount of quotation and last sale reporting information that is currently being disseminated through the Options Price Reporting Authority (''OPRA''). At the same time, the Exchange is seeking to provide the members who trade these inactive issues with an opportunity to continue trading the ones that they deem to be most promising, subject to the fee.[3] Second, the new fee is designed to allow the Exchange to recover the costs of

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In September 1999, 273 of the approximately 800 issues traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the $500 fee for 190 issues. Consequently, 83 issues were eligible for redistribution and were posted for reallocation. Because there were no applicants for those issues, the Reallocation Committee delisted them. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Gordon Fuller, Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission; and Melinda Diller, Law Clerk, Commission (October 8, 1999).

supporting the listing and trading of their inactive issues.

The new fee applies to equity and index option issues that do not generate at least $400 in Exchange revenue per month, based on a ''rolling'' three-month average.[4] The fees and charges included in calculating whether an issue has generated $500 in Exchange revenue are: (1) PCX Transaction Charges;[5] PCX Ticket Data Entry Charges;[6] (3) PCX On-line Comparison Charges;[7] (4) PCX Book Execution Fees;[8] and (5) PCX Book Staff Entry Charges.[9] Once an issue is subject to the new fee, the new fee will continue to apply in subsequent months, unless the issue generates $500 or more in Exchange revenue per month, based on a ''rolling'' three-month average.[10]

Once an option issue has been identified as being subject to the fee, the Exchange will immediately notify the LMM or trading crowd that trades the issue. The LMM or trading crown representative will then have an opportunity to make a commitment to pay the fee on an ongoing basis.[11] Alternatively, if the LMM or trading crowd representative does not commit to paying the fee on an ongoing basis, then the Exchange will make the issue available for reallocation to other trading crowds or LMMs who are willing to commit to the fee upon reallocation.[12] If the issue is not reallocated, then it will be delisted. The Exchange always provides an opportunity for an option issue to be reallocated before initiating the delisting process.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objective of Section 6(b)(4) of the Act[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and subparagraph (f)(2) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 5U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–32 and should be submitted by November 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28198 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 37860 (October 23, 1996), 61 FR 56079 (October 30, 1996) (order approving File No. SR–PSE–96–37).

[4] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 17 CFR 200.30–3(a)(12).

[3] In September 1999, 273 of the approximately 800 issues traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the $500 fee for 190 issues. Consequently, 83 issues were eligible for redistribution and were posted for reallocation. Because there were no applicants for those issues, the Reallocation Committee delisted them. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Gordon Fuller, Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission; and Melinda Diller, Law Clerk, Commission (October 8, 1999).

[4] The rolling average is derived from the three months immediately preceding imposition of the fee. For example, if an issue generated $490 in July, $490 in August and $500 in September, the issue will be subject to the new fee for October because the three-month average of $493 is less than the $500 threshold. However, if an issue generated $490 in July, 490 in August and $525 in September, the issue would not be subject to the new fee for October because the three month average of $502 would exceed the $500 threshold. A newly-listed option issue will not be subject to the fee until it has been listed on the Exchange for at least three months.

[5] These are currently set at $0.12 per contract side for customer transaction (except that no customer

[11] The Exchange represents that the LMM will have approximately one week to decide whether or not to pay the fee. Once an LMM or trading crowd has committed to paying the fee on an ongoing basis, the LMM will be required to continue paying the fee on a monthly basis unless either (a) the issue is no longer subject to the fee (because the issue generates $500 or more in Exchange revenue per month, based on a ''rolling'' three-month average); or (b) the LMM or trading crowd representative indicates to the Exchange an unwillingness to continue paying the fee, and the issue is posted for reallocation. Telephone conversation between Michael Pierson, Director, Regulatory Policy, PCX, and Melinda Diller, Law Clerk, Commission (September 28, 1999).

[12] The Exchange represents that it follows an informal policy in reallocating before the opening of the market. Any LMM who wishes to apply for the issue may do so by submitting an application to the Reallocation Committee no later than 11 a.m. that day. The Committee then meets to consider all of the applicants and reassigns the issue to the applicant it considers to be best suited for the issue. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission, and Melinda Diller, Law Clerk, Commission (October 8, 1999).

[13] Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission, and Melinda Diller, Law Clerk, Commission (October 8, 1999).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42048; File No. SR–PCX–99–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Registration Fee Change ($8 to $25)

October 21, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Schedule of Rates and Charges for Exchange Services by increasing the annual Registration Fee from eight dollars to twenty-five dollars, for new applications, maintenance, and transfer of registration status for each Registered Representative (''RR'') and each Registered Options Principal (''ROP'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

Background. Currently, the PCX Schedule of Rates and Charges provides for an eight dollar Registration Fee to be paid by Member Organizations for new applications, maintenance, or transfer of registration status for each Registered Representative (''RR'') and each Registered Options Principal (''ROP'').[3]

Proposal. The Exchange is now proposing to increase the annual Registration Fee for new applications, maintenance, and transfer of registration status for each RR or ROP. Specifically, the Exchange proposes to increase the annual Registration Fee from eight dollars to twenty-five dollars in order to offset the Exchange's costs relating to its market surveillance programs, regulatory responsibilities and routine Designated Examining Authority (DEA) activity.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act, in general, and Section 6(b)(4) of the Act, in particular, in that it provides for the equitable allocation of reasonable charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and paragraph (f)(2) of 19b–4 thereunder in that it establishes or changes a due, fee or other charge.[4]

At any time within 60 days of the filing of each proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection in copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–42 and should be submitted by November 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–28201 Filed 10–27–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 37860 (October 23, 1996), 61 FR 56079 (October 30, 1996) (order approving File No. SR–PSE–96–37).

[4] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3144]

Discretionary Grant Programs Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 2000 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Central and East Europe, Russia, and Eurasia. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 2000 under a program administered by the Department of State. The program seeks to build and sustain expertise among Americans willing to make a career commitment to the study of Central and East Europe, Russia, and Eurasia.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by January 28, 2000.

Applications Delivered by Mail

An application sent by mail must be addressed to W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, 2201 C Street, NW, Washington, DC. Please phone first at (202) 736–4572 to gain access to the building.

The Advisory Committee staff will accept hand-delivered applications between 9 a.m. and 4 p.m. EST daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983, the Congress declared that independently verified factual knowledge about the countries of that area is ''of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs.'' Congress also declared that the development and maintenance of such knowledge and expertise ''depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government.'' The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Central and East Europe, Russia, and Eurasia, the program contributes to the overall objectives of the FREEDOM Support and SEED Acts.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Serbia (including Kosovo and Montenegro), Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes the final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on Central and East Europe, Russia, and Eurasia and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Central and East Europe, Russia, and/or Eurasia.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Central and East Europe, Russia, and/or Eurasia by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Central and East Europe, Russia, and Eurasia, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Central and East Europe, Russia, and Eurasia, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the countries of Central and East Europe, Russia, and Eurasia by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Central and East Europe, Russia, and Eurasia in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies and priorities:

- *Support for Transitions.* The Advisory Committee strongly encourages support for activities which, while building expertise among US specialists on the region, also (1) promote fundamental goals of US assistance programs such as helping establish market economies and promoting democratic governance and civil societies, and (2) provide knowledge related to current US policy interests in the region, broadly defined. This includes, but is not limited to, such topics as ethnic conflict, post-Soviet economics, and political participation. The Advisory Committee gives priority to programs on Central Asia, the Caucasus, and the Balkans, where gaps in knowledge exist, and encourages research on Russia's regions and other areas outside capital cities. Historical or cultural research that promotes understanding of current events in the region also is encouraged if an explicit connection can be made to contemporary political and/or economic transitions.
- *Publications.* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.
- *Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.
- *Library Activities.* Funds may be used for certain library activities that clearly strengthen research and training on the countries of Central and East Europe, Russia, and Eurasia and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.
- *Language Support.* The Advisory Committee encourages attention to the non-Russian languages of Eurasia and the less commonly taught languages of the Central and East Europe. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above that has appropriate peer group review mechanisms.
- *Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Central and East Europe, Russia, and Eurasia. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (*i.e.*, U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, *i.e.*, nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure. Despite this restriction on support for non-Americans, collaborative projects are encouraged—where the non-American component is funded from other sources—and priority is given to institutions whose programs contain such an international component.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Central and East Europe, Russia, and Eurasia. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort that will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $4.8 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1999, the Congress appropriated to the program $4.8 million from the FREEDOM Support and Support for East European Democracies (SEED) Acts, which funded grants to 9 national organizations, with $3.3 million for activities on Russia and Eurasia and $1.5 million for those on Central and East Europe, including the Baltic states. The number of awards varies each year, depending on the level of funding and the quality of the applications submitted.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in 12 pitch in the following format: one-page, single-spaced Executive Summary; Budget presentation; narrative description of proposed programs not to exceed 20 double-spaced pages; one-page, single-spaced vitae of key professional staff; and required certifications. Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Budget

Because funds will be appropriated separately for Central and East Europe (including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR part 145, ''Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' OMB Circular A–110, ''Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements,'' and OMB Circular A–133, ''Audits of

Institutions of Higher Learning and Other Non-Profit Institutions'' and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, ''Cost Principles for Educational Institutions,'' or OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations;''

(2) A detailed program budget indicating direct expenses with clearly identified administrative costs by program element and by region (NIS or Central and East Europe), indirect costs, and the total amount requested. The budget also should reflect administrative costs as a percentage of the total requested funding. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report, if available) and the name, address, and point of contact of the audit agency. N.B.: The threshold for grants that trigger an audit requirement has been raised from $25,000 to $300,000.

(5) An indication of the applicant's priorities if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the Department of State.

Narrative Statement

The Applicant must describe fully the proposed programs, including detailed information about plans for advertising programs, peer review and selection procedures and identification of anticipated selection committee participants, estimates of the types and amounts of anticipated awards, and benefits of these programs for the Central and East European, Russian, and Eurasian fields.

Applicants who have received previous grants from this State Department program should provide detailed information on the awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. Applicant's should specify both past and anticipated applicant to award ratios. A summary of an organization's past grants under this State Department program also should be included.

Proposals from national organizations involving language instruction programs should provide, for those programs supported in the past year, information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

Certifications

Applicants must include a description of affirmative action policies and practices and certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Public Law 100–690), in accordance with Appendix C of 22 CFR part 137, Subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Public Law 101–121), in accordance with Appendix A of 22 CFR part 138, New Restrictions on Lobbying Activities.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in Program Part II, Information (45 points);

(2) The professional qualifications of the applicant's key personnel and selection committees, and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Central and East Europe, Russia, and Eurasia (35 points); and

(3) Budget presentation and cost effectiveness (20 points).

Further Information

For further information, contact W. Kendall Myers, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520–6510. Telephone: (202) 736–4572 or 736–4386, fax: (202) 736-4851 or (202) 736–4807.

Dated: October 21, 1999.

W. Kendall Myers,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 99–28208 Filed 10–27–99; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice No. 3135]

Advisory Committee on International Economic Policy Charter Amendment and Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00 a.m. to 1:00 p.m. on Tuesday, November 23, 1999, in Room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and by Acting Under Secretary of State for Economic, Business and Agricultural Affairs Alan P. Larson.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government. The charter has been amended to increase the membership.

Topics for the November 23 meeting will be: Asian Financial Crisis—Next Steps and Indonesia; World Trade Organization and the New Round; International Affairs Resources; and short briefings and discussion on Southeast Europe, Sanctions, Biotechnology, APEC Private Sector Initiatives, and Anti-Corruption Developments.

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State Building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by phone at (202) 647–5968 or fax (202) 647–5713 (Attention: Arlene Nelson) by Friday, November 19, 1999. On the date of the meeting, persons who have registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

FOR FURTHER INFORMATION CONTACT: Arlene Nelson, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520.

Dated: October 22, 1999.

William J. McGlynn,

Executive Secretary.

[FR Doc. 99–28207 Filed 10–27–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public outreach meeting with South/South Central State Departments of Transportation.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a special public outreach meeting of the Council with representatives from the South/South Central states. At the special meeting, the Council will hear from, among others, representatives from the states of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, and West Virginia, to discuss all aspects of intercity railroad passenger service, including corridor service, in the South/South Central region of the country. The Honorable Kay Bailey Hutchison, U.S. Senator from Texas, is scheduled as the Keynote Speaker.

DATES: The Special Public Outreach meeting will be held on November 8, 1999 from 9:00 a.m. to 5:00 p.m. in the Dallas Union Station (attached to the Hyatt Regency Dallas), 400 S. Houston Street, Dallas, TX 75207.

ADDRESSES: The Meetings will held in Pullman Room B, Dallas Union Station (attached to the Hyatt Regency Dallas), 400 S. Houston Street, Dallas, TX 75207, telephone at the Hyatt (214) 651–1234. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTAL INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after two years, the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five-year term.

Issued in Washington, DC, October 20, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–28129 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Wednesday, November 17, 1999, at 10:00 a.m., at the Department of Transportation, Nassif Building, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–8085.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to brief the Council on the Federal Employees Cancer Warmline, the Life with Cancer Signature Project in memory of the late American Federation of Government Employees (AFGE) President John Sturdivant; status report on Phase II of DOT labor-management climate study; and initiatives/options for enhancing partnership efforts throughout DOT.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by November 12, 1999 in order to be considered at the November 17th meeting.

Issued in Washington, DC on October 22, 1999.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Human Resource Leadership Division.

[FR Doc. 99–28218 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Loudon, Roane, Anderson, and Knox Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public than an environmental impact statement will be prepared for a proposed project in Loudon, Roane, Anderson, and Knox Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Charles S. Boyd, Division Administrator, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, TN 37211, Telephone (615) 781–5770.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to connect Interstate 40 with Interstate 75 from near the current I–40/I–75 interchange in Loudon County, near Lenoir City, Tennessee, to an area north and east in Anderson County, near the interchange of I–75 and State Route 61. The proposed project is considered necessary to improve the operation and safety of these affected interstate highways.

Alternatives to be considered include: (1) taking no action; (2) three build alternatives consisting of diffeenct

alignments; and (3) other alternatives that may arise from public and agency input.

Coordination letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies. Public meetings were held to dicuss concept alignments in January and February 1997 and public comments were received. The draft environmental impact statement (EIS) will be prepared and made available for public and agency review and comment. Comments from the initial coordination letters and the public meetings will be considered in determining the scope of the EIS.

To insure that the full range of issues to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address above.

(Catalogue of Federal Domestic assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Issued on October 15, 1999.

Charles S. Boyd,

Division Administrator, Tennessee Division, Nashville, Tennessee.

[FR Doc. 99–28174 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Polk County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Polk County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Charles S. Boyd, Division Administrator, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781–5770.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve U.S. Route 64 (U.S. 64) in Polk County, Tennessee. The proposed project would involve improvements to a section of the U.S. 64 roadway between U.S. 411 on the west and State Route 68 in Ducktown for a distance of about 42 kilometers (26) miles.

Improvements to the corridor are considered necessary to provide for existing and projected traffic demand and to improve safety. Alternatives under consideration include (1) taking no action; and (2) widening the existing two-lane highway to four lanes to the east and west of the Ocoee River Gorge, and constructing a four-lane divided highway on new location to bypass existing U.S. 64 through the Ocoee River Gorge.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 15, 1999.

Charles S. Boyd,

Division Administrator, Tennessee Division, Nashville, Tennessee.

[FR Doc. 99–28175 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA–1999–5685, Notice No. 3]

RIN 2130—AB33

Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCIES: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), DOT.

ACTION: Extension of comment period.

SUMMARY: By notice of a proposed policy statement published on May 25, 1999 (64 FR 28238), FRA and FTA proposed how they intend to coordinate use of their respective safety authorities to address safety issues related to light rail transit operations that take place, or are planned to take place, on the general railroad system of transportation. The proposal also summarized how the process of obtaining waivers of FRA's safety regulations may work, particularly where the light rail and conventional rail operations occur at different times of day. In that notice, the deadline for the submission of written comments was July 30, 1999. By notice published on July 28, 1999 (64FR 40931), the deadline for the submission of written comments was extended until October 29, 1999.

Due to the need to ensure that all interested parties have a sufficient amount of time to fully develop their comments, and because FRA's separate proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations is not yet published, this document announces an additional extension of the deadline for the submission of written comments.

DATES: Written comments must be received by January 14, 2000. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at http://doms.dot.gov. (Docket hours at the Nassif Building are Monday-Friday, 10:00 a.m. to 5:00 p.m., excluding

Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC–2, Room 9316, 400 Seventh Street, SW, Washington, DC 20590 (telephone: (202) 366–4063); and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6029).

SUPPLEMENTARY INFORMATION: In the proposed joint policy statement issued on May 25, 1999 by FRA and FTA, the agencies explained that the proposal is intended to delineate the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment and summarize the application of FRA safety rules to such shared-use operations. The proposal will help transit authorities, railroads, and other interested parties understand how the respective safety programs of the two agencies will be coordinated. The proposed statement noted that FRA soon intended to issue its own proposed statement of agency policy concerning its safety jurisdiction over railroad operations, which would discuss the extent and exercise of FRA's jurisdiction, provide guidance on which of FRA's safety rules are likely to apply in particular operational situations, and summarize how the process of obtaining waivers of FRA's safety regulations may work. The expectation of the two agencies was that commenters would then have the ability to study and analyze FRA's proposed policy statement before October 29, 1999, the revised deadline for submitting written comments on the proposed joint statement.

Since FRA has not yet issued its separate proposed policy statement, potential commenters will be unable to review that document before the close of the revised comment deadline for the proposed joint statement. Due to the complexity and importance of adopting a joint policy concerning shared use of the general railroad system by conventional railroads and light rail transit systems, especially to communities that are planning or developing light rail systems, FRA and FTA do not wish to inhibit the ability of any party to fully develop its comments and seek to provide sufficient time for all interested parties to gather necessary information. Consequently, FRA and FTA believe it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to January 14, 2000, which is the anticipated deadline that FRA will set for submission of comments on its separate proposed statement of agency policy. FRA and FTA do not anticipate any further extension of the comment period in this proceeding. The two agencies will consider comments submitted after January 14, 2000, only to the extent possible without causing additional expense or delay.

Issued in Washington, DC, on October 25, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 99–28350 Filed 10–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6383]

Notice of Receipt of Petition for Decision That Nonconforming 1998 Jaguar XK–8 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998 Jaguar XK–8 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1998 Jaguar XK–8 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) It is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 29, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether a 1998 Jaguar XK–8 passenger car is eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1998 Jaguar XK–8 passenger car that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1998 Jaguar XK–8 to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1998 Jaguar XK–8, as originally manufactured, conforms to many Federal motor vehicle safety standards

in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1998 Jaguar XK–8 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the vehicle conforms to the Bumper Standard found at 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) Installation of a seat belt warning lamp that displays the appropriate symbol; (c) Recalibration of the speedometer/odometer to show distance in miles and speed in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) Installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) Installation of U.S.-model taillamp assemblies; (d) Installation of a high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) Installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) Replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button at the front outboard seating positions, with combination lap and shoulder restraints that release by means of a single push button at the rear outboard seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line.

The petitioner also states that all vehicles will be inspected prior to importation to ensure that they are equipped with anti-theft devices in compliance with the Theft Prevention Standard found in 49 CFR part 541 and modified if necessary.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 22, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–28099 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6384]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Eagle Vision Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Eagle Vision passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Eagle Vision that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) It is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 29, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of

the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1994 Eagle Vision passenger cars originally manufactured in the United States for export to foreign markets are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1994 Eagle Vision that was manufactured for sale in the United States and certified by its manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Eagle Vision to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Eagle Vision, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Eagle Vision is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 111 *Rearview Mirror,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 301 *Fuel System Integrity,* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-US certified 1994 Eagle Vision complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Replacement of the odometer/speedometer with units calibrated in miles/miles per hour on vehicles that are not already so equipped; (b) Inscription of the word ''brake'' on the brake failure indicator lamp lens.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the headlights, taillights, and front and rear sidemarker assemblies with components that conform to the standard.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* Installation of driver's and passenger's side airbags and knee bolsters. The petitioner states that the vehicle is equipped with Type 2 seat belts in front and rear outboard seating positions, and with a lap belt in the rear center designated seating position.

The petitioner states that a vehicle identification number plate that meets the requirements of 49 CFR part 565 will be affixed to the vehicle if it is not already so equipped.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 22, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–28100 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–6093; Notice 2]

Italjet S.p.A.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Italjet S.p.A., an Italian corporation, through Italjet USA (''Italjet'') of New York City, NY, for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The basis of the request was that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. Sec. 30113(b)(3)(B)(iv).

We published a notice of receipt of the application on August 24, 1999 (64 FR 46225) asking for comments, but received none.

Italjet has applied on behalf of its Torpedo 125, Formula 125, Millenium 125, and Millenium 150 motor scooters (''scooters''). The scooters are defined as ''motorcycles'' for purposes of compliance with the Federal motor vehicle safety standards. According to Italjet, its scooters have a peak motor output of 26 hp and a top speed of 60 miles per hour.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1). Italjet would like to use the left handlebar as the control for the rear brakes of the scooters, whose peak motor output of 26 hp produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The gear ratio of the vehicle is fixed, and ''there is no need for the rider to shift gears, as on a standard motorcycle.'' Because of this, the scooters are ''equipped with neither a

clutch nor a clutch lever, and the left hand of the rider is free to operate a brake lever.'' Italjet states that it prefers this design, given its focus on European and Asian markets ''where rear brake controls for scooters of all horsepower ratings are typically mounted on the left handlebar.''

Italjet argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. It believes that ''the prevalence of the left hand operated design in Europe and Asia is one strong indicator that a vehicle designed in this way can be operated safely.'' It believes that ''vehicle safety might be somewhat enhanced with the left hand brake lever, as the hand (bare or gloved) is generally more capable of sensitive modulation of the braking force than the foot.''

Italjet intends to field test a small number of the scooters in the American market in Fall 1999 to assess the design, and without an exemption it would be unable to do so. It wishes to consider whether the United States' scooter market offers sufficient sales potential to justify the creation of a design specifically for the United States that incorporates the right foot brake pedal. Alternatively, it may petition for rulemaking to amend Standard No. 123 to allow the hand-operated brake control on motorcycles with more than 5 hp.

Italjet anticipates sales of not more than 2500 scooters a year while an exemption is in effect. It believes that an exemption would be in the public interest and consistent with the objectives of traffic safety ''because it would maintain an acceptable level of safety while accelerating the advancement of an important new class of vehicles for use by consumers and businesses.''

The application by Italjet is substantially similar to that by Aprilia, S.p.A. which we granted on August 13, 1999 (64 FR 44264). Aprilia also requested an exemption from the rear brake location requirement of S5.2.1 (Table 1) of Standard No. 123 pursuant to 49 U.S.C. 30113(b)(3)(B)(iv). On August 20, 1999, we also granted an exemption from this requirement to Vectrix Corporation for its electric scooter pursuant to 49 U.S.C. 30113(b)(3)(B)(iii), on the basis that it would make the development or field evaluation of a low-emission vehicle easier (64 FR 45585).

As we observed in granting Aprilia's application, we must find that an exemption is consistent with the public interest and motor vehicle safety (49 U.S.C. Sec. 30113(b)(3)(A)), and that compliance with the brake control location requirement of Standard No. 123 would prevent Aprilia from selling a motorcycle with an overall safety level at least equal to the safety level of a nonexempt motorcycle (49 U.S.C. Sec. 30113(b)(3)(B)(iv)).

Aprilia correctly identified our principal area of concern: the standardization of motorcycle controls. In adopting Standard No. 123 in April 1972, effective September 1, 1974, we justified standardization of motorcycle controls as a means of minimizing operator error in responding to the motoring environment, saying that ''a cyclist, especially the novice and the cyclist who has changed from one make of machine to another, must not hesitate when confronted with an emergency'' (37 FR 7207).

We asked Aprilia to comment on our concern that a left hand lever-operated rear brake may contribute to unfamiliarity and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with conventionally configured controls. At the request of Aprilia's U.S. sales subsidiary, Aprilia U.S.A. Inc. of Woodstock, Georgia, Carter Engineering of Franklin, Tennessee, prepared a report on ''Motorscooter Braking Control Study'' (Report No. CE–99-APR–05, May 1999) comparing braking response times of riders using the left hand control of the Leonardo 150 and the right foot control of the Yamaha XC–125 Riva. We have placed a copy of this report in the Aprilia docket, Docket No. NHTSA–98–4357. Aprilia U.S.A. commented that ''[o]verall, the test subjects'' reaction times on the Leonardo were approximately 20% quicker than their reaction times on the conventional motorcycle.'' Aprilia believed that ''a less complex braking arrangement like that of the [vehicle for which it sought exemption] will improve rider reaction in an emergency situation.'' We interpreted the report as indicating that a rider's braking response was not likely to be degraded by the different placement of the brake controls, thus directly addressing and meeting our safety concern.

With respect to the public interest and consistency with objectives of motor vehicle safety, the available information suggests that Italjet's request to operate the rear brake with the left hand instead of the right foot may not degrade the rider's braking response. By allowing exempted vehicles to be sold on a temporary basis for two years, it will be possible for us to gather data on operators' experience with this alternative rear brake control. This information would allow us to make a more informed decision about locations for motorcycle brake controls.

In consideration of the foregoing, it is hereby found that to require compliance with Standard No. 123 would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. It is further found that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Italjet, S.p.A. is hereby granted NHTSA Temporary Exemption No. EX99–11 from the requirement of Item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123, *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. This exemption applies only to models Torpedo 125, Formula 125, Millenium 125, and Millenium 150, and will expire on October 1, 2001. 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on October 22, 1999.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 99–28176 Filed 10–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33806]

Tishomingo Railroad Company, Inc.—Lease and Operation Exemption—Line of State of Mississippi at Iuka, MS

Tishomingo Railroad Company, Inc., a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the State of Mississippi, Department of Economic and Community Development, and operate approximately 10 miles of rail line in Iuka, MS (line). The line runs between the Tri-State Commerce Park and a connection with the Memphis main line of Norfolk Southern Corporation, at station 8385–475 (east leg of Wye) and station 8406.00 (west leg of Wye).

The parties report that they intend to consummate the transaction promptly after the effective date of the exemption. The earliest the transaction can be consummated is October 21, 1999, 7 days after the exemption was filed.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to

revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33806, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard, Esq., 90 Canal Street, Boston, MA 02114.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: October 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–28122 Filed 10–27–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 22, 1999.

The Department of the 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 November 29, 1999, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Type of Review: Extension.

Title: Application Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

Description: Form ATF F 5400.21 is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,800.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 540 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

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. 99–28221 Filed 10–27–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 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 November 29, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0071.

Form Number: IRS Form 2120.

Type of Review: Extension.

Title: Multiple Support Declaration.

Description: A taxpayer who pays more than 10%, but less than 50% of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 11,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—7 min.
Learning about the law or the form—3 min.
Preparing the form—7 min.
Copying, assembling, and sending the form to the IRS—10 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,950 hours.

OMB Number: 1545–0718.

Form Number: IRS Form 941–M.

Type of Review: Extension.

Title: Employer's Monthly Federal Tax Return.

Description: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as notified by the district Director that they must file Form 941–M monthly.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—12 hr., 26 min.
Learning about the law or the form—35 min.
Preparing, copying, assembling and sending the form to the IRS—50 min.

Frequency of Response: Monthly.

Estimated Total Reporting/ Recordkeeping Burden: 166,320 hours.

OMB Number: 1545–1209.

Regulation Project Number: IA–83–90 Final.

Type of Review: Extension.

Title: Disclosure of Tax Return for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

Description: These regulations govern the circumstances under which tax return information may be for purposes of conducting quality or per reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 250,000.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: 250,000 hours.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 Final (T.D. 8382).

Type of Review: Extension.

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the

penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion, annually.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1497.

Form Number: IRS Form 8837.

Type of Review: Extension.

Title: Notice of Adoption of Revenue Procedure Model Amendments.

Description: Form 8837 is used as a transmittal document by the sponsors of ''master or prototype'' plans, regional prototype plans, and volume submitter plans. Revenue Procedures implementing law changes or other changes may be issued at any time requiring changes in plan documents. These changes or amendments can be submitted to the Service using this form.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 11 min.

Preparing and sending the form to the IRS—28 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 7,950 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. 99–28222 Filed 10–27–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (Survey of Benefits Usage)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Planning and Analysis, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Planning and Analysis, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information that will be collected by a telephone survey concerning the usage of VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 27, 1999.

ADDRESSES: Submit written comments on the collection of information to Marcelle Habibion, Task Order Project Manager, Office of Assistant Secretary for Planning and Analysis (008B2), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–NEW (Survey of Benefits Usage)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Marcelle Habibion at (202) 273–5058 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Planning and Analysis invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Survey of Department of Veterans Affairs (VA) Benefits Usage.

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The proposed telephone survey is intended to collect data as part of a program evaluation to assess the effectiveness and efficiency of Department of Veterans Affairs (VA) programs which assist the survivors of veterans and servicemembers who die of service-connected disabilities (in the case of Dependency and Indemnity Compensation) or with service-connected disabilities (in the case of Insurance) and certain other veterans. This evaluation will fulfill the ongoing requirements of Public Law 103–62, the Government Performance and Results Act of 1993; Title 38, U.S.C., Section 527, Evaluation and Data Collection; and Title 38 CFR, Section 1.15, Standards for Program Evaluation. In addition, this evaluation will fulfill the specific requirements of Public Law 105–368, Section 303, Assessment of Effectiveness of Insurance and Survivor Benefits Programs for Survivors of Veterans with Service-connected Disabilities.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden:

a. 2,604 survivors @ 35 minutes per response = 1,519 hours
b. 1,511 insurance takers @ 20 minutes per response = 505 hours
c. 1386 non-insurance takers @ 15 minutes per response = 347 hours.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,501.

Dated: October 13, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–28271 Filed 10–27–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 64, No. 208

Thursday, October 28, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcemnt Administration

[DEA # 179F]

Controlled Substances: 1999 Aggregate Production Quotas

Correction

In notice document 99–27291 beginning on page 56366 in the issue of Tuesday, October 19, 1999, make the following correction:

On page 56367, in the table, under **Schedule II**, under the heading ''Established final 1999 quotas'', in the third entry ''3,900'' should read ''3,800''.

[FR Doc. C9–27291 Filed 10–27–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday
October 28, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 409, 410, 411, etc.

Medicare Program; Prospective Payment System for Home Health Agencies; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, and 484

[HCFA–1059–P]

RIN 0938–AJ24

Medicare Program; Prospective Payment System for Home Health Agencies

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish requirements for the new prospective payment system for home health agencies as required by section 4603 of the Balanced Budget Act of 1997, as amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999. These include the implementation of a prospective payment system for home health agencies, consolidated billing requirements, and a number of other related changes. The prospective payment system described in this rule would replace the retrospective reasonable-cost-based system currently used by Medicare for the payment of home health services under Part A and Part B.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 27, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1059–P, P.O. Box 8010, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT:

Bob Wardwell (Project Manager), (410) 786–4607.
Susan Levy (Payment Policy), (410) 786–9364.
Debbie Chaney (Data), (410) 786–8164.
Randy Throndset (Data), (410) 786–0131.

SUPPLEMENTARY INFORMATION: Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1059–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

Table of Contents

Regulations Text

In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL—Activities of Daily Living
BBA—Balanced Budget Act of 1997
COPs—Conditions of participation
DME—Durable medical equipment
FIs—Fiscal intermediaries
FFY—Federal fiscal year
FMR—Focused medical review
FY—Fiscal year
HHA—Home health agency
HIC—Health insurance claim
HHRGs—Home Health Resource Groups
IADL—Instrumental Activities of Daily Living
IPS—Interim payment system
LUPA—Low-utilization payment adjustment
MS—Medical social services
MSA—Metropolitan Statistical Area
NCSB—Neurological, cognitive, sensory, and behavioral variables
OASIS—Outcome and Assessment Information Set
OBQI—Outcome based quality improvement
OCESAA—Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999
OES—[U.S. Bureau of Labor Statistics] Occupational Employment Survey
OSCAR—On-line Survey and Certification System
OT—Occupational therapy
PEP—Partial episode payment
PPS—Prospective payment system
PT—Physical therapy
RHHI—Regional Home Health Intermediary
RUGs—Resource Utilization Groups
SCIC—Significant Change in Condition
SN—Skilled nursing service
SP—Speech-language pathology

I. Background

A. Current System for Payment of Home Health Agencies

The Balanced Budget Act of 1997 (Public Law 105–33) (BBA), enacted on August 5, 1997, significantly changed the way we pay for Medicare home health services. Until the implementation of a home health prospective payment system (PPS), home health agencies (HHAs) receive payment under a cost-based reimbursement system, referred to as the interim payment system and generally established by section 4602 of the BBA. The interim payment system imposes two sets of cost limits for HHAs. Section 4206(a) of the BBA reduced the home health per-visit cost limits from 112 percent of the mean labor-related and nonlabor per-visit costs for freestanding agencies to 105 percent of the median. In addition, HHA costs are subjected to an aggregate per-beneficiary cost limitation. For those providers with a 12-month cost reporting period ending in Federal fiscal year (FFY) 1994, the per-beneficiary cost limitation is based on a blend of costs (75 percent on 98 percent of the agency-specific costs and 25 percent on 98 percent of the standardized regional average of the costs for the agency's census region). For new providers and those providers without a 12-month cost-reporting period ending in FFY 1994, the per-beneficiary limitation is the national median of the per-beneficiary limits for HHAs. Under the interim payment system, HHAs are paid the lesser of (1) actual costs; (2) the per-visit limits; or (3) the per-beneficiary limits. Effective October 1, 1997, the interim payment system exists until prospective payment for HHAs is implemented.

On October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA), 1999 (Public Law 105–277) was signed into law. Section 5101 of OCESAA amended section 1861(v)(1)(L) of the Social Security Act (the Act) by providing for adjustments to the per-beneficiary and per-visit limitations for cost-reporting periods beginning on or after October 1, 1998. We had published a notice with comment period establishing the cost limitations for cost reporting periods beginning on or after October 1, 1998 in the **Federal Register** that was entitled ''Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998'' (HCFA–1035–NC) on August 11, 1998 (63 FR 42912). OCESAA made the following adjustments to these limitations:

Providers with a 12-month cost reporting period ending during FY 1994, whose per-beneficiary limitations were less than the national median, which is to be set at 100 percent for comparison purposes, will get their current per-beneficiary limitation plus ⅓ of the difference between their rate and the adjusted national median per-beneficiary limitation. New providers and providers without a 12-month cost-reporting period ending in FFR 1994 whose first cost-reporting period begins before October 1, 1998 will receive 100 percent of the national median per-beneficiary limitation.

New providers whose first cost-reporting periods begin during FFY 1999 will receive 75 percent of the national median per-beneficiary limitation as published in the August 11, 1998 notice. In the case of a new provider or a provider that did not have a 12-month cost-reporting period beginning during FFY 1994 that filed an application for HHA provider status before October 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate freestanding agency on or after that date, the per-beneficiary limitation will be set at 100 percent of the median. The per-visit limitation effective for cost-reporting periods beginning on or after October 1, 1998 is set at 106 percent of the median instead of 105 percent of the median, as previously required in the BBA.

There is contingency language for the home health PPS provided in the BBA that was also amended by section 5101 of OCESAA. If the Secretary for any reason does not establish and implement the PPS for home health services, the Secretary will provide for a reduction by 15 percent to the per-visit cost limits and per-beneficiary limits, as those limits would otherwise be in effect on September 30, 2000.

B. Requirements of the Balanced Budget Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 for the Development of a Prospective Payment System for Home Health Agencies

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services paid on a reasonable cost basis that will ultimately be based on units of payment by adding section 1895 to the Act entitled ''Prospective Payment For Home Health Services.''

Section 5101(c) of OCESAA amends section 1895(a) of the Act by removing the transition into the PPS by cost-reporting periods and requiring all HHAs to be paid under PPS effective upon the implementation date of the system. Section 1895(a) of the Act now states ''Notwithstanding section 1861(v),

the Secretary shall provide for portions of cost-reporting periods occurring on or after October 1, 2000, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section.''

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services. Under this system all services covered and paid for on a reasonable-cost basis under the Medicare home health benefit as of the date of enactment of the BBA, including medical supplies, will be paid on the basis of a prospective payment amount. The Secretary may provide for a transition of not longer than 4 years during which a portion of the prospective payment may be agency-specific as long as the blend does not exceed budget-neutrality targets.

Section 1895(b)(2) of the Act requires the Secretary in defining a prospective payment amount to consider an appropriate unit of service and the number, type, and duration of visits furnished within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

Section 1895(b)(3)(A)(i) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case mix and wage levels among HHAs.

Section 5101(c) of OCESAA modifies the effective date of the budget-neutrality targets for HHA PPS by amending section 1895(b)(3)(A)(ii) of the Act. Section 1895(b)(3)(A)(ii) of the Act, as amended, requires that the standard prospective payment limitation amounts be budget neutral to what would be expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000.

Section 5101(d)(2) of OCESAA also modifies the statutory provisions dealing with the home health market basket percentage increase. For fiscal years 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act, as so modified, require that the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change.

Section 1895(b)(3)(C) of the Act requires the Secretary to reduce the prospective payment amounts if the Secretary accounts for an addition or adjustment to the payment amount made in the case of outlier payments. The reduction must be in a proportion such that the aggregate reduction in the prospective payment amounts for the given period equals the aggregate increase in payments resulting from the application of outlier payments.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year cannot exceed 5 percent of total payments projected or estimated.

Section 1895(b)(6) of the Act provides for the proration of prospective payment amounts between the HHAs involved in the case of a patient electing to transfer or receive services from another HHA within the period covered by the prospective payment amount.

Section 1895(d) of the Act limits review of certain aspects of the HHA PPS. Specifically, there is no administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, of the following: the establishment of the transition period under 1895(b)(1) of the Act, the definition and application of payment units under section 1895(b)(2) of the Act, the computation of initial standard prospective amounts under 1895(b)(3)(A) of the Act (including the reduction described in section 1895(b)(3)(A)(ii) of the Act), the establishment of the adjustment for outliers under 1895(b)(3)(C) of the Act, the establishment of case-mix and area wage adjustments under 1895(b)(4) of the Act, and the establishment of any adjustments for outliers under 1895(b)(5) of the Act.

Section 4603(b) of the BBA amends section 1815(e)(2) of the Act by eliminating periodic interim payments for HHAs effective October 1, 2000.

Section 4603(c) of the BBA sets forth the following conforming amendments: Section 1814(b)(1) of the Act is amended to indicate that payments under Part A will also be made under section 1895 of the Act; section 1833(a)(2)(A) of the Act is amended to require that home health services, other than a covered osteoporosis drug, are paid under HHA PPS, and section 1833(a)(2) is amended by adding a new subparagraph (G) regarding payment of Part B services at section 1861(s)(10)(A) of the Act; and section 1842(b)(6)(F) is added to the Act and section 1832(a)(1) of the Act is amended to include a reference to section 1842(b)(6)(F), both governing the consolidated billing requirements.

Section 4603(d) of the BBA was amended by section 5101(c)(2) of OCESAA by changing the effective date language for the HHA PPS and the other changes made by section 4603 of the BBA. Section 4603(d) provided that: ''Except as otherwise provided, the amendments made by this section shall apply to portions of cost reporting periods occurring on or after October 1, 2000.'' This change requires all HHAs to be paid under HHA PPS effective October 1, 2000 regardless of the current cost-reporting period. This change is discussed in detail in section IV.H. of this regulation.

Section 4603(e) of the BBA sets forth the contingency language for HHA PPS. If the Secretary for any reason does not establish and implement HHA PPS on October 1, 2000, the per-visit cost limits and per-beneficiary limits under the interim payment system will be reduced by 15 percent.

C. Summary of the Research

The PPS described in the following sections is a culmination of substantial research efforts focusing on the areas of HHA payment and quality.

The Per-Visit Prospective Payment Demonstration

Description of the Demonstration

Under the per-visit demonstration, administered under a contract to Abt Associates, Inc., 47 agencies in California, Florida, Illinois, Massachusetts, and Texas were phased

into the project at the beginning of their fiscal years starting in October 1990 and continuing for 3 years. Of the 47 agencies, 26 were randomly assigned to be paid prospectively, and the remaining 21 were paid retrospectively, subject to the statutory limitations. The participating agencies were representative nationally in terms of their average costs per visit for each visit type and their patients' characteristics.

For the first year, prospective per-visit rates by type of visit (for example, skilled nursing or occupational therapy) were set for each demonstration agency based on the agency's cost for the year preceding its entry into the project and adjusted for inflation. If the base year cost used to set the rates exceeded the statutory cost limits, it was reduced to satisfy the limits. For the second and third years, the agency-specific rates were updated for inflation. The demonstration payment rates were adjusted annually for changes in agencies' volume. Payments were adjusted to share losses and profits with us.

The opportunity to earn a profit on visits was expected to motivate demonstration agencies to hold increases in cost per visit below the rate of increase in their payment per visit. It was expected that agencies would make a variety of changes to enhance efficiency and hold down both service-related and administrative costs. However, it was recognized that costs to the Medicare program could potentially increase under prospective rate setting, if agencies furnished more visits than they would have under cost reimbursement, or if agencies' efforts to lower costs also lowered quality of care and led to increased use of other Medicare services. It was the role of the evaluation contractor to study these and other potential consequences.

Evaluation of the Demonstration

We contracted with Mathematica Policy Research, Inc. to perform an independent evaluation of the demonstration. The objectives of the evaluation were to describe and assess the impacts on the Medicare program and its beneficiaries and to understand possible changes in agency decision making and operations as a result of the incentives of the new payment method.

Major data resources for the evaluation included Medicare claims, enrollment files, case studies, and site visits with participating providers, an annual mail survey of demonstration agencies, interviews with organizations involved in the demonstration (for example, fiscal intermediaries), provider cost reports, patient surveys, patient intake data collected by the providers, home health certification and plan of treatment forms (Form 485), and records of quality assurance reviews from the New England Research Institute, the demonstration's quality assurance contractor.

Several types of multivariate regression models were used to estimate treatment-control differences. For example, analysis of costs per visit and visit volume involved a comparison of cost reports during the 3 years of the demonstration and the 3 prior years. Using a regression procedure, the treatment group's change in average visit cost and average number of visits was compared to the control group's change. Impacts on visits per episode were estimated using episode-level data from claims, with separate analyses conducted for each demonstration year. Patient survey data and quality assurance reviews were among the sources for analyses of quality impacts, which controlled for potential confounding factors such as patient and agency characteristics.

Qualitative research to understand agency responses used case study methods. Twenty-two cases for study (11 treatment and 11 control agencies) were drawn from across the five States to represent the variation in a range of provider characteristics, such as auspices, size, and urban or rural location. The agencies were followed over most of the 3 years of the demonstration. Data were collected through site visit and telephone interviews, as well as from cost reports and a mail survey of agencies. The case studies focused on several key aspects of demonstration operations, such as strategic planning, clinical costs, administrative costs, relations between the agencies and administrative organizations, and perceptions about a national program of prospective payment.

Evaluation Results

Cost

The per-visit PPS did not result in more cost control, nor did it induce excessive volume. There were no statistically significant differences between treatment and control agencies in the change in average cost per visit, regardless of type of visit. For example, the cost per skilled nursing visit for treatment agencies increased from an average of about $81 to about $92 between the predemonstration and demonstration periods. Control agencies' average costs grew by a similar amount. A related analysis found that a subgroup of agencies—freestanding agencies with a large proportion of Medicare visits—exhibited treatment-control differences in profits and ability to control cost increases. Their greater success in generating profits and in holding down Medicare cost increases suggested that HHAs can be induced to control costs. Nonetheless, this possible demonstration effect was too small to produce a difference in impacts for the sample as a whole.

Utilization

The analysis of volume suggested no impact from prospective rate setting. Average total visits for the two groups grew at similar rates between the base year and the end of the demonstration—21.3 percent per year for the treatment group and 23.6 percent per year for the control group. Visit growth for three specific types of visits (skilled nursing, aide, and physical therapy) was statistically equal for the two groups as well. Small sample sizes prevented reliable estimation for the remaining three visit types.

Treatment group agencies did not differentially increase the number of visits per episode. They provided slightly fewer physical therapy visits per episode, a result that is inconsistent with the incentives to increase visits under visit-based rate setting and may not have been a result of the demonstration. The duration of episodes did not differ between treatment and control agencies, although the length of aide visits was significantly shorter for treatment agencies. However, the evaluators concluded this was probably not due to the prospective payment, and this finding was not supported by data from other evaluation sources. The demonstration had no effects on patients' use of other Medicare-covered services, such as hospital care or physicians' visits. Finally, per-visit PPS did not appear to affect patients' use of non-Medicare services or on the amount of informal care received.

Quality and Access

The evidence suggested that quality of care was unaffected by per-visit prospective payment. Analyses of quality assurance data uncovered no impacts. Access-related provider behavior—such as agencies becoming more selective about the patients they accepted—was unaffected. For example, treatment and control group patients differed significantly in all 3 years on only two of the many patient characteristics at admission—clinical stability and pre-admission location. There were no significant differences in the proportion of admissions with

characteristics suggesting a need for long visits.

Qualitative Findings

The first year of the demonstration was a time of transition, during which participants were adjusting to demonstration operations, which included collection of special patient-intake data and use of a single fiscal intermediary. Agencies reported that these adjustments imposed costs that limited their ability to reduce overall costs. The environment of the first year was one of change and competition, which continually compelled providers to assess their services and service areas, payment sources, and marketing activities. For many providers, it was also a time of large volume growth and an increasing proportion of more acutely ill patients. Agencies were continuing to seek efficiency measures, as they had before the demonstration. The evaluators did not observe any effect of the demonstration itself on such clinical activities as referral procedures, intake procedures, assessment and care planning, and quality assurance procedures. Relations with the fiscal intermediary were generally smooth, although some problems needed resolution, particularly during the early months.

By the third year of the demonstration, it was clear that the incentives introduced by the switch to visit-based prospective payment did not dramatically alter the overall environment of treatment agencies relative to controls. This outcome seemed attributable to background conditions deriving from Medicare program cost limits and allowable cost determinations. In addition, the combined effects of competition in the industry and cost control policies in other health sectors created a climate in which agencies, both treatment and control, felt pressures to produce services efficiently. Yet most identified little that could be done to reduce their costs. The evaluators concluded that the prospective payment incentive may have been responsible for some slight additional attention to cost cutting. Specific examples included more attention to efficiency and profitability in the strategic plans of treatment as compared to control agencies, more branch offices opened by treatment than control agencies, more use of computers by treatment than control agencies, and higher productivity expectations for staff of treatment compared to control agencies.

Summary of Results

The evaluation findings overall suggested that prospective per-visit rates are unlikely to generate sizable cost savings for the Medicare program. Agencies appeared to respond modestly to this incentive to be more efficient. Due to the limited size of the project, the evaluators had little opportunity to assess whether prospective rate setting worked better for certain types of agencies. Nevertheless, the demonstration suggested that agencies can make some changes to slow the rate of increase in costs per visit.

The Per-Episode Prospective Payment Demonstration Description of the Demonstration

The per-episode PPS demonstration, administered under a contract to Abt Associates, Inc., began in June 1995. The demonstration was scheduled to terminate by December 1998. At the participating agencies' request, the demonstration has been extended pending the implementation of a national, episode-based PPS. However, as originally planned, the collection of evaluation data terminated at year-end 1998.

Ninety-one agencies from five sites—California, Florida, Illinois, Massachusetts, and Texas—were randomly assigned to either the treatment group (PPS payment, 48 agencies) or the control group (conventional cost-based reimbursement, 43 agencies). The agencies phased into the demonstration at the beginning of their 1996 fiscal year.

The payments received by the treatment group agencies for the first 120 days of an episode are based on each agency's own costs in the fiscal year immediately preceding its entry into the demonstration, updated for inflation and adjusted for changes in its case mix. While each agency is ''at risk'' during the first 120 days after admission for all home health visits the patient needs, we reimburse treatment agencies for up to 99 percent of fiscal-year losses, up to the statutory payment limits. Profits in excess of the specified statutory limits are shared with us. For visits occurring after the initial 120 days, agencies are reimbursed using prospective per-visit rates.

Episodes are defined by gaps of at least 45 days in the receipt of Medicare home health care. Only after the 120-day payment period and a 45-day gap in services could an agency receive a new episode-based payment for a given Medicare beneficiary.

Treatment agencies can reduce the cost of care they furnish during the 120-day payment period by reducing visits, changing the mix of visits to make less costly visits a larger proportion of visits, reducing per-visit costs, or some combination of all three. The cost-reducing activities raise the possibility that quality of care might deteriorate under episode-based payment. Quality reduction could occur through several cost-saving mechanisms, such as inadequate provision of expensive therapeutic services, excessive reductions in visit frequency, or excessive shortening of visits.

Evaluation of the Demonstration

We contracted with Mathematica Policy Research, Inc. to evaluate the episode-based demonstration. As with the visit-based demonstration evaluation, this project sought to answer policy questions on two main issues: program impacts and agency decisions and operations. The program evaluation addresses impacts on home health utilization, other Medicare services utilization, non-Medicare services utilization, quality and access, and cost. The analysis of agency decisions and operations seeks to provide useful insights for the implementation of a national program of episode-based prospective payment.

We also contracted with the Center for Health Policy Research at the University of Colorado to perform quality assurance monitoring. All agencies participating in the demonstration are required to collect patient status data at the start of care, at discharge, at 120 days after admission if the patient is still on service, at admission to an inpatient facility for 48 hours or more, and upon resumption of care after an inpatient stay. Outcomes are reported at the agency level. Based on outcome report findings, agencies are requested to engage in follow-up activities to investigate processes of care, and specific agencies are selected for an additional process of care review. In addition to outcome monitoring for individual agencies, the quality assurance project reports on patterns of outcomes for treatment and control agencies.

The evaluation results to date are based largely on data from the first year of the demonstration. Most of the analyses are based on approximately 51,000 home health episodes from 85 of the demonstration agencies (6 dropped out or had inadequate data). All admissions occurring between an agency's start date (beginning of its 1996 fiscal year) and August 1996 are included. Medicare claims files provided data on the outcomes variables describing the use of services. Claims

data were supplemented with data from the quality assurance contractor for the analyses of quality impacts. Claims data and cost report data were used to research the impact of the demonstration on agency costs. Data from a survey of patients conducted during the second and third demonstration years were the basis for a study of utilization of non-Medicare services and selected quality outcomes.

For most statistical analyses, regression models were used to estimate treatment-control differences. Use of regression analysis permits the isolation of PPS effects from other potential causes of treatment-control differences, such as a difference in the proportion of agencies affiliated with a hospital. Data collected at admission for case-mix adjustment and from prior Medicare claims histories provided measures of pre-admission patient characteristics that were used to account for potential pre-existing treatment-control differences in patient populations. Other control variables were obtained from agency cost reports and the demonstration contractor.

A qualitative research component of the evaluation is based on case study methods. For a judgmental sample of 67 demonstration agencies, primary data were collected during site visits early in the demonstration and supplemented by agency documents. Freestanding agencies (56) predominated in the sample. About half of the freestanding agencies were for-profit, and half were voluntary or private nonprofit organizations (primarily visiting nurse associations). Administrative data on these agencies came from our provider files. The researchers also conducted telephone interviews with representatives of the demonstration contractor and fiscal intermediaries.

Interim Evaluation Results

Cost

On average, episode prospective payment reduced the cost per episode by $419, or 13 percent. This appears to have resulted from the combined effects of fewer visits and higher average cost per visit, compared to agencies not paid prospectively. For treatment agencies, the rising cost per visit would have increased the cost per episode by $377, whereas decreases in visits per episode would have reduced the cost per episode by $656, for a net decline of $280. For control agencies, a relatively small increase in cost per episode ($139, or about 4 percent) was due almost entirely to increases in costs per visit. Because treatment agencies' costs declined by $280 per episode instead of rising by $139, the overall effect of prospective payment was $419.

The impact on cost per episode was similar across different types of agencies, except that small agencies (less than 30,000 visits in the base year) exhibited a significantly smaller effect than large agencies. Small agencies failed to decrease their cost per episode in the first demonstration year, evidently because they added to their cost per visit more, and lowered their number of visits less, than larger treatment agencies. This response may be due in part to more pronounced economies of scale among small agencies, with the result that they incur relatively high cost increases as volume declines.

Utilization

Based on first-year findings, per-episode PPS appears to have a substantial impact on the amount of services delivered during the 120-day payment period. Few other impacts on the pattern of service delivery were observed. The number of visits in a 120-day risk period was 17 percent lower for patients in treatment agencies compared to controls. Treatment agencies delivered an average of 37 visits, compared to an average of 45 for control agencies. This difference was primarily due to fewer skilled nurse visits, home health aide visits, and medical social worker visits. Episode prospective payment reduced the average length of episodes (within the first 120 days) by about 15 percent. About 25 percent of stays exceeded 120 days under prospective payment, compared to about 35 percent without prospective payment.

Except for occupational therapy, the proportion of patients receiving care in each home health discipline changed little under episode payment. The one-third reduction in the user rate for occupational therapy (to about 8 percent of patients) may be due to fewer patients receiving assessment visits from occupational therapists. Prospective payment appeared to have no effect on the proportion of visits per episode accounted for by any particular home health discipline.

These findings generally applied to agencies regardless of size, nonprofit status, affiliation status (hospital or freestanding), or use pattern (that is, whether the agency provided more or less than the average number of visits during a base year, given its case mix). One exception to this rule was that the reduction in total visits was significantly greater for agencies with a high-use practice pattern than for agencies with a low-use practice pattern.

The reduction in visits does not lead to compensating utilization in other parts of the health care system. The analysis of utilization and reimbursement for other Medicare-covered services during the 120-day payment period found that prospective payment did not affect the use of reimbursement for these services. This suggests that a reduction in home health utilization at the level observed under the demonstration does not adversely affect care quality or shift costs to services in other settings (acute care hospitals, emergency rooms, skilled nursing facilities, other HHAs, and outpatient hospital departments). Questions on the patient survey addressed ''spillover effects'' on certain non-Medicare services. Prospective payment was associated with a lower likelihood of admission to an assisted living facility. It may have reduced the likelihood of admission to a nursing home. It did not affect the likelihood of receipt of nonresidential services, such as personal care aide and adult day care. Nor did it affect the likelihood of receipt of care from relatives or friends.

Quality

The interim analysis of quality impacts found few differences in patient outcomes between treatment and control agencies, and when differences were found they were small. The three basic sources of quality evaluation data to date are claims, the patient survey, and patient assessment data.

Analysis of claims data indicated that episode PPS patients have significantly lower emergency room use. There were no significant differences due to episode PPS in any other outcomes studied from the claims data, including institutional admissions for a diagnosis related to the home health diagnosis, and mortality.

Results from the patient survey on client satisfaction suggested that both treatment and control group clients were generally satisfied. On three specific components of satisfaction with agency staff, treatment-group clients were found to be somewhat less satisfied than control group clients, although satisfaction levels were quite high in both groups. Measures of health and functional outcomes from the survey offered equivocal evidence for small negative effects of prospective payment in a few of the functional outcomes. Those results are preliminary and will require further study.

Measures constructed from the patient status assessments at the start of care and at discharge or follow-up consist of indicators of improvement or

stabilization for 17 outcomes, such as improvement in pain or ambulation. Results from these data source are provisional, in part because differences in the timing of quality outcome data collection between the treatment and control groups could cause unreliable comparisons. As noted earlier, treatment agency patients tend to be discharged sooner. Their outcome measurements may reflect less improvement because of the earlier average observation point.

The comparisons demonstrated one significant difference suggesting improvement in measures of confusion was more likely among treatment agencies. There were also two differences in the stabilization indicators, one favoring the treatment group and one the control group; however, both differences were small. Analysis of the assessment data by the quality assurance contractor using different methods suggested no consistent evidence that per-episode payment under the demonstration improves or harms patient outcomes. Several separate analyses conducted by the contractor revealed a mix of small impacts, some favoring the treatment group and others favoring the control group. A recent analysis of the second year of the demonstration did not show any statistically significant differences between treatment and control agencies. See Center for Health Policy Research, Executive Summary of Quality Assurance Activities and Findings to Date, December 1998.

Qualitative Findings

The qualitative evaluation results to date come from the case study activities conducted early in the demonstration. Almost all of the case study agencies, which included both PPS agencies and controls, had taken steps to reduce their per-visit costs in the 3 years before the site visits. They had done so primarily to make themselves more attractive to managed care organizations from whom they were seeking contracts. Strategies to cut costs varied. About half of the agencies sought to reduce administrative costs (for example, through consolidating functions or positions) or to stabilize them while growing their volume. About one agency in five reduced per-visit costs by making technology investments, such as portable computers for home health workers. In addition, about one in six took an approach such as using lower-cost staff for intake, scheduling and record keeping; introduction of productivity standards and controls on overtime hours; moving away from hourly or salary payment of staff to per-visit payment; reducing travel costs by restructuring staffing of geographic areas or improving scheduling programs to reduce mileage; and reducing supply costs, through, for example, centralized purchasing.

Half of the visited treatment agencies reported plans for specific initiatives to reduce per-episode costs spurred by their participation in the demonstration project. These initiatives included closer supervision of utilization through such measures as better review of the initial plan of treatment and requiring special justification for any visits beyond those originally approved; use of care protocols for patients with selected diagnoses; greater reliance on community services or informal caregivers; replacement of some visits by telephone contacts; speeding up patient education in self-care; eliminating multiple visits in a day; making greater use of specialists such as dietitians and wound healing experts; focusing on patient rehabilitation or environmental modifications to reduce patient need for personal care; and use of multidosing pumps for intravenous therapy patients, so that patients and caregivers can administer a larger proportion of therapy treatments without assistance.

From their case studies conducted early in the demonstration, the evaluators concluded that treatment agencies did not change their behavior in ways that threatened access or quality of care. They did not change referral and patient admission practices to avoid costly patients or recruit lower-care ones. Many agencies were struggling to maintain a stream of referrals. They were not in a position to shun referral sources, and they did not do so. Some of the strategies being planned seemed likely to improve care quality, such as strategies to achieve quicker patient independence. For certain other strategies, the long-term consequences might be variable. For example, the success of greater reliance on informal caregivers and community resources would depend on the adequacy of these auxiliary resources.

Remaining Evaluation Activities

The evaluation of the second year of the demonstration is expected to be completed by fall 1999. A draft report that includes analysis of utilization effects beyond the first 120 days has been received and is under review. The findings are consistent with the initial results reported earlier: Episode prospective payment reduced the average number of visits to a patient in the year following admission to home health care by 24 percent compared to the levels under cost-based reimbursement. Reductions in services occurred both during and after the 120-day period covered by the episode payment, and they were of a similar proportion for each service type. Prospectively paid agencies achieved these reductions by shortening the overall length of service and by lowering the frequency of visits provided. Reductions occurred among all subgroups of agencies and patients investigated, and they were stable between the first and second years of the demonstration.

Subsequent reports will evaluate the consequences of these service reductions on patient health and access, non-home health expenditures, and other outcomes. These reports will include results from a follow-up patient survey at 8 months from admission that will address impacts on quality of care and use of non-Medicare health services over a longer term than did the first survey. There will be further case study results on agency response to the demonstration and an extension of previous work on cost impacts to include an analysis of agencies' financial performance. Finally, supplementary analyses will consider the representativeness of the demonstration sample and the patient selection behavior of agencies.

Case-Mix Research

Case-mix adjustment is a prerequisite for an effective national home health PPS. With a prospectively set payment unit, providers have an incentive to seek profits by economizing on patient care during the covered period. For example, providers can try to economize by admitting patients with lower care needs, or by furnishing fewer and lower-quality services. Case-mix adjustment seeks to counteract this incentive by modifying the prospective payments according to patient need for services. To administer the case-mix adjustment system, patients are evaluated and then classified into groups with differing expected need. Varying payments for the groups will reduce provider incentives to economize inappropriately. Case-mix adjusted payments are intended to produce appropriate compensation for providers while retaining opportunities to manage care efficiently.

Background of the Case-Mix Project

In the late 1980s, the Secretary funded several empirical studies that sought to increase understanding of the major issues facing PPS designers, particularly the factors that define case mix. As reported in the 1989 Report to Congress, studies investigating case-mix issues

were necessary because methodologies at that time were insufficiently tested on a large scale with Medicare patients. A sizable, comprehensive Medicare database was considered necessary to test existing methodologies and possibly develop new ones.

We assembled this data resource under a cooperative agreement with the Georgetown University School of Nursing (Virginia K. Saba, ''Develop and Demonstrate a Method for Classifying Home Health Patients to Predict Resource Requirements and to Measure Outcomes, Georgetown University School of Nursing, February 1991). Subsequent attempts to test existing case-mix methodologies using the Georgetown data suggested that indicators of home health treatments could play a substantial role in case-mix adjusters of acceptable predictive accuracy. Examples of treatment measures include indicators for specific skilled nursing activities, such as teaching diabetic care and infusion care, and physical, occupational, and speech therapy. Two basic case-mix adjustment methodologies tested with these data demonstrated comparable accuracy for the purposes of paying providers prospectively (Brown, Randall S., Barbara R. Phillips, and Valarie E. Cheh, *et al.* ''Case Mix Analysis Using Georgetown Data: Home Health Prospective Payment Demonstration.'' Princeton, NJ: Mathematica Policy Research, Inc., November 25, 1991). These two approaches were a regression-based approach and a classification-method approach that uses computer algorithms to find groups of similar patients.

Although case-mix research on the Georgetown data and other smaller-scale data sets demonstrated progress in testing and developing case-mix methodologies, a significant concern lingered. Research had demonstrated the explanatory power of treatment information, but treatments are not necessarily a suitable basis for payment. Treatment planning and execution is subject to some discretion on the part of the provider. This means a case-mix system predicated on treatments planned or delivered may be vulnerable to manipulation for profit maximization.

In the early 1990s, the per-visit prospective payment demonstration provided another relatively large source of data to continue case-mix adjuster development. The database was not as varied as the Georgetown database, but it was sizable, containing 11,000 cases. The expendability of possibly manipulable treatment variables was specifically addressed in the Georgetown research. This demonstration tested the impact of using less treatment information with the best methodologies. When measures of treatments considered highly or moderately vulnerable to provider manipulation were dropped from the study's case-mix adjuster, the predictive accuracy of the adjuster was poor. The researchers recommended that in future research we study additional patient characteristics data needed to make up for the loss of explanatory power from the treatments (Phillips, Barbara R., Randall S. Brown, Jennifer L. Schore, Amy C. Klein, Peter Z. Schochet, Jerrold W. Hill, and Dexter Chu. ''Case-Mix Analysis Using Demonstration Data: Home Health Prospective Payment Demonstration.'' Princeton, NJ: Mathematica Policy Research, Inc., December 21, 1992; and Phillips, Barbara R. ''Improving the Accuracy of Case-Mix Adjusters for Per-episode Home Health Prospective Payment: Measures of Alternative Sources of Care and Patient and Caregiver Characteristics.'' Draft Report. Princeton, NJ: Mathematica Policy Research, Inc., April 27, 1995).

By 1994, we had launched a comprehensive review of home health care policies called the Medicare Home Health Initiative. One result was a recommendation to revise the HHA conditions of participation (COP). The revision would require a standard assessment instrument to be used in a program of continuous quality improvement. We subsequently adopted a comprehensive list of specific patient assessment elements to implement this quality improvement system (final regulations were published January 25, 1999 (64 FR 3747 and 64 FR 3764)). Known as the Outcome and Assessment Information Set (OASIS), these elements cover patient demographics and health history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs), medications, equipment management, emergent care use, and discharge disposition. OASIS offers a fairly detailed examination of the patient's condition. Importantly, if OASIS elements could be the basis for a case-mix adjuster as well as continuous quality improvement, we could implement home health payment and quality reforms while minimizing data burdens on providers.

Case-Mix Research Project for a National Home Health PPS

In 1996, in anticipation of the Medicare program's eventual adoption of OASIS assessment data, we began research with a sample of 90 HHAs to develop a case-mix adjustment system for use under a future national prospective payment for home health care. The project was conducted under contract to Abt Associates, Inc., of Cambridge, Mass. (Contract Number 500–96–0003/TO2). The purpose of this project was to develop a case-mix adjuster based on OASIS assessment elements and, potentially, on additional assessment items that could enhance the case-mix adjuster's predictive accuracy. To assure its relevancy to Medicare's needs, the project collected data on a large cohort of Medicare patients admitted to a broad sample of Medicare-certified HHAs in late 1997 and early 1998. An important feature of the Abt Associates research is the use of improved measurement methods compared to previous studies. Improvements in measurement for the dependent variable, resource costs, and for the explanatory variables of patient characteristics allow the system's developers to reach a clearer understanding of the contribution of individual items to case-mix measurement. This leads to improved predictive accuracy for the case-mix groups.

Another important feature of the Abt Associates project is its objective of developing easily understandable patient case-mix groupings. We sought a system of groups that uses recognizable clinical categories and adheres to clinicians' logic as they assess a patient's care needs.

The case-mix system resulting from the Abt Associates project was developed from statistical analysis, review of the literature, and consultation with home health clinicians. Government policy and research experts helped with the development process to ensure the administrative feasibility and policy relevance of the final product.

The system is a straightforward method of combining 20 data elements to measure case mix. The data elements measure three basic dimensions of case mix: clinical severity factors, functional status factors, and service utilization factors. Each possible value for each data element used in a dimension is given a score. Scores were developed through statistical analysis of the agencies' data. Within each dimension, scores on assessment items are summed, and the resulting summation is used to

assign a patient to a severity level on the given dimension. The case-mix system defines a set of 80 groups from all possible combinations of severity levels across the three dimensions.

The process of defining a structure for the case-mix system, and of selecting items for the dimensions, is described in detail in Abt Associates, Second Interim Report, August 1999. The process of selecting items for the three case-mix dimensions employed not only statistical criteria for predictive accuracy, but also qualitative criteria relating to policy objectives, incentives to provide good care, susceptibility to gaming, apparent item subjectivity, and administrative feasibility. Further discussion of the item selection process is provided below in section II.C.

The first case-mix system dimension is the clinical severity dimension. It is measured by OASIS items pertaining to the following clinical conditions and risk factors: diagnoses involving orthopedic, neurological, or diabetic conditions; therapies used at home (that is, intravenous therapy or infusion therapy, parenteral and enteral nutrition); vision status; pain frequency; status of pressure ulcers, stasis ulcers, and surgical wounds; dyspnea; urinary and bowel incontinence; bowel ostomy; and cognitive/behavioral problems such as impaired decisionmaking and hallucinations. This dimension captures significant indicators of clinical need from several OASIS subdomains, including patient history, sensory status, integumentary status, respiratory status, elimination status, and neuro/emotional/behavioral status.

The second case-mix dimension is the functional status dimension, comprised of six Activities of Daily Living: upper and lower body dressing, bathing, toileting, transferring, and locomotion. These items come from the ADL/IADL subdomain of the OASIS assessment instrument.

The third case-mix dimension is the services utilization dimension. This dimension is measured via two basic kinds of data elements. The first describes the patient's pre-admission location in the 14 days preceding admission to home care. The pre-admission location is recognized among clinicians and in the literature as an indicator for the amount and type of care likely to be needed by a patient. It comes from the patient history subdomain of OASIS. The second is a utilization variable from the period of the home health episode itself. This variable is receipt of home health therapies totaling at least 8 hours. The data for this variable will come from the HHA's billing records. Ideally, the case-mix system should rely on data elements that do not depend on treatments planned or received; however, the case-mix research project found that a measure of therapy received is extremely powerful in explaining resource use, even after all other predictive patient characteristics are used in the system. Consequently, we decided to incorporate a measure of therapy. It is adopted under a definition designed to minimize its vulnerability to provider manipulation. A patient must need and use at least 8 hours of home health therapies to be assigned to a therapy case-mix group. In the Abt Associates sample, a minority of therapy users receive at least 8 hours of therapy. It is probable that many of the remaining therapy users received relatively little therapy beyond services from therapists for evaluation purposes. The therapy receipt definition in the case-mix system is intended to preserve access to therapy for patients with significant therapy needs. Patients receiving relatively little therapy or those with therapy use limited to evaluation services with or without a small amount of therapy are included in nontherapy groups. Their relative resource cost is accounted for in those groups.

For each dimension, additional measures of patient characteristics or utilization were considered and tested before arriving at the final set of data elements in the recommended model. The proposed set of data elements is our best recommendation after an intensive process of subjecting the items to statistical analysis, policy criteria, criteria pertaining to clinical care incentives and gaming vulnerability that might be introduced, reliability-related criteria, and administrative feasibility considerations.

The recommended case-mix system performs well in terms of overall predictive accuracy. It explains 32 percent of the variation in resource use over a 60-day episode. The 60-day episodes available for case-mix system development from the Abt Associates research sample pertained to the first 60 days from admission. However, a sizable number of observations was assembled from the study sample to evaluate the explanatory power for the subsequent 60-day period of care. From data available to the case-mix project to date, we find that the explanatory power of the groups is similar regardless of whether the episode is the patient's first 60 days or the subsequent 60 days following the start of care. The presence of certain data elements in the case-mix adjustment model may help explain the statistical finding suggesting that the case-mix model is inherently self-adjusting to changes in patient characteristics that drive resource use over a sequence of 60-day episodes. Examples comprise the preadmission location variable, the functional status elements, the therapy receipt variable, and the ulcers/wound status variables. As the accumulating data permit, we will continue to test the model's explanatory power on later 60-day units.

The data and methods of the case-mix development project are described in further detail in sections II.A.2 and II.C below and in Abt Associates, Inc., Second Interim Report, August 1999. Comments on specific issues of model design and implementation are being solicited as noted in section II.C.

D. Home Health Agency Prospective Payment—Overview

1. Payment Provisions—National Episode Payment Rate

a. Episode Definition

The PPS will apply to all home health services furnished by all HHAs participating in the Medicare program. Section 4603(a) of the BBA adds section 1895(b)(1) to the Act. Section 1895(b)(1) requires all services covered and paid on a reasonable cost basis under the Medicare home health benefit as of the date of the enactment of the BBA, including medical supplies, to be paid on the basis of a prospective payment amount under HHA PPS. Durable medical equipment (DME) is a covered home health service that is not currently paid on a reasonable cost basis, but paid on a fee schedule basis when covered as a home health service under the Medicare home health benefit. Under HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. Thus, a separate additional payment amount based on the DME fee schedule in addition to the prospective payment amount for home health services will be made for DME covered as a home health service under PPS.

In compliance with section 1895(b)(2) of the Act, requiring the Secretary to determine the unit of payment under PPS, we have analyzed the number, type, duration, and costs of visits furnished within the proposed episode payment. In addition, we will discuss the general system design that provides for continued access to quality services in section IV.J. of this regulation.

Preliminary results from the Phase II per-episode HHA PPS demonstration have provided information regarding how length of episodes are affected by prospective payments and how analysis

from the National Claims History File can show the existing use and length of service. Preliminary results from the Phase II per-episode PPS demonstration indicate that about 60 percent of episodes paid under PPS were completed within 60 days and 73 percent within 120 days. These episode completion rates are about 5 to 10 percentage points higher than rates for the control group under the demonstration. These findings indicate that PPS should result in shorter average length of episodes.

We also conducted analysis on an episode database created from the 1997 National Claims History File using 60-day episodes. Data from the 1997 national claims history suggest that the proportions completing their episodes in the first and second month are slightly lower than the proportions for the PPS demonstration control group. We interpret the demonstration findings to indicate that national PPS should use shorter average episodes. From the 1997 national claims history, we find at the end of a full year, 20 percent of home health beneficiaries have not yet completed their episodes. This indicates the need to provide continuing episode payments to capture the long-stay home health patient under PPS since the volume of long-stay cases exceeds the capacity of an outlier policy.

60-Day National Episode Payment

Recognizing that OASIS data will be captured on a 60-day cycle and current Medicare plan of care certification requirements govern a bimonthly period of time, we are proposing a 60-day episode as the basic unit of payment for the HHA PPS. We are proposing that a new 60-day episode begins with the first Medicare billable visit as day 1 and ends on and includes the 60th day from the start-of-care date. The next continuous episode recertification period would begin on day 61 and end on and include day 120. We are proposing the requirement that the 60-day episode payment covers one individual for 60 days of care regardless of the number of days of care actually furnished during the 60-day period unless there is one of the following intervening events during the 60-day episode: (1) A beneficiary elected transfer; (2) a discharge resulting from the beneficiary reaching the treatment goals in the original plan of care (not defined as a significant change in condition during an existing plan of care) and return to the same HHA; or (3) a significant change in condition resulting in a new case-mix assignment. The significant change in condition is a change not anticipated in the original plan of care or as part of the expected course of the patient's response to treatment. The significant change in condition must be sufficient to require a new OASIS assessment and thus, resulting in a change in the case-mix assignment.

The intervening event defined above as (1) a beneficiary elected transfer or (2) a discharge and return to the same HHA during a 60-day episode, starts a new 60-day episode for purposes of payment, OASIS assessment, and physician certification of the plan of care. The original 60-day episode payment is proportionally adjusted to reflect the actual length of time the beneficiary remained under the agency's care prior to the intervening event of the beneficiary elected transfer or the discharge and return to the same HHA during the 60-day episode. The proportional payment adjustment that closes the original 60-day episode payment is called the partial episode payment adjustment or PEP adjustment. We are proposing the PEP adjustment to the original 60-day episode payment in order to equitably recognize the intervening events of a beneficiary elected transfer or a discharge and return to the same HHA over the course of a 60-day episode of home health care.

Since we are proposing to close out the initial episode payment with a PEP adjustment and restart the 60-day episode clock under an existing episode due to a beneficiary elected transfer, we are concerned that these transfer situations could be subject to manipulation. Therefore, we are proposing not to apply the PEP adjustment in the situation of transfers between organizations of common ownership. A determination of whether an individual (or individuals) or organization possesses significant ownership or equity in the provider organization and the supplying organization, in order to consider if the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the provider organization or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity of interest will be determined by reference to the interest in the assets of the organization. In the situation of a transfer among organizations of common ownership, we are proposing that the HHAs under common ownership look to the initial HHA for payment. Therefore, PEP adjustment would not apply in situations of transfers among HHAs under common ownership.

The discharge and return to the same HHA during the 60-day episode period is only recognized when a beneficiary has reached all treatment goals in the original plan of care for the 60-day episode. The original plan of care must be terminated with no anticipated need for additional home health services for the balance of the 60-day period. The discharge cannot be a result of a significant change in condition. In order for the situation to be defined as a PEP adjustment due to discharge and return to the same HHA during the 60-day episode, the discharge must be a termination of the complete course of treatment in the original plan of care. We would not recognize any PEP adjustment in an attempt to circumvent the more conservative payment made under the significant change in condition payment adjustment discussed below.

If a patient experiences an intervening hospital stay during an existing 60-day episode under an open plan of care, then the patient would not have met all of the treatment goals in the plan of care. Therefore, the intervening hospital admission during an existing 60-day episode could result in a SCIC adjustment, but could not be considered a discharge and return to the same HHA PEP adjustment.

The PEP adjustment is based on the span of days including the start of care date (first billable service date through and including the last billable service date) under the original plan of care prior to the intervening event. The PEP adjustment is calculated using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case mix and wage adjusted 60-day episode payment. For example, a patient is assigned to a 60-day episode payment of $3000. Day 1 through Day 30 the patient is served by HHA–1. Day 1 is the first billable service date and Day 30 is the last billable service provided by HHA–1 under the original plan of care. The beneficiary elects to transfer to HHA–2 on Day 35. The first ordered service for the beneficiary under the new plan of care is Day 38. Day 38 starts a new 60-day episode clock for purposes of payment, OASIS assessment, and physician certification of the plan of care. Day 38 becomes Day 1 of the new 60-day episode. The final payment to HHA–1 is proportionally adjusted to reflect the length of time the beneficiary remained under its care. HHA–1 would receive a PEP adjustment equal to 30/60

* $3000 = $1500. The initial percentage payment will be adjusted accordingly to reflect the PEP adjustment. Several illustrative PEP adjustment examples are provided in section IV. of this regulation. An HHA may also receive a low-utilization payment adjustment instead of the PEP adjustment described in this section of the regulation or an outlier payment in addition to the PEP adjustment described in section IV. of this regulation.

We are proposing the requirement that the 60-day episode payment covers the individual for 60 days of care unless one of three intervening events occurs. The PEP adjustment described above encompasses the two intervening events defined as a beneficiary elected transfer or a discharge and return to the same HHA over the course of a 60-day episode of home health care. We are proposing that the third intervening during a 60-day episode of home health care that could trigger a change in payment level would be a significant change in the patient's condition. We are proposing the significant change in condition payment adjustment (SCIC adjustment) to be the proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of SCIC payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in treatment approach in the patient's plan of care.

The SCIC adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *prior* to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) before the patient's significant change in condition (defined below) as a proportion of 60 multiplied by the original episode payment amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case mix assignment for payment at the end of the 60-day episode.

The second part of the SCIC adjustment reflects the time the patient is under the care of the HHA after the patient experienced the significant change in condition during the 60-day episode that warranted the new case mix assignment for payment purposes. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end of the 60-day episode. Once the HHA completes the OASIS, obtains the necessary physician change orders reflecting the need for a new course of treatment in the plan of care, and assigns a new case mix level for payment, the second part of the SCIC adjustment begins. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or (LUPA) discussed below) determined at the final billing for the 60-day episode. Illustrative examples are provided in section IV.J.4. of this proposed rule.

As discussed above, we are concentrating additional monitoring resources on the events that would trigger the PEP adjustment and SCIC adjustment. We are also planning to analyze the data from the demonstration sites to determine the frequency of a (1) beneficiary elected transfer, (2) discharge and return to the same HHA during the 60-day episode, or (3) significant change in condition, in order to establish a baseline of information to determine how frequently these events occur prior to PPS. Based on this information we will establish a baseline, identify agencies which differ significantly from it, and concentrate monitoring resources on those agencies.

In order to address the needs of longer stay patients, at this time we are proposing not to limit the number of 60-day episode recertifications in a given fiscal year. There is the potential for unlimited consecutive episodes. Recertification of and payment for consecutive 60-day episodes is, of course, dependent on OASIS assessment and the patient's eligibility for continued medically necessary Medicare home health services. We believe the consecutive 60-day episode recertification and payment will ensure continued access to the Medicare home health benefit without exceeding the statutory budget-neutrality targets.

We believe the 60-day episode provides an appropriate time frame for purposes of prospective payment for many reasons. The 60-day episode period is the basic time frame under which HHAs have historically been required to manage and project home health care needs of beneficiaries in order to comply with current plan of care certification requirements for Medicare home health plans of care. The 60-day episode period also basically matches the reassessment schedule for OASIS, and this parallel time frame will permit case-mix adjustment of each episode. Further, the 60-day episode captures the majority of stays experienced in the Phase II per-episode HHA PPS demonstration.

As discussed above, about 60 percent of the Phase II per-episode HHA/PPS demonstration patients completed their episodes within 60 days. If capturing a majority of the patients is one criterion for the episode length, we now have evidence from the Phase II per-episode PPS demonstration that a 60-day episode will do so. A 120-day episode, as tested in the Phase II per-episode HHA/PPS demonstration, also meets this criterion, but we do not gain a significantly larger completion percentage by lengthening the episode to 120 days. A 120-day episode may result in more inequity in payments because of the larger risk of a change in a patient's condition over the span of the longer episode. We are specifically soliciting comments on the utility of a 60-day episode period for purposes of prospective payment and the efficacy of unlimited consecutive episode recertifications for eligible beneficiaries in a given fiscal year.

Low-Utilization Payment Adjustment

As discussed above, the statute requires that the definition of the unit of payment must take into consideration the number, type, duration, mix , and cost of visits furnished within the unit of payment. We are concerned with the financial incentive to provide minimal services within an episode. We are also challenged by the possible motivation to obtain an additional full 60-day episode payment beyond a current episode by

furnishing the absolute minimum of additional services. Utilization incentives potentially change from overutilization under the cost based payment system to underutilization under a prospective payment system. We want to ensure that HHAs do not have an incentive to provide less care than is necessary. Under such an approach, an HHA that provided the minimum threshold number of visits or less during the 60-day episode would receive a low utilization payment adjustment reflecting a national average per-visit payment by discipline for the visits actually provided during the episode. We believe this policy reduces incentives to provide only one or two visits to beneficiaries to trigger a full prospective payment and, in addition, makes it harder to obtain either an initial or a second prospective payment by providing a minimal number of additional services. As a result of our analysis, we determined the need to recognize a low utilization payment adjustment under HHA PPS.

Our next decision required us to determine the number of visits that must be provided before a full 60 day prospective payment is made. Increasing the number of visits required, decreases the potential for agency gaming by providing a few additional services to obtain a full prospective payment. Based on analysis of our episode database, we concluded approximately 12 percent of current episodes constitute four or fewer visits. We explored the option of a six or fewer visit threshold for the low utilization payment adjustment and found approximately 20 percent of episodes in our database contain six or fewer visits. However, we recognize that these numbers may change under a fully implemented PPS.

A potential advantage of the six or fewer visit threshold would be to further reduce the number of episodes with only six or fewer visits during a 60-day episode; that is, agencies will have incentives to provide enough services to reach the threshold by increasing the number of services delivered to individuals who currently receive only a few. It would also make it harder to provide enough additional services to game or trigger full prospective episode payments inappropriately. However, the six visit threshold based on current data would result in 20 percent of all episodes under national HHA PPS being paid at the lower per-visit amount. We are soliciting comments and supporting data on the most appropriate threshold for the low utilization payment adjustment. We also plan to focus our medical review resources on the fourth or sixth visit, whichever is chosen in the final rule, to assure the medical appropriateness of the visits which actually triggers a full prospective episode payment.

We have developed our approach in the regulation to reflect the four or fewer visit threshold for the low-utilization payment adjustment. The methodology for the low-utilization payment adjustment and all other payment calculations in this rule reflect the four or fewer visit threshold. Under this proposed provision, a 60-day episode, a PEP adjustment, or a SCIC adjustment with four or fewer visits would be paid the national standardized per-visit amount by discipline for each visit type furnished during the 60-day episode. However, we are seeking comments and supporting data on the utility of the six or fewer visit threshold for the low-utilization payment adjustment. We are soliciting comments on the operational and financial impact of the low utilization payment adjustment. We are also specifically seeking comments on the potential financial impact on rural HHAs to comply with this requirement.

We are concerned with the potential manipulation of the LUPA under a pattern of certification of continuous home health episodes. Our interest is focused on patterns of behavior involving two continuous 60-day episodes. We are concerned that the possibility of a 60-day period may be too long for a second episode if the intensity of services is greater in the earlier part of that second episode. We are also concerned that agencies may have greater incentives to provide five additional visits beyond the first 60-day episode so as to trigger a second 60-day payment than they do at the beginning of the first episode. We are analyzing data on the second and subsequent 60-day episode and the distribution of the intensity of services within these episodes. Based on this analysis, we are considering the following possible alternative policies: (1) modify the proposed episode definition; (2) extend the LUPA for the second and subsequent episodes from four to six visits. We invite comment on these alternatives to the policies presented in this proposed regulation.

b. National Episode Payment Rate

We propose that the HHA PPS use a 60-day national episode payment rate. Section 1895(b)(3)(A)(i) of the Act requires—(1) the computation of a standard prospective payment amount to include all costs of home health services covered and paid for on a reasonable cost basis and to be initially based on the most current audited cost report data available to the Secretary, and (2) the prospective payment amounts to be standardized to eliminate the effects of case mix and wage levels among HHAs. Section 5101(c) of OCESAA amends section 1895(b)(3)(A)(ii) of the Act, to require that the standard prospective payment amounts be budget neutral to the amounts expended under the current interim payment system as of the inception of the PPS on October 1, 2000, with the limits reduced by 15 percent. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost-reporting periods contained in our database and September 30, 2001. Sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act, as amended by section 5101(d)(2) of OCESAA, require the standard prospective payment amounts for fiscal year 2002 or 2003 to be increased by a factor equal to the home health market basket minus 1.1 percentage points. For any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change.

The national 60-day episode payment incorporates adjustments to account for provider case mix using a clinical classification system that accounts for the relative resource utilization of different patient types. The classification system, The Clinical Model from Abt, uses patient assessment data (from the Outcome and Assessment Information Set (OASIS)) supplemented by one additional patient-specific item regarding number of therapy hours received in the 60-day episode period that is completed by HHAs to assign patients into one of 80 Home Health Resource Groups (HHRGs). The OASIS items and the supplemental therapy item are discussed in detail in section II.C.2. of this regulation. HHAs complete the OASIS assessment according to an assessment schedule specifically designed for Medicare payment (see section IV.L. of this regulation). The total case-mix-adjusted 60-day episode payment is based on the initial OASIS assessment and the supplemental item indicating projected therapy hours received in a 60-day episode submitted at the start of the 60-day episode. The projected number of therapy hours received (physical, speech-language pathology, and occupational therapy in any combination) in a 60-day episode reported at the start of the 60-day episode is confirmed by the actual receipt of therapy via the line-item date visits submitted on the final claim at the

end of the 60-day episode. The reconciliation of projected therapy use with actual therapy services furnished during the 60-day episode has the potential to decrease the final payment if actual therapy use reported at the end of the episode does not correspond to the projected therapy use provided at the start of the episode. We are proposing to use visit utilization data as a proxy for time. The proxy approach is discussed in detail in the case-mix methodology in section II.C.2. of this regulation.

For Medicare billing purposes, there are codes associated with each of the 80 HHRGs. The patient will be grouped into the appropriate case-mix category from the OASIS assessment at the HHA. The case-mix methodology consists of 19 OASIS items plus one supplemental non-OASIS item. We are exploring the approach that the ''grouper'' software will be provided to HHAs via the HAVEN software used for State transmission of OASIS quality data. The OASIS assessment is fed into the grouper logic at the HHA. The grouper logic selects the OASIS elements supplemented by one additional non-OASIS item indicating projected therapy hours (as translated into therapy visits) in a 60-day episode needed to establish the case-mix group and determines the appropriate case-mix category for the patient. The visit projection must be based on the physician's orders in the plan of care certified by the physician. The grouper logic generates a code. The code corresponds to the appropriate case-mix category and would be placed on the claim at the provider. The initial claim is submitted for an initial percentage payment at the start of care (see section I.D.2. of this regulation on percentage payments). As mentioned above, as applicable, the confirmation of the projected number of therapy hours received during the 60-day episode from the line-item date visit information submitted at the end of the 60-day episode is used for pricing the final case-mix adjusted payment. The pricer logic at the Regional Home Health Intermediary (RHHI) will compute the final episode payment based on the reconciliation of the projected therapy use received during the 60-day episode with the actual therapy visits reported on the final claim submitted at the end of the 60-day episode.

The confirmation of projected therapy services has the potential to decrease the final payment if the actual therapy use reported at the end of the episode does not correspond with the projected therapy use furnished at the start of the episode. The 60-day case-mix adjusted episode payment is intended to provide full payment for the patient for the 60-day period except in the case of a partial episode payment adjustment, low-utilization payment adjustment, outlier payment adjustment, or a finding that the episode was not medically necessary or covered due to medical review. We are seeking comments on our approach to the case-mix assignment during the 60-day episode. We are specifically seeking comments on potential effects on cash flow for HHAs. Operational aspects of the system design are discussed in more detail in section IV. of this regulation.

2. Payment Provisions—Split Payment

We are proposing a split percentage payment during the 60-day episode period. We propose that there be two percentage payments (initial and final) and two corresponding claims (initial and final) per 60-day episode. First, the initial percentage payment will equal 50 percent of the estimated case-mix adjusted episode payment. Each initial claim submitted for the initial percentage payment must be based on a current OASIS-based case mix and supplemented, as applicable, by one item indicating proposed therapy use in a 60-day episode. Second, the final payment will equal 50 percent of the actual case-mix adjusted episode payment. A new initial and final bill must be submitted for each recertified 60-day episode period. For example, patient is assessed via OASIS supplemented by the therapy variable, if applicable, and is categorized by the grouper logic into HHRG group Y. Included in HHRG group Y is a projected therapy use of 8 hours or more in a 60-day period. The HHRG group case-mix adjusted payment for the 60-day episode is $2,000. The HHA submits the claim with the corresponding code to HHRG group Y. The pricer at the RHHI computes 50 percent of the payment for HHRG group. The HHA receives an initial payment of $1,000. At the end of the 60-day episode, the HHA bills for the residual 50 percent final payment. The line-item date information confirms the receipt of at least 10 therapy visits as a proxy for time. The final claim is submitted for payment. The pricer at the RHHI confirms the line-item date information. No increase or decrease adjustment is necessary for therapy use. The pricer computes the 50 percent residual final payment. The HHA receives a final payment of $1,000. The initial percentage payment will be adjusted to reflect a LUPA, PEP adjustment, SCIC adjustment, or medical review determination as applicable.

Operational aspects of the split payment relationship to the system design are discussed in detail in section III. of this regulation. We are specifically soliciting comments on the impact on HHAs to financially and operationally comply with the split percentage payment approach. We are proposing a 50/50 percentage split for purposes of this proposed rule; however, more complete data may result in future refinements to the percentage payment approach.

3. Payment Provisions—Outlier Payments

Section 1895(b)(5) of the Act notes that we may provide for additions or adjustments to the payments due to unusual variations in the type or amount of medically necessary home health care. The total amount for addition or adjustment payments during a fiscal year may not exceed 5 percent of total payments projected or estimated to be made based on the HHA PPS in that year. Because successive episode payments will be made for a beneficiary as long as the beneficiary continues to be recertified and otherwise eligible for additional home care, there will be no need for long-stay outlier cases under the HHA PPS. However, we believe outlier payments for 60-day episodes in which the HHA incurs extraordinary costs beyond the regular episode payment amount may be desirable. Outlier payments would provide some protection for beneficiaries whose care needs cost more than the amount of the episode payment. They would also provide HHAs with some financial protection against possible losses on individual beneficiaries.

The methodology proposed for outlier payments is modeled on the outlier payment methodology of the Medicare inpatient hospital PPS. There are two basic principles underlying the approach: First, before outlier payments are made for a case or episode, cost should exceed the payment for the case. The amount by which cost exceeds payment should be the same for cases in all case-mix groups because a dollar lost is a dollar lost whether the case belongs in a low cost or a high cost case-mix group. Use of a uniform fixed dollar loss for all case-mix groups avoids creating differential incentives to accept patients in different case-mix groups. The second principle is that outlier payments should cover less than the full amount of the additional costs above the outlier threshold to preserve the incentive to contain costs once a case qualifies for outlier payments. (See Emmett B. Keeler, Grace M. Carter, and Sally Trude, ''Insurance Aspects of DRG

Outlier Payments,'' The Rand Corporation, N–2762–HHS, October 1988.) We discuss the outlier payments in greater detail in section II.A.5. of this regulation.

We are seeking comments on our approach to outlier payments.

4. Payment Provisions—Transition Period

Section 4603(b)(1) of the BBA provides discretion on the transition from payment under the current reasonable cost-based interim payment system to the full prospective payment amount by blending a portion of the PPS amount with agency-specific costs for a period of time. The statute provides for the blend of agency-specific costs for up to 4 years in a budget-neutral manner.

Blending options provides significant practical obstacles. We could in theory blend what would have been paid under the current reasonable cost reimbursement system and PPS. A percentage of the payment would be based on costs of the agency building on the current interim payment system and a percentage would be based on the national PPS amount.

While other prospective payment systems have used a blended agency and national payment amount, the complexities of blending dissimilar payment methodologies for home health are so great that we believe it is not a viable option. Moreover, OCESAA amended the statute to require that we implement PPS on the same date for all providers, regardless of their cost reporting period. This break in the cost reporting period further discourages continued use of the cost-based system. The legislation also reflects Congressional interest in expediting the transition from the interim payment system to PPS. We believe proceeding with a highly complicated percentage payment system based on historical data from the cost-based interim payment system would not be in the best interest of the industry based on historical reaction to the interim payment system.

We believe full transition to the PPS system on October 1, 2000 is the most viable option.

5. Consolidated Billing for Home Health Agencies

Both sections 4603(c)(2)(B) and (c)(2)(C) of the BBA require a new consolidated billing and bundling of all home health services while a beneficiary is under the plan of care. The BBA requires payment for all covered home health items and services to be made to an HHA. However, in accordance with section 1895(b)(1) of the Act, PPS payments are to include only those home health services paid on a reasonable cost basis, and DME is currently paid under the DME fee schedule. Furthermore, payment for Medicare covered home health services can only be made to the HHA that establishes the individual's home health plan of care. The result is that the HHA must bill when the plan of care specifies DME and even if an outside supplier provides it. HHAs will no longer be able to ''unbundle'' services to an outside supplier that can then submit a separate bill directly to the Part B carrier. Instead, the HHA itself will have to furnish the home health services either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. The outside supplier must look to the HHA rather than to Medicare Part B for payment. The HHA consolidated billing requirement is discussed in detail in section V. of this regulation.

6. Medical Review Under the Prospective Payment System

The financial incentives available to HHAs change from overutilization to underutilization under an episode-based PPS. The initial claim for each 60-day episode may contain visit information and will only include the code corresponding to the appropriate case-mix category. The final claim for the 60-day episode will include all of the line-item visit information for the previous 60 days. Given the limited information on the initial claim, prepayment review of the initial claim would be limited to overall medical necessity of care and technical eligibility issues, such as whether the homebound requirement was met. Medical review will be conducted on a random and targeted basis. Targeting may include claim-specific and patterns of case-mix upcoding as well as general issues of the medical need for the episode of care and technical eligibility. There must be the capacity, for both prepayment and postpayment, to deny claims in total or to adjust payment to correct case mix. Medical review will validate OASIS case-mix category information used for payment against medical records and the OASIS information separately submitted for quality. Medical review will also be conducted to verify individual beneficiary therapy information and patterns of therapy information for larger groups. The information reported on claims will be an essential part of this effort due to the significant impact of therapy use in the case-mix designation.

7. Continued Access to Quality Home Health Services Under the Prospective Payment System

The quality component of PPS is critical to ensure that HHAs do not furnish less care than is necessary to beneficiaries in an attempt to increase profit. The advantage of using similar elements to measure quality through outcomes of care and case mix for payment purposes is that an agency that provides less care than needed to a patient in an episode will be likely to reflect poor outcomes of care in terms of quality. The quality component of the HHA PPS is crucial to ensuring that beneficiaries receive needed services. The continued access to quality services under PPS is discussed further in section IV.J. of this regulation.

8. Implementation of the Prospective Payment System

Section 5101(c)(1) of OCESAA removed the effective date of the PPS by cost reporting period previously prescribed in the BBA and instead requires all Medicare participating HHAs to be paid under PPS effective on the same date of implementation—October 1, 2000. The implementation approach is discussed in section IV.H. of this regulation.

II. Prospective Payment System for Home Health Agencies

A. National 60-Day Episode Payment

This proposed rule sets forth the methodology for the national PPS applicable to all Medicare home health services covered under both Part A and Part B. This proposed rule incorporates a national 60-day episode payment for all of the reasonable costs of services furnished to an eligible beneficiary under a Medicare home health plan of care. This section describes the components of the national 60-day episode payment and the methodology and data used in computation.

1. Costs and Services Covered by the 60-Day Episode Payment

The 60-day episode prospective payment applies to all home health services set forth in section 1861(m) of the Act that are covered and paid on a reasonable cost basis under the Medicare home health benefit as of the date of the enactment of the BBA, including medical supplies. DME is a covered home health service that is not currently paid on a reasonable cost basis, but is paid on a fee schedule basis when covered as a home health service under the Medicare home health benefit. Under the HHA PPS, DME covered as a home health service as part

of the Medicare home health benefit will continue to be paid under the DME fee schedule. Thus, we believe a separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS. All DME must be billed by the HHA during the 60-day episode when it is furnished directly, under arrangement, or otherwise as discussed in section V.C. of this regulation. Although the covered osteoporosis drug under the home health benefit is currently paid on a reasonable cost basis, section 4603(c) of the BBA of '97 amended section 1833(a)(2)(A) of the Act to specifically exclude it from the prospective payment rate. In addition, like DME, the osteoporosis drug is included in the consolidated billing requirements.

2. Data Sources Used for the Development of the 60-Day Episode Payment

The methodology we used in developing the 60-day episode payment combines a number of data sources. These data sources include audited cost report data, claims data, a wage index, a market basket inflation index, and Abt Associates Case-Mix Research Project Data. This section describes each of these data sources while the following section describes the methodology that combines them to produce the 60-day episode payment.

a. Audited Cost Report Data

Section 1895(b)(1) of the Act requires the prospective payment amount to include all services covered and paid on a reasonable cost basis under the Medicare home health benefit, including medical supplies. Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost report data available to the Secretary. Under section 1895(b)(3)(A)(i) of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ended on or after October 1, 1996 through September 30, 1997).

In February 1998, we directed our fiscal intermediaries (FIs) to conduct comprehensive audits of the cost reports submitted by a sample of HHAs whose cost reporting periods ended in FFY 1997. Each FI received a list of agencies to audit and instructions on how to conduct the audits and report the data obtained.

The sample was designed to be representative of the home health industry in several respects: type of provider (for example, provider-based), census region, urban versus rural location, and large versus small agencies. We anticipated that many agencies in the sample would not be audited because their records were unavailable for a variety of reasons or their cost reporting periods were less than 12 months long. Consequently, the sample size was adjusted upward by 15 to 20 percent to allow for attrition.

To create national HHA PPS rates, each observation in the final data set is weighted so that in the aggregate the entire sample reflects the national Medicare home health payment experience. For example, the estimates will reflect differences across census regions and urban versus rural areas.

Audit Sample Methodology

The sample frame was intended to include all home health agencies except very small ones and agencies without a full year of cost reporting for the audit period. The sample selection design was a stratified sample. With this design, agencies are selected as samples within each stratum, where a stratum is defined for each provider type. There were four strata: freestanding not-for-profit, freestanding for-profit, freestanding governmental, and provider-based agencies. The stratified design of the sample takes into account the number of providers and the variation in cost and beneficiaries associated with each provider type. The sample was designed to produce estimates from key elements of the audit data with a reasonable level of precision.

One issue arose as auditing activities unfolded. Although ordinarily each sampling unit should appear once and only once in the frame, after the sample was drawn and fieldwork begun, it was found that this assumption was not strictly true for the governmental units. In some cases, multiple providers' numbers corresponding to a single cost report appear on the frame, while in other cases a provider number is a parent possibly with multiple subunits. In the former case, we considered the subunits associated with a single cost report as the appropriate sampling unit, and assigned weights to those observations to compensate for their higher probability of inclusion in the sample. This weighting procedure ensures that correct totals are obtained from the analysis.

The original sample design anticipated that the weights would need further adjustment so that audits expected but ultimately missing from the sample are represented and the sample in total will produce the known totals from the frame for key subgroups or cells. The process assigns a larger weight to audited units in the sample similar (in the same cell) to those missed. In the case of the HHA, the cells were defined by cross-classification of three characteristics: urban or rural location; the four census regions of Northeast, Midwest, South, and West; and provider type. Therefore, the weights were adjusted for the missed sample units to ensure that the units obtained most closely represent the missed units cell by cell. (The adjustment gives more weight to the audited HHA in a cell to account for the missing audits within the cell.) The adjustment was a minor one, because examination of counts from the realized sample, intended sample, and sample frame showed that the sample actually obtained generally was within range or close to the specifications.

After completing the weight adjustments, a file was created with the resulting weights, the provider number, provider type, Census4 (four census regions), and Metropolitan Statistical Area (MSA) code. This file can be merged with the data from the cost reports for the audited providers to compute weighted values for costs and visits in order to compute the average cost-per-visit ratios by discipline. As a check on the computations, the following table is the result of a summary by provider type that agrees with the frame totals.

Type	Sample	Frame #
FS/F	142	3290
FS/G	159	458
FS/N	171	955
PROV	95	2458

The final audit sample contained 567 audited cost reports which were the basis of the home health PPS rate calculations. See Section III. below for a more detailed description of the sampling and estimation procedures.

Updating to September 30, 2001

Before computing the average cost per visit for each discipline that would be used to calculate the prospective payment rate, we adjusted the costs from the audit sample by the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001. Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar level for the FY end September 30, 2001. Therefore,

we multiplied the total costs for each provider by the appropriate inflation factor shown in the table below. See section II.A.2.b. of this regulation for a detailed description of the market basket.

Nonroutine Medical Supplies Paid on a Reasonable Cost Basis Under a Home Health Plan of Care

Before computing the average cost per episode for nonroutine medical supplies paid on a reasonable cost basis under a home health plan of care, we also adjusted the audited cost report data for nonroutine medical supplies using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001.

Adjusting Costs for Providers Impacted by the Visit Limits

For cost reporting periods ending in FY 1997, Medicare recognized reasonable costs as the lower of the provider's actual costs or the per-visit limit applied in the aggregate for the six disciplines. Because some providers' costs were higher than the per-visit limits applied in the aggregate for the six disciplines, it was necessary to adjust their costs in order to reflect only those costs for which the provider's payment was based. The adjustment factor was calculated by dividing a provider's total visit limit by the total Medicare costs, but only if the total visit limit was less than total Medicare costs. For those providers not impacted by the visit limit, no adjustment was necessary, and the adjustment factor was set equal to one. The adjustment factor was applied to each provider's total costs for each discipline. Summing each provider's updated, weighted, and adjusted total costs by the sum of visits for each discipline results in the nonstandardized, updated, weighted, and visit limit adjusted average cost per visit by discipline. The Office of Inspector General (OIG) has raised concerns that the payment rates may be inflated because improper costs were included in the base year data. These concerns are based on prior OIG reviews which have found improper payments have been made to HHAs in the past. Depending on the results of these past reviews and additional OIG reviews currently underway, HCFA may consider adjusting the payment rates to account for improper costs that were included in these rate calculations.

b. Home Health Agency Market Basket Index

The data used to develop the HHA PPS payments (60-day episode and LUPA) were adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2001. The following inflation factors were used in calculating the HHA PPS:

Factors for Inflating Database Dollars to September 30, 2001

FY end	1996	1997
October 31	1.15486	.....
November 30	1.15222	.....
December 31	1.14961	.....
January 31	.....	1.14705
February 28	.....	1.14453
March 31	.....	1.14202
April 30	.....	1.13952
May 31	.....	1.13703
June 30	.....	1.13444
July 31	.....	1.13175
August 31	.....	1.12896
September 30	.....	1.12615

For fiscal year 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act require the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates be increased by the applicable home health market basket index change.

c. Claims Data

We also conducted analysis on an episode database created from the 1997 National Claims History File using 60-day episodes to define episode lengths. These data were based on use of home health services under the current system.

The 1997 60-day episode file used to establish the PPS rates was created in two parts. The first part matched all home health claim records for each beneficiary together to create a complete episode history. We combined monthly records of home health services using a 60-day gap of service as the break for when an episode would begin and end (that is, a 60-day consecutive gap in home health services would trigger a new episode). The second part of the episode file creation was to create exact 60-day episodes from the monthly episode file. Using the first day of the episode, we counted exactly 60 days to find the end of the 60-day episode. If the beneficiary was still receiving home health services, we then started another 60-day episode on day 61 and continued the process until the end of the episode.

In order to create the first part of the 1997 60-day episode file, we used the 100 percent National Claims History of 1997 HHA records. A list of Health Insurance Claim (HIC) numbers was created for all beneficiaries who received home health services in calendar year 1997. Using the HIC number for each of those beneficiaries, we compared it against the 1997 Master Beneficiary Denominator File. The comparison was done to eliminate (1) Railroad Board beneficiaries, (2) invalid beneficiary HIC numbers, and (3) beneficiaries enrolled in an HMO for any part of 1997.

The valid matches on the 1997 Master Beneficiary Denominator File were then matched against the initial 100 percent of 1997 HHA records. The records that resulted from this step were compared to a program table consisting of the dates that encompassed the universe of complete episodes created (January 1996 through June 1998). The HHA records were reformatted with Units and Reimbursement allocated to 1 of 7 Revenue Center Code groupings:

550–559	skilled nursing
420–429	physical therapy
430–439	occupational therapy
440–449	speech pathology
560–569	medical social services
570–579	home health aide
270–279	medical supplies

This output was then sorted by the ''From and Thru Dates'' on each claim to see if the From Date was within the first 2 months of 1997 and the Thru Date was within the last 2 months of 1997. If the From Date was within the first 2 months of 1997, a HIC list was created and matched to the 1996 HHA records. If the Thru Date was within the last 2 months of 1997, a HIC list was created and matched to the 1998 HHA records. At the time these files were created, 1998 HHA records were complete only through June 1998. The HIC lists were processed through a cross-reference procedure that ensures that any changes in HIC numbers are related to the original HIC and to ensure all utilization for a beneficiary was reflected under one current HIC number. These files were matched against the 1996 HHA and 1998 HHA files, respectively. The outputs of these matches were reformatted with Units and Reimbursement allocated to 1 of 7 Revenue Center Code groupings (listed above). The same process was performed on the 1997 HHA records.

The resulting three files for 1996, 1997, and 1998 were sorted by From Date within each HIC number. The sorted file was read and a complete

home health history was created for each beneficiary HIC. This was accomplished by sorting the HHA records for each HIC in chronological order from January 1996 through June 1998. During this process, Number of Days, Total Charges, and Total Reimbursement were allocated to a monthly table. For any records that spanned 2 calendar months, charges, visits, and reimbursement were apportioned based on the distribution of those days in each respective month. Whenever a beneficiary HIC's history was read and tabled, the data were analyzed in order to determine whether any prospective episodes would have ended in 1996 or started in 1998. If either was true, that historical utilization was discarded. The final valid data included 1996 data that were contiguous or ended within 2 months (60 days) of 1997 data and 1998 data that began within 2 months of 1997 data.

Once the valid table was completed, a single episode or multiple episodes were determined by a 60-day break. The final episode(s) for each home health beneficiary with combined monthly records was written to an output file referred to as the 1997 Home Health Monthly Interval File.

The 1997 HHA 60-Day Episode file was then derived from the 1997 Home Health Monthly Interval File by analyzing monthly records by episode number and sequential month number. A full episode from the Home Health Monthly Interval File is made up of two consecutive monthly intervals in which the beneficiary received services (no 60-day gap in services furnished to that beneficiary for a given episode of care). Each monthly record within the common episode number was assigned a sequential month number to indicate where, in the sequence of monthly records for that given episode number, a particular monthly record exists.

The first episode-begin-date for a 60-day episode was derived from the first from-date for a given previously established episode (a group of related monthly records) as read from the home health interval file. An episode-end-date for that first 60-day episode was calculated by adding 59 days to the episode-begin-date. Visits, charges, lengths of stay, and reimbursement dollars were then accumulated across the six disciplines (skilled nursing services, home health aide services, physical therapy (PT) services, occupational therapy (OT) services, speech-language pathology services, and medical social services) for the 60-day episode by adding in subsequent monthly interval records (if appropriate) for a given episode. If an episode-end-date occurs within a monthly record, accumulating variables were prorated between the 60-day episode record that was closed out and the subsequent 60-day episode to be created. Consequently, the subsequent 60-day episode was assigned an episode-begin-date equal to that of the previous episode's episode-end-date plus 1. For episodes that did not begin and end within a monthly record, the episode-begin-dates were established from the from-date and episode-end-dates were calculated from the episode-begin-date.

The end result was a 1997 HHA episode file of 60-day episode records. In addition to the accumulating variables mentioned above, the episode record also contained up to three provider numbers of HHAs involved in furnishing care for that patient during the 60-day episode. For identifiable purposes, the episode record contained variables depicting—(1) the episode number (the episode number relates 60-day episode records for which no 60-day gap in services existed), (2) the total number of related 60-day episodes for that episode number, and (3) a sequential number for that 60-day episode within the episode number.

Using the 60-day episode file, we were able to analyze the number, type, and duration of visits for each 60-day period as well as across multiple 60-day episodes. Since the full 100 percent episode file was created to determine actual episodes that could span more than 1 year, episodes were defined by actual start and end dates even if they were outside the calendar year period, as long as the beneficiary received home health services in calendar year 1997. This provided a true representation of the length of home health episodes and showed that 10 percent of the beneficiaries were receiving services that spanned more than a full calendar year. This file also showed that 46 percent of the beneficiaries completed home health services in the first 60 days and over 60 percent actually completed their episodes in less than 120 days.

To complete the second part of the 1997 60-day episode file needed to calculate prospective payment rates and to develop impacts, we needed to convert the full episode file to a file containing only those 60-day episodes that fell into the calendar year 1997 period. This meant that if a beneficiary started receiving home health services in July 1996 and continued for multiple 60-day episodes through June 1997, we only included their 4th, 5th, and 6th 60-day episodes that fell in calendar year 1997. Calculating the distribution of beneficiaries across the total number of episodes as we did for the full episode file, we determined that the total percentage of beneficiaries with only one episode increased to 51 percent. The table below shows the distribution across total number of 60-day episodes for both the full episode file and the calendar year 1997 file.

TABLE 1.—DISTRIBUTION OF THE NUMBER OF CONSECUTIVE 60-DAY EPISODES

Total number of consecutive 60-day episodes	Distribution based on all 60-day episodes—even those outside the CY 1997 period (percent)	Distribution based on only 60-day episodes that occurred in the CY 1997 period (percent)
1	46	51
2	16	18
3	8	8
4	5	5
5	3	4
6	3	3
7	3	10
8	3	.....
9	2	.....
10	2	.....
11	1	.....
12	2	.....
13	2	.....
14	3	.....
15	0	.....

Next, we calculated the average number of visits by discipline for all 60-day episodes and compared that to only those episodes that fell into the calendar year 1997. We discovered that there was a slight decrease in the average number of visits for home health aide and skilled nursing services when using only the episodes that fell in calendar year 1997. This was expected due to the fact that the utilization in 1997 declined because of the incentives under Operation Restore Trust and because the distribution of beneficiaries having fewer number of total episodes increased as shown in Table 1 above. Beneficiaries with fewer total episodes had on average a lower total average number of visits.

For purposes of rate setting, we believed it was more appropriate to use the average number of visits for only those episodes that occurred in calendar year 1997, as these reflect the reduced visit utilization experienced since 1997 and thus represented more closely the actual episodes that we would be paying for under PPS. Because we are paying episodes with four or fewer visits on a per-visit basis, under the LUPA methodology mentioned previously, it is necessary to exclude them for the calculation of the average number of

episodes. Taking the low-visit episodes out of the calculation resulted in an overall higher average for each discipline as would be expected.

TABLE 2.—COMPARISON OF THE AVERAGE NUMBER OF VISITS PER EPISODE FOR EACH DISCIPLINE FOR THE FULL EPISODE FILE, EPISODES IN CY 1997 AND EPISODES IN CY 1999 WITH FIVE OR MORE VISITS

Average number of visits by discipline	Average based on all 60-day episodes—even those outside the CY 1997 period	Average based on only 60-day episodes that fell into the CY 1997 period	Average based on only 60-day episodes that fell into the CY 1997 period with visits
Skilled Nursing Services	13.14	12.55	14.69
Physical Therapy Services	2.08	2.35	2.74
Occupational Therapy Services	.36	0.41	0.48
Speech Pathology Services	.14	0.15	0.18
Medical Social Services	.30	0.31	0.36
Home Health Aide Services	16.78	14.59	17.59
Total for all disciplines	32.8	30.36	36.04

Analysis of each 60-day episode that occurred within calendar year 1997 showed that the distribution of visits across each discipline changed the longer the home health patient received home health services. For beneficiaries who had only one episode, the proportion of skilled nursing visits to home health aide visits was about 2 to 1. But for beneficiaries who are in their 6th consecutive episode, the relationship is reversed. The longer a beneficiary receives home health services, the lower their skilled nursing needs and the more they become dependent only on home health aide services. It is also noticeable and expected that physical therapy services decline over time. This finding suggests that future PPS research should be directed at whether the episode payment should vary with each consecutive episode.

TABLE 3.—DISTRIBUTION OF DISCIPLINES ACROSS SERIES OF 60-DAY EPISODES

Total number of 60-day episodes	Episode No. within series of 60-day episodes	Percent of skilled nursing services	Percent of home health aide services	Percent of occupational therapy services	Percent of speech pathology services	Percent of medical social services	Percent of physical therapy services
1	1	50	26	3	1	2	19
2	1	46	34	3	1	1	15
2	2	44	40	2	1	1	12
3	1	46	38	2	1	1	11
3	2	43	44	2	1	1	9
3	3	43	46	1	1	1	8
4	1	45	42	2	1	1	9
4	2	42	48	1	1	1	7
4	3	42	49	1	1	1	6
4	4	42	50	1	0	1	6
5	1	44	45	2	1	1	8
5	2	41	50	1	1	1	6
5	3	40	52	1	0	1	5
5	4	40	53	1	0	1	5
5	5	40	53	1	0	1	5
6	1	42	48	1	1	1	7
6	2	39	53	1	0	1	5
6	3	38	55	1	0	1	4
6	4	38	57	1	0	1	4
6	5	37	57	1	0	1	4
6	6	38	56	1	0	1	4
7	1	36	59	1	0	1	4
7	2	35	60	1	0	1	3
7	3	35	61	0	0	1	3
7	4	34	62	0	0	1	3
7	5	34	62	0	0	1	3
7	6	34	62	0	0	1	2
7	7	35	61	0	0	1	3

National Part B Claims History File

Nonroutine medical supplies are also a covered home health service listed in section 1861(m) of the Act. As discussed above, the home health prospective payment rate includes those items that are currently covered and paid on a reasonable-cost basis. DME covered as a home health service (see section 1861(m) of the Act) will continue to be paid the fee schedule amount. As discussed previously, there is a new consolidated billing provision that requires HHAs to bill for all home health services listed in section 1861(m)

of the Act that are ordered under a home health plan of care.

Before PPS implementation, HHAs were not required to bundle all home health services. Specifically, nonroutine medical supplies that are covered and paid under Part B could have been furnished by a supplier rather than the HHA. Under the current interim payment system, nonroutine medical supply costs were subjected to the aggregate per-beneficiary limits, but not the per-visit limits. Some HHAs may have chosen to unbundle those nonroutine medical supplies that had a corresponding Part B payment. In order to determine the scope of the unbundled nonroutine medical supplies under the current system, we identified 199 HCPCS codes, representing those items that would fall into the possible ''unbundled nonroutine medical supply'' category. We pulled all claims with the corresponding HCPCS codes from the Part B national claims history file. In order to determine whether the HCPCS codes were related to a beneficiary receiving home health services under a home health plan of care, we linked every Part B claim with one or more of the 199 HCPCS codes to home health episodes from our episode database, by beneficiary and dates of service. If a beneficiary received home health services during a 60-day episode and there was a corresponding Part B claim with one of the 199 HCPCS codes that was billed during the same 60-day episode, we identified the item as related to the home health stay.

Since the nonroutine medical supply costs are bundled into the prospective payment rate and subjected to consolidated billing under prospective payment, we are proposing an additional payment amount in the 60-day episode base rate for those nonroutine medical supplies with corresponding Part B codes that may have been unbundled under the interim payment system. The methodology amount is set forth in section II.B. of this regulation.

d. Hospital Wage Index

As discussed in section I. of this regulation, sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act, require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under the PPS to account for area wage differences. The wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act. The statute allows the Secretary to use the area where the services are furnished or such area as the Secretary may specify for the wage index adjustment. To be consistent with the application of the wage index adjustment under the current interim payment system for HHAs, we propose that the wage index value applied to the labor portion of the 60-day episode payment under HHA/PPS be adjusted by the appropriate wage index for the geographic area in which the beneficiary received home health services.

In addition, section 1895(b)(3)(A)(i) of the Act requires the Secretary to standardize the cost data used in developing the HHA/PPS payment amount for wage levels among different HHAs in a budget-neutral manner. The wage-index adjustments to the 60-day episode payments must be made in a manner that does not result in aggregate payments that are greater or less than those that would otherwise be made if the 60-day episode payments were not adjusted by the wage index.

Each HHA's labor market area is determined based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). In establishing the 60-day episode payments, we used the most recently published hospital wage index (that is, the FY 1999 hospital wage index published in the **Federal Register** on February 25, 1999 (64 FR 9378), which is based on 1995 hospital wage data) without regard to whether these hospitals have been reclassified to a new geographic area. Therefore, the prospective payments reflect the MSA definitions that are currently in effect under the hospital PPS.

We believe the use of the hospital wage data results in an appropriate adjustment to the labor portion of costs based on an appropriate wage index as required under sections 1895(b)(3)(A)(i), (b)(4)(A)(ii), and (b)(4)(C) of the Act.

TABLE 4A.—FY 1999 WAGE INDEX FOR RURAL AREAS—PRE-FLOOR AND PRE-RECLASSIFIED

Rural Area	Wage Index
Alabama	0.7294
Alaska	1.2430
Arizona	0.7989
Arkansas	0.7250
California	0.9979
Colorado	0.8436
Connecticut	1.2074
Delaware	0.8807
Florida	0.8877
Georgia	0.7888
Guam	0.6516
Hawaii	1.0910
Idaho	0.8477
Illinois	0.7916
Indiana	0.8380
Iowa	0.7777
Kansas	0.7319
Kentucky	0.7844
Louisiana	0.7454
Maine	0.8467
Maryland	0.8555
Massachusetts	1.0834
Michigan	0.8875
Minnesota	0.8595
Mississippi	0.7312
Missouri	0.7452
Montana	0.8398
Nebraska	0.7674
Nevada	0.9256
New Hampshire	1.0240
New Jersey [1]	.....
New Mexico	0.8269
New York	0.8588
North Carolina	0.8112
North Dakota	0.7497
Ohio	0.8519
Oklahoma	0.7124
Oregon	0.9910
Pennsylvania	0.8664
Puerto Rico	0.4080
Rhode Island [1]	.....
South Carolina	0.8046
South Dakota	0.7508
Tennessee	0.7492
Texas	0.7565
Utah	0.8859
Vermont	0.9416
Virgin Islands	0.4588
Virginia	0.7857
Washington	1.0489
West Virginia	0.7875
Wisconsin	0.8711
Wyoming	0.8768

[1] All counties within the State are classified as urban.

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED

MSA	Urban Area (Constituent counties)	Wage Index
0040	Abilene, TX Taylor, TX	0.7981
0060	Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4727
0080	Akron, OH Portage, OH Summit, OH	0.9900
0120	Albany, GA Dougherty, GA Lee, GA	0.7975
0160	Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY	0.8610

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.8613
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.8526
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA	1.0204
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9335
	Blair, PA	
0320	Amarillo, TX	0.8474
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.2818
	Anchorage, AK	
0440	Ann Arbor, MI	1.1033
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8658
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI	0.8825
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4867
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.8940
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	0.8673
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	0.9915
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.1536
	Atlantic, NJ	
	Cape May, NJ	
0600	Augusta-Aiken, GA–SC	0.9233
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.8782
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9531
	Kern, CA	
0720	Baltimore, MD	0.9642
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	0.9474
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.5382
	Barnstable, MA	
0760	Baton Rouge, LA	0.8872
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	0.8659
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.1434
	Whatcom, WA	
0870	Benton Harbor, MI	0.8531
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2186
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	0.9143
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS	0.8276
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.9059
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9073
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.8025
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8965
	Monroe, IN	
1040	Bloomington-Normal, IL	0.8851
	McLean, IL	
1080	Boise City, ID	0.9160
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1269
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0038
	Boulder, CO	
1145	Brazoria, TX	0.8906
	Brazoria, TX	
1150	Bremerton, WA	1.1055
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX	0.8237
	Cameron, TX	
1260	Bryan-College Station, TX	0.7820
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	0.9587
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	0.9577
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4400
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.8813
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.870
	Natrona, WY	
1360	Cedar Rapids, IA	0.8814
	Linn, IA	
1400	Champaign-Urbana, IL	0.8723
	Champaign, IL	
1440	Charleston-North Charleston, SC	0.9114
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.8990
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC	0.9686
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0272
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	0.9074
	Catoosa, GA	
	Dade, GA	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8149
	Laramie, WY	
1600	Chicago, IL	1.0461
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0145
	Butte, CA	
1640	Cincinnati, OH–KY–IN	0.9595
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY	0.8040
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH	0.9886
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	0.9390
	El Paso, CO	
1740	Columbia, MO	0.8942
	Boone, MO	
1760	Columbia, SC	0.9290
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8511
	Russell, AL	
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9781
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8513
	Nueces, TX	
	San Patricio, TX	
1900	Cumberland, MD–WV	0.8242
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	0.9369
	Collin, TX	
	Dallas, TX	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9045
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL	0.8413
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9605
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9134
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.8233
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8035
	Macon, IL	
2080	Denver, CO	1.0331
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.8448
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0544
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.7892
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9363
	Kent, DE	
2200	Dubuque, IA	0.8222
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	0.9962
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.0530
	Dutchess, NY	
2290	Eau Claire, WI	0.8573
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9215
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9305
	Elkhart, IN	
2335	Elmira, NY	0.8440
	Chemung, NY	
2340	Enid, OK	0.7983
	Garfield, OK	
2360	Erie, PA	0.9271
	Erie, PA	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
2400	Eugene-Springfield, OR	1.1193
	Lane, OR	
2440	Evansville-Henderson, IN–KY	0.8528
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN	0.9520
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.8389
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR	0.8614
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	0.9483
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1031
	Genesee, MI	
2650	Florence, AL	0.7676
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8501
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.0770
	Larimer, CO	
2680	Ft. Lauderdale, FL	0.9807
	Broward, FL	
2700	Fort Myers-Cape Coral, FL	0.8942
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL	1.0241
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	0.7623
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	0.8615
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9047
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX	0.9719
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0700
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8779
	Etowah, AL	
2900	Gainesville, FL	0.9453
	Alachua, FL	
2920	Galveston-Texas City, TX	1.0894
	Galveston, TX	
2960	Gary, IN	0.9435
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8490
	Warren, NY	
	Washington, NY	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
2980	Goldsboro, NC	0.8530
	Wayne, NC	
2985	Grand Forks, ND–MN	0.8836
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	0.8279
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI	0.9971
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	0.8872
	Cascade, MT	
3060	Greeley, CO	0.9457
	Weld, CO	
3080	Green Bay, WI	0.9156
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC	0.9547
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9434
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC	0.9222
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	1.0183
	Washington, MD	
3200	Hamilton-Middletown, OH	0.9233
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA	1.0060
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.1831
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7261
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC	0.8904
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.1510
	Honolulu, HI	
3350	Houma, LA	
	Lafourche, LA	
	Terrebonne, LA	0.8197
3360	Houston, TX	0.9889
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH	0.9647
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8385
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	0.9831
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9481
	Johnson, IA	
3520	Jackson, MI	0.9224
	Jackson, MI	
3560	Jackson, MS	0.8292
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.8560
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	0.8900
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.7556
	Onslow, NC	
3610	Jamestown, NY	0.7660
	Chautauqua, NY	
3620	Janesville-Beloit, WI	0.9051
	Rock, WI	
3640	Jersey City, NJ	1.1598
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA	0.8773
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.8619
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7407
	Craighead, AR	
3710	Joplin, MO	0.7873
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI	1.1331
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	0.9418
	Kankakee, IL	
3760	Kansas City, KS–MO	0.9645
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9129
	Kenosha, WI	
3810	Killeen-Temple, TX	1.0109
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.8918
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.9275
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.8913
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8255
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.8841
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.7674
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL	0.8939
	Polk, FL	
4000	Lancaster, PA	0.9561
	Lancaster, PA	
4040	Lansing-East Lansing, MI	1.0090
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.7343
	Webb, TX	
4100	Las Cruces, NM	0.8870
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1413
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	0.8655
	Douglas, KS	
4200	Lawton, OK	0.8697
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9149
	Androscoggin, ME	
4280	Lexington, KY	0.8506
	Bourbon, KY	
	Clark, KY	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.8949
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	0.9303
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR	0.8503
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.8698
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA	1.2085
	Los Angeles, CA	
4520	Louisville, KY–IN	0.9093
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.8496
	Lubbock, TX	
4640	Lynchburg, VA	0.8900
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.8980
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0018
	Dane, WI	
4800	Mansfield, OH	0.8534
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.4401
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX	0.8893
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.0020
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL	0.9216
	Brevard, Fl	
4920	Memphis, TN–AR–MS	0.8361
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0033
	Merced, CA	
5000	Miami, FL	1.0017
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ	1.1152
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI	0.9356
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI	1.0854
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9189
	Missoula, MT	
5160	Mobile, AL	0.8377
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0346
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.1317
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8219
	Ouachita, LA	
5240	Montgomery, AL	0.7821
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	0.9414
	Delaware, IN	
5330	Myrtle Beach, SC	0.8179
	Horry, SC	
5345	Naples, FL	1.0177
	Collier, FL	
5360	Nashville, TN	0.9480
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.3593
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2328
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT	1.1616
	New London, CT	
5560	New Orleans, LA	0.9310
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.4461
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1866
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
	Newburgh, NY–PA	1.1155
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC	0.8275
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.4993
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9152
	Marion, FL	
5800	Odessa-Midland, TX	0.8656
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.8708
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.1522
	Thurston, WA	
5920	Omaha, NE–IA	0.9972
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
5945	Orange County, CA	1.1522
	Orange, CA	
5960	Orlando, FL	0.9813
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.7771
	Daviess, KY	
6015	Panama City, FL	0.8507
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH	0.8016
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8246
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.8058
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.1370
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	0.9591
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.7912
	Jefferson, AR	
6280	Pittsburgh, PA	0.9789
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0819
	Berkshire, MA	
6340	Pocatello, ID	0.8792
	Bannock, ID	
6360	Ponce, PR	0.4788
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	0.9561
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA	1.1178
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI	1.0801
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	0.9885
	Utah, UT	
6560	Pueblo, CO	0.8712
	Pueblo, CO	
6580	Punta Gorda, FL	0.9031
	Charlotte, FL	
6600	Racine, WI	0.9130
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC	0.9812
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8208
	Pennington, SD	
6680	Reading, PA	0.9234
	Berks, PA	
6690	Redding, CA	1.1858
	Shasta, CA	
6720	Reno, NV	1.1095
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA	1.0287
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA	0.9211
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA	1.0757
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.8509
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.1698
	Olmsted, MN	
6840	Rochester, NY	0.9657
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.8615
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9012
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.1962
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI	0.9487
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	0.9586
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.9889
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9151
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
7080	Salem, OR	0.9904
	Marion, OR	
	Polk, OR0	
7120	Salinas, CA	1.5142
	Monterey, CA	
7160	Salt Lake City-Ogden, UT	0.9398
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.7646
	Tom Green, TX	
7240	San Antonio, TX	0.8100
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.2265
	San Diego, CA	
7360	San Francisco, CA	1.3957
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.3827
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.4623
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.1264
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.1194
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA	1.3981
	Santa Cruz, CA	
7490	Santa Fe, NM	0.9652
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3597
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	0.9532
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	1.0060
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton—Wilkes-Barre—Hazleton, PA	0.8299
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA	1.1526
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.8847
	Mercer, PA	
7620	Sheboygan, WI	0.8225
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.8570
	Grayson, TX	
7680	Shreveport-Bossier City, LA	0.9386
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	0.8481
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.8912
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	0.9859
	St. Joseph, IN	0.9859
7840	Spokane, WA	1.0928
	Spokane, WA	
7880	Springfield, IL	0.8720
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.8071
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.0990
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.9449
	Centre, PA	
8080	Steubenville-Weirton, OH–WV	0.8428
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.1075
	San Joaquin, CA	
8140	Sumter, SC	0.8127
	Sumter, SC	
8160	Syracuse, NY	0.9400
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.0380
	Pierce, WA	
8240	Tallahassee, FL	0.8449
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL	0.9113
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8991
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX	0.8506
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	0.9991
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9812
	Shawnee, KS	
8480	Trenton, NJ	1.0509
	Mercer, NJ	
8520	Tucson, AZ	0.9028
	Pima, AZ	
8560	Tulsa, OK	0.8463
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.7641
	Tuscaloosa, AL	
8640	Tyler, TX	0.8818
	Smith, TX	
8680	Utica-Rome, NY	0.8418
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA	1.3413
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1014
	Ventura, CA	
8750	Victoria, TX	0.8381
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ	1.0440
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA	1.0083
	Tulare, CA	
8800	Waco, TX	0.8371
	McLennan, TX	
8840	Washington, DC–MD–VA–WV	1.0807
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.7958
	Black Hawk, IA	
8940	Wausau, WI	0.9733
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL	1.0219
	Palm Beach, FL	
9000	Wheeling, WV–OH	0.7627
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.8898
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.7830
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8556
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD	1.1868
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9343
	New Hanover, NC	
	Brunswick, NC	
9260	Yakima, WA	1.0318
	Yakima, WA	
9270	Yolo, CA	1.1233
	Yolo, CA	
9280	York, PA	0.9410
	York, PA	

TABLE 4B—WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban Area (Constituent counties)	Wage Index
9320	Youngstown-Warren, OH	0.9815
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0865
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	1.0058
	Yuma, AZ	

e. Abt Associates Case Mix Research Project Data

Under the Abt Associates case-mix research project (Contract Number 500–96–0003/TO2), data necessary for developing a system of case-mix groups were collected and assembled into an analytic file. The basic data components needed for case-mix system development were (1) a reliable measure of resource cost for a defined unit of time and (2) reliable measures of patient characteristics along with several utilization variables. The patient and utilization variables were to be tested for their usefulness as predictors of resource cost. The defined unit of time was the 60-day payment episode, which was simulated from dates appearing on Medicare claims and primary data (visit logs) collected as part of the Abt Associates research. A total of 22,120 records for simulated 60-day episodes from more than 17,000 patients in the study sample comprise the file. A random subsample of episode records from this file was used for case-mix system development and refinement. The remaining records were used to validate the predictive accuracy of the recommended case-mix system. (A preliminary sample of 4,303 records available early in the study was used for most of the period during which Abt Associates conducted case-mix system development activities.)

After the case-mix system development phase was completed, the same file—now with a case-mix group assigned to every 60-day episode record—was combined with data on provider characteristics and national episode counts to generate a set of sample weights for the Abt Associates episode records. The provider characteristics data came from the On-line Survey and Certification System (OSCAR) Provider of Service file, and the national episode counts came from the episode claims file described in subsection c. above. In addition to the sample weights, the area hospital wage index applicable to each 60-day episode record was merged onto the sample of episodes.

The sample weights were designed to make the sample episodes with their case-mix group assignments represent 100 percent of the payment episodes nationally in 1997. Weights were developed by case-mix group for up to 32 stratification cells defined from an agency auspices variable, urban/rural location, and regional location. Weights were computed from the ratio of 1997 episodes in the stratum to episodes in the sample from that stratum. Weights for initial 60-day episodes were derived separately from weights for noninitial 60-day episodes.

After weighting the data, we estimated the average resource cost by case-mix group, as well as the overall average resource cost. Ratios formed from these averages provide case-mix relative weights. The file's sample weights also permit national estimates of case-mix group frequencies for 60-day episodes in 1997. Thus, the sample weights in conjunction with the case-mix group assignment for each record in the sample support two procedures underlying the rate setting methodology. One is the computation of the case-mix relative weights shown in Table 9. This computation procedure is described in Section II.C.3. The second procedure is the computation of the standardization factor (which also relies on the merged area hospital wage index). For a description of the standardization factor computation, see section II.A.3.d.

The remainder of this section provides a summary of the study sample and file construction activities leading to the Abt Associates analytic file comprising 22,120 simulated 60-day episodes. More detailed information on these aspects of the study is found in section II.C below.

Ninety agencies were selected to provide the patient sample—a cohort of all patients newly admitted between October 1997 and April 1998. Agencies were drawn from eight States (Arkansas, California, Florida, Illinois, Massachusetts, Pennsylvania, Texas, and Wisconsin) chosen to be representative of four census geographic regions (northeast, north central, south, and west). Within these States, agencies were selected from the four major auspices types (freestanding for-profit, freestanding voluntary/private nonprofit, hospital-based, and government) and both urban and rural areas. A final selection criterion was the practice pattern of the agencies, measured in terms of their visit volume relative to other agencies in the region.

Primary data sources for the study came from patient assessments and visit logs. Secondary data came from Medicare claims and several other administrative and economic data bases.

The assessment instrument consisted of OASIS data items supplemented by approximately 40 additional assessment items. Using the visit logs, agencies in the study collected data on every home health visit to members of the cohort. The visit logs provide the study's fundamental measure of resource use, the visit time, which is converted into a standardized resource cost using Bureau of Labor Statistics hourly wage data. Previous research on case mix generally used a measure of resource use based on the count of visits. The case-mix study measured time spent on visits rather than visit counts themselves to provide more reliable information for forming case-mix groups than did previous research.

Medicare claims for the 6-month cohort were linked to the patient characteristics data (OASIS and other assessment items) and visit log data to verify membership in the patient cohort, to provide utilization measures, and to simulate 60-day episodes, using the from-and thru-dates on the claims. Assessments were linked to an episode in the simulation file only if the assessment was conducted within 14 days of the start of the episode. Iterative matching algorithms, and intensive manual review of potential matches, were used to match assessments and visit logs to the claims records.

In order to estimate resource use for each 60-day period of care, decision rules for allocating claims and visit logs by discipline to 60-day ''windows'' of time, or episodes, were developed.

After resources were calculated for all simulated payment segments, analysis of the data revealed the presence of outliers in mean minutes per visit by discipline within payment segment. Outlier values were replaced with agency-level mean visit lengths by home health discipline. The application of the various linkage rules resulted in the final analytic file consisting of 22,120 60-day episodes of care. Further information on these data procedures is provided below in Section II.C. For complete details, see Abt Associates, Inc., Second Interim Report, August 1999.

3. Methodology Used for the Calculation of the 60-Day Episode Payment Amount

The methodology used to compute the standardized national 60-day episode payment rates was a multistep process combining each of the data sources described above. As stated above,

section 1895(b)(3)(A)(i) of the Act, requires—(1) the computation of a standard prospective payment amount that includes all costs of home health services covered and paid for on a reasonable-cost basis be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts to be standardized to eliminate the effects of case mix and wage levels among HHAs. Section 5101(c)(1) of the OCESAA amends section 1895(b)(3)(A)(ii) of the Act, to require the standard prospective payment amounts be budget neutral to the amounts expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001.

With data described above we calculated the standard average prospective payment amount for the 60-day episode using the following formula:

The nonstandardized average prospective payment amount for a 60-day episode is calculated by—

(1) multiplying the national mean cost per visit updated for inflation for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) in a 60-day episode by (2) the national mean utilization for each of the six disciplines in a 60-day episode summed in the aggregate. Added to this amount are amounts for (1) nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care, (2) possible unbundled nonroutine medical supplies billed under Part B that will be included under the PPS rate, and (3) an OASIS adjustment to pay HHAs for estimated ongoing OASIS assessment reporting costs.

Nonroutine Medical Supplies

The per-episode nonroutine medical supply amounts, paid on a reasonable cost basis under a home health plan of care, were calculated by summing the nonroutine medical supply costs for all of the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001. That total was divided by the number of episodes for the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001.

The per-episode possible unbundled nonroutine medical supply amounts billed under Part B included in the PPS rate were calculated by summing the allowed charges for the 199 HCPC codes (described in section II.A.2.c.) in calendar year 1997 for beneficiaries under a home health plan of care. That total was divided by the total number of episodes in calendar year 1997 from the episode database.

Ongoing OASIS Cost Adjustments

In the August 11, 1998 IPS Per-Visit and Per-Beneficiary Limitations notice (63 FR 42912) HCFA discussed a proposed adjustment for HHAs for the agency collection of the Outcome Assessment Information Set (OASIS) Data. Collecting and reporting OASIS is a condition of Medicare participation for HHAs. As we stated in the August 11, 1998 IPS notice, we believe there will be no permanent ongoing incremental costs associated with OASIS collection. Additionally, we believe that there will be no further one-time, start-up, OASIS reporting costs beyond those recognized at the inception of OASIS collection under IPS. However, we do believe that ongoing costs are associated with reporting OASIS data. Our proposed adjustment for the ongoing costs associated with OASIS reporting is based on information from the ongoing Medicare Quality and Improvement Demonstration, as well as the OASIS demonstration data. We assume, for purposes of deriving the OASIS proposed adjustment, that the typical HHA has 486 admissions and 30,000 visits per year and an 18 person staff. OASIS reporting adjustments are unlike the one-time OASIS collection adjustments published in the August 11, 1998 **Federal Register** which were based only on the number of skilled visits. These reporting adjustments are based on total Medicare visits. The following are HCFA's estimates of costs a typical HHA will incur for OASIS reporting which form the basis of the per-visit OASIS reporting adjustment and the per-episode OASIS adjustment. The first descriptive chart below shows the base OASIS reporting costs for an HHA which include the following: audits to ensure data accuracy; data entry, editing and auditing; supplies; and telephone costs. We estimate these ongoing OASIS costs to total $.101228 per visit. The second descriptive chart shows the OASIS personal computer costs for those HHAs that are unable to run OASIS because they lack the requisite hardware needed to support automation of the assessment tool. We estimate this percentage to be 50 percent (64 FR 3759). These costs consist of the depreciation of a personal computer and printer. For years one through three, HHAs are able to depreciate both their personal computer and printer. We estimate this OASIS cost to be $.026778 per visit. For years four and five, HHAs can only depreciate their printer. We estimate this OASIS cost to be $.004 per visit. In order for HHAs to keep pace with the ever evolving computing standards, to include enhancements to computer hardware and software, as well as future versions of Haven's OASIS software, this process of the depreciation of computer hardware is one that would repeat itself every five years. In that vain, a yearly average computer hardware depreciation adjustment was computed to yield an OASIS adjustment for each of the five years. This was accomplished by multiplying the first three years' computer hardware depreciation adjustment of $.026778 by 3, multiplying the following two years' computer hardware depreciation adjustment of $.004 by 2, summing those two factors, and dividing that sum by the total number of depreciable years(5) to get a yearly average for the computer hardware depreciation adjustment of $.017667. This yearly average for computer hardware depreciation adjustments ($.017667), when added to the base OASIS adjustment ($.101228), results in a total OASIS adjustment of $.118895 rounded to $.12 per visit.

For purposes of calculating the ongoing OASIS adjustment for the 60-day episode payment, we multiplied the average number of visits per 60-day episode (36 visits) by the total rounded per-visit OASIS adjustment ($.12 per visit). The calculation resulted in a per-episode OASIS adjustment of $4.32 for each 60-day episode under HHA PPS. The home health prospective payment calculation is provided in Table 5.

We calculated the ongoing OASIS adjustment for the low utilization payment adjustments by adding the total rounded per-visit OASIS adjustment ($.12 per visit) to the national standardized average cost per visit by discipline for each of the four or fewer visits provided in the episode. The low utilization payment adjustment calculation is provided in Table 6.

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Continuous Oasis Adjustment: base (for data reporting)

Type of Adjustment	Source	Formula	Cost per Visit
Audits to ensure data accuracy	University of Colorado (CHPR) BLS Occupational Employment Survey (1996) 1994 & 1995 HCFA Cost Report Data	(((((10 records per month * 12 months)) * .25 hrs) * $25.42) / 30,000 avg visits)...professional staff	$.02542
Data entry, editing, & auditing	University of Colorado(CHPR) Estimated average salary for clerical staff 1994 & 1995 HCFA Cost Report Data	((((8.5 hrs per month * 12) + (5 hrs per month * 12) + (1 hr per month * 12) + (5 hrs per year)) * $10 per hour) / 30,000 avg visits)	$.059667
Supplies	HCFA-3006-IFC OASIS Reporting (64FR3748) 1994 & 1995 HCFA Cost Report Data	$250 avg cost / 30,000 avg visits	$.008333
Ongoing telephone costs	Bell Atlantic 1994 & 1995 HCFA Cost Report Data (for average size HHA)	((($13.14 per month, per line) + ($ 6.38 per month subscriber fee)) * 12 months) / 30,000 avg visits)	$.007808
TOTAL			**$.101228**

Continuous Oasis Adjustment: 5 year depreciation averaging (for data reporting)

Type of Adjustment	Source	Formula	Cost per Visit
Computer Hardware: Computer Printer	American Hospital Association's..... Health Data & Coding Standards Group's "Estimated Useful Lives of Depreciable Hospital Assets" {revised 1998} Average cost for PC with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data Average cost for printer with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data	$2050 computer depreciated over 3 years.... (($2050/3) / 30,000 avg visits $600 printer cost depreciated over 5 years... (($600/5) / 30,000 avg visits	$.022778 $.004
	First 3 Year's Adjustment	***Note: computer & printer depreciation**	**$.026778**
	Next 2 Year's Adjustment	***Note: printer ONLY depreciation**	**$.004**
	5-Year Average Adjustment	**(((($.026777 * 3) + ($.004 * 2)) / 5)**	**$.017667**

Personal Computer Minimal Specifications

Description	Minimal Specifications
Warranty	Minimum 3 year
Processor	Pentium II Processor running at 400Mhz w/512 Cache
Operating System	32-bit operating system with Graphical User Interface
Hard Drive	3 Gb Hard drive minimum
Memory	32Mb minimum
CD ROM	14-32X, IDE, integrated sound
Floppy Drive	3.5" 1.44Mb diskette drive
Fax Modem	56K v.90 Data/Fax
Monitor	17" Color Monitor
Graphics	8Mb AGP
Mouse	Wheel mouse
Keyboard	104 key ergonomic keyboard
Anti Virus	Anti Virus Software
Management Software	System management client software/license
Printer	600 dpi Laser printer with cable

Oasis Adjustment: "One-Time" (for data reporting)

Type of Adjustment	Source	Formula	Cost per Visit
Training of Data Entry Staff	BLS Employer Provided Training(Hrs of Training{1995} & an estimated average salary for clerical personnel 1994 & 1995 HCFA Cost Report Data	(24 hrs * $10) / 30,000 avg visits	$.008
Telephone installation	Bell Atlantic Bell Atlantic 1994 & 1995 HCFA Cost Report Data	($28 processing fee) + ($40 per line connect fee)/ 30,000 avg visits	$.002266
TOTAL One Time Adjustment			**$.010266**

The nonstandardized average prospective payment amount must be standardized to eliminate the effects of case mix and wage levels among HHAs. The standard average prospective payment amount for the 60-day episode equals the nonstandardized average prospective payment amount for a 60-day episode divided by the standardization factor. The standardization factor is discussed in section II.A.3.d. of this regulation. Once the payment rate is standardized, that amount is multiplied by the budget-neutrality factor. The budget-neutrality factor is discussed in section II.A.3.e. of this regulation. The standardized budget-neutral amount is divided by 1.05 to account for outlier payments capped at 5 percent of total estimated outlays under PPS.

The actual national 60-day episode payment amount that will be paid to HHAs incorporates the standard average prospective payment amount adjusted to account for case mix and wage index. All of the elements incorporated into the national 60-day episode payment amounts (the standard average prospective payment amount adjusted to account for case mix and wage index) must be budget neutral to the interim payment system limitation amounts reduced by 15 percent. Table 5 illustrates the home health prospective payment calculation.

TABLE 5- HOME HEALTH PROSPECTIVE PAYMENT CALCULATION

Home Health Discipline Type	Total Costs for all providers in the PPS audit sample (weighted, updated to FY 2001, and visit limit adjusted)	Total Visits for all providers in the PPS audit sample (weighted)	Average Cost per Visit from the PPS audit sample	Average number of visits for episodes with >4 visits from the CY 1997 Episode File	Home Health Prospective Payment Rate
Home Health Aide Services	5,825,520,715	139,826,559	$41.66	17.59	$732.80
Medical Social Services	446,102,371	2,896,223	$154.03	.36	$55.45
Occupational Therapy. Services	435,117,642	4,192,964	$103.79	.48	$49.82
Physical Therapy Services	2,418,400,914	23,352,076	$103.56	2.74	$283.75
Skilled Nursing Services	11,945,901,801	126,256,624	$94.62	14.69	$1389.97
Speech Pathology Services	220,671,286	1,954,344	$112.91	.18	$20.32
Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001					$2532.11
Average Cost per Episode for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report					$52.78
Average Payment per Episode for Non Routine Medical Supplies possibly unbundled and billed separately to Part B					$10.35
Average Payment per episode for Ongoing OASIS Adjustment Costs					$4.32
Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001 Plus Medical Supplies & Ongoing OASIS					$2,599.56

Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001	Standardization Factor for Wage Index and Case Mix /1	Budget Neutrality Factor /2	Outlier Adjustment Factor 3/	Final Standardized and Budget Neutral Prospective Payment Amount Per 60-Day Episode For FY 2001
$2,599.56	.95502	.78578	1.05	$2037.04

/1 (based on ABT data validated using 100% episode wage index standardization factor)

/2 (budget neutral to current IPS with 15% reduction in limits)

/3 (Adjustment to PPS rate to account for 5% of total payments to outlier episodes)

Calculation for Non Routine Medical Supplies Per Episode Amount included in the Home Health Benefit

Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report 1/	Total number of episodes for those providers in the audited cost report sample 2/	Average Cost per Episode for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report
$419,729,371.85	7,952,692	$52.78

1/Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals

2/Source: Calendar Year 1997 Episode file

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Calculation for Non Routine Medical Supplies Per Episode Amount Possibly Unbundled and Billed under Part B

Non Routine Medical Supplies possibly unbundled and billed separately to Part B and reimbursed on the Fee Schedule 1/	Total number of episodes for all providers in the calendar year 1997 file adjusted for estimated total episodes in FY 2001 2/	Average Payment per Episode for Non Routine Medical Supplies possibly unbundled and billed separately to Part B
$92,958,370.81	8,985,000	$10.35

1/Source: 1997 National Claims History Part B file extract for 199 codes matched to the 60-Day episode file by beneficiary and dates of service

2/Source: Calendar Year 1997 Episode file

Calculation for Ongoing OASIS Adjustment Cost Per Episode

Average Cost per Visit for Ongoing OASIS Adjustment Costs 1/	Average number of Visits per Episode for Episodes with Greater than 4 Visits 2/	Average Payment per Episode for Ongoing OASIS Adjustment Costs
$0.12	36.04	$4.32

1/See Section II.A.3 for a description of the average cost per visit

2/Source: Calendar Year 1997 Episode file

Each component of the methodology is discussed below. The methodology set forth in this rule may be refined based on the accumulation of national OASIS data reported to us. We are specifically soliciting comments on the impact on HHAs to financially comply with the methodology set forth in this section.

a. Cost Data—60-Day Episode Payment

The audited cost data is discussed above in detail in section II.A.2.a. of this proposed regulation. The data source used in developing the national mean cost per visit for a 60-day episode is the audited cost report sample database. We calculated the national mean cost per visit for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) used in a 60-day episode. The data source in developing the average cost per episode for nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care is the audited cost report sample database also discussed in section II.A.2.a. and III of this proposed regulation.

b. Utilization Data—60-Day Episode Payment

As discussed above, developing the national mean number of visits for each of the six disciplines in a 60-day episode resulted from the thorough analysis of the national claims history. See section II.A.2.c. of this regulation for a detailed description of the utilization data analysis.

c. Updating the Data

The HHA market basket index reflects changes over time in the prices of an appropriate mix of goods and services included in covered HHA services. The HHA market basket index is used to develop the national 60-day episode payment rates. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001. For fiscal year 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act require the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change. A complete discussion concerning the design and application of the HHA market basket index and the factors used in developing the 60-day episode payment rates is discussed in section II.A.2.b. of this regulation.

d. Standardization Factor

Section 1895(b)(3)(A)(i) of the Act requires that the prospective payment amounts be standardized to eliminate the effects of variation in wage levels and case mix among HHAs. The objective of standardization is to ensure that the wage-index and case-mix adjustments to the episode payment amount do not alter the aggregate payments that would occur in the absence of these adjustments. All the estimates described in this section are based on episodes with more than four visits since only those episodes will be paid on a per-episode basis.

Several types of information are required for standardization. To account for wage differences, the proportion of labor and nonlabor components of HHA costs must be identified. These proportions are based on the relative importance of the different components of the HHA market basket index. As calculated, the labor-related portion of cost is 77 percent and the nonlabor-related portion is 23 percent. Wage differences are measured using the hospital wage index. In standardizing the episode payment amount, we used the FY 1999 hospital wage index, which is based on 1995 hospital wage data. For application of the wage index, the statute allows us to use the service area or any other area we specify. To be consistent with the current interim payment system, the wage index value that will be applied to the labor portion of the episode amount will be the appropriate wage index for the geographic area where the beneficiary received home health services.

To account for case-mix differences, it is necessary to have information on the distribution of 60-day home health episodes among the 80 groups of the HHRG case-mix system. For this proposed rule, the only available nationally representative sample of Medicare home health episodes with information on HHRG case mix is the Abt data set (described in section II.C. of the preamble) that was used to develop the HHRG case-mix classification system. As national OASIS data become available, we will develop a national data set that may enable us to refine our standardization estimate for the final rule. Also required for standardization is the set of HHRG relative weights that reflect the resource intensity of the average episode in each HHRG group relative to the overall average episode. A detailed description of the HHRG relative weights appears in section II.C. of this regulation.

Ideally, standardization would be estimated using nationally representative data with information on the joint variation in case-mix and wage-index values. Currently, national data on wage-index variation are only available from the episode data set constructed from 1997 Medicare home health claims. However, we are not able to classify these data by case mix using the HHRGs. Only the Abt data set currently provides information on both wage and case-mix variation. However, because they are a sample, the Abt data provide less information on wage variation than the claims episode data set.

In calculating standardization factors using the Abt sample, population weights that reflect the number of episodes in the national population represented by each sample episode were used in place of 1.0 for each episode to obtain the best population estimate from the sample. These weights take account of the region, agency type, and urban/rural characteristics used to stratify the Abt sample as well as the case-mix distribution among HHRGs in the Abt data. The national episode data derived from 1997 home health claims were the source of the population estimates of episodes by region and agency characteristics. These weights should not be confused with the audit sample weights described in section II.A.2.a. The Abt sample weights are described in detail in Appendix F of Abt Associates, Inc. *Case-Mix Adjustment for a National Home Health Prospective Payment System*. Second Interim Report, August 1999.

To make full use of the available data, we developed the following strategy for standardizing the episode amount: First, we estimated two standardization factors using the Abt data set. One accounts only for variation in wage-index values; the other accounts for both case-mix and wage-index variation. The Abt standardization factors differ by about .006 (.96093 vs. .96667). Next, the wage-only standardization factor from the Abt data was compared to the wage-only standardization factor computed from the national claims episode data (.96093 vs. .94935). These standardization factors differ by about .012. These three estimates are quite consistent with one another. However, because the wage-only standardization factor based on the national claims data provides the most reliable estimate of the effects of wage variation, we decided to use it (.94935) after applying a small adjustment for the combined effects of wage and case-mix variation. Therefore,

we multiplied .94935 by the ratio of the two Abt estimates (.9667/.96093=1.00597) to obtain a standardization factor of .95502.

Each of the three estimates of the standardization factor was calculated in the following manner: For each episode (or in the case of the Abt data, the number of episodes represented by each sample episode), the appropriate wage-index value was multiplied by the labor-related proportion of cost (.77) and added to the nonlabor-related proportion (.23) to obtain a wage-adjustment factor. In turn, the wage-adjustment factor was multiplied by the HHRG relative weight. The product of the wage and case-mix factors was summed over all episodes in the database, yielding a case-mix and wage-adjusted episode sum. Dividing the case-mix and wage-adjusted episode sum by the total number of episodes (the unadjusted episode sum) yields the standardization factor, a ratio that indicates how the combined effects of wage and case-mix variation impact aggregate payments. If the standardization factor is greater than one, the unstandardized episode cost must be reduced to account for the aggregate payment effect of the case-mix and wage-index payment adjustments. If the factor is less than one, then the unstandardized episode cost must be increased to accomplish the same objective. The standardized episode amount is equal to the unstandardized episode cost divided by the standardization factor. Note that all three of our estimates were less than one, which implies that the standardization factor increases the standard episode amount. Our final standardization factor produces an increase of about 4.7 percent.

The OASIS data should give us better information about the national distribution of episodes across the HHRG categories. As these data are collected and reported, we will examine them to determine whether refinements to the current estimate are needed.

e. Budget-Neutrality Factor

Section 1895(b)(3)(A)(i) of the Act requires that the standardized prospective payment amounts be computed in a budget-neutral manner so that the total amounts payable under the PPS are equal to the amounts that would have been made if the PPS were not in effect (that is, payments were made under the interim payment system) but if the per-visit and per-beneficiary limits had been reduced by 15 percent. The BBA had established budget-neutrality with respect to expenditures that would have been made under the interim payment system for FY 2000 (that is, beginning October 1, 1999), and section 5101(c) of OCESAA changed the date for the budget-neutrality calculation to be expenditures that would have been made under the interim payment system for FY 2001 (that is, beginning October 1, 2000), as if the 15 percent reduction in per-visit and per-beneficiary limits had taken place. Before calculating home health PPS rates in 2001, the IPS rates are reduced by 15 percent. Then, the total amounts payable under the PPS are calculated in a budget neutral fashion to be what would have been expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000. The reduction in the IPS limits will occur even if the PPS is not implemented by the October 1, 2000 statutory deadline.

To determine the adjustment factor, we determined what would have been paid under a prospective payment system having an episode payment of the non-standardized payment rate described earlier, which is $2,599.56. Under this system, in cases where a beneficiary receives four or fewer visits in an episode, we plan to reimburse at the per-visit rates described in low utilization payment adjustment methodology section of this regulation. We assumed that 5 percent of episodes would be reimbursed under this method. We determined the average reimbursement in these cases would be $348.72. This amount was determined by taking the difference between the non-standardized episode payment without low utilization episodes, $2,599.56 and the non-standardized payment that included such episodes in the average payment, $2,250.84.

In determining how many episodes there will be in fiscal year 2001, results from the analysis of the calendar year 1997 episode file were applied to the actual number of visits incurred in calendar year 1997. The most accurate estimate of incurred visits for 1997 is 281.6 million. The number of visits per episode resulting from these visits would have been 31.34, resulting in 8.985 million episodes. Although the number of visits in total has declined since 1997, there is nothing to indicate whether this would affect the number of 60-day episodes in a year. We are projecting that the total number of episodes will be the same in fiscal year 2001 as it was for 1997, 8.985 million. It is estimated that 95 percent of these episodes will be receiving an average payment of $2,599.56 and 5 percent will receive an average payment of $348.72. This would result in incurred fee-for-service home health payments of (8.985*.95*2599.56)+(8.985*.05*348.72), equaling $22,346 million for fiscal year 2001.

The current projection of incurred fee-for-service home health expenditures for FY 2001 under IPS with a 15 percent reduction in the per-visit and beneficiary cap limits is $17,466 million. We add to this the projected costs of the non-routine medical supplies under PPS that may have otherwise been unbundled under the interim payment system, which is $93 million. The budget neutrality factor is then calculated by dividing the sum of (1) our current projection for fee-for-service incurred home health expenditures and (2) the projected non-routine medical supplies currently paid by fee schedule by the projected aggregate episode payments: (17,466+93)/22,346=0.78578. The resulting budget neutrality factor is 0.78578.

4. Methodology Used for Low-Utilization Payments

As discussed above, section 1895(b)(1) of the Act requires the development of the definition of the unit of payment or episode to take into consideration the number, type, duration, mix, and cost of visits provided within the unit of payment. As a result of our analysis, we determined the need to also recognize a low-utilization payment under HHA PPS. Low-utilization payment would reduce the 60-day episode payments or the PEPA to those HHAs that provide minimal services to patients during a 60-day episode.

Payments for low-utilization episodes will be made on a per-visit basis using the cost-per-visit rates by discipline determined from the audited cost report sample for calculation of the standard episode amount. Included in these per-visit amounts are amounts for (1) nonroutine medical supplies paid under a home health plan of care, (2) nonroutine medical supplies possibly unbundled to Part B, and (3) a per visit ongoing OASIS reporting adjustment as discussed above in section II.A.3 of this regulation. These per-visit ''prices'' would be updated and adjusted for budget neutrality in the same manner as the standard episode amount. For low-utilization payments, they would be adjusted by the wage index in the same manner as the standard episode amount. However, the low-utilization payments are not case mix adjusted. The standardization factor used to adjust the LUPAs was calculated using national claims data for episodes containing four or fewer visits. This standardization factor includes adjustments only for the

wage index. The ''savings'' from the reduced episode payments would be redistributed to all episodes.

Below is Table 6, which presents the home health low-utilization provider adjustment payment calculation.

TABLE 6.—HOME HEALTH LOW-UTILIZATION PROVIDER ADJUSTMENT PAYMENT CALCULATION

Home health discipline type	Average cost per visit from the PPS audit sample	Average cost per visit for non routine medical supplies reported as costs on the cost report	Average cost per visit for non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule	Average cost per visit for ongoing OASIS adjustment costs [4]	Standardization factor for wage index [1]	Budget neutrality factor [2]	Outlier adjustment factor [3]	Final wage standardized and budget neutral per visit payment amounts per 60-day episode for FY 2001
Home Health Aide Services	$41.66	$1.41	$0.35	$0.12	.94622	.78578	1.05	$34.44
Medical Social Services	154.03	1.41	0.35	0.12	.94622	.78578	1.05	123.31
Occupational Therapy. Services	103.79	1.41	0.35	0.12	.94622	.78578	1.05	83.57
Physical Therapy Services	103.56	1.41	0.35	0.12	.94622	.78578	1.05	83.39
Skilled Nursing Services	94.62	1.41	0.35	0.12	.94622	.78578	1.05	76.32
Speech Pathology Services	112.91	1.41	0.35	0.12	.94622	.78578	1.05	90.79

[1] Based on 100% episode for episodes with 4 or fewer visits and wage index only standardization factor.
[2] Budget neutral to current IPS with 15% reduction in limits.
[3] Adjustment to PPS rate to account for 5% of total payments to outlier episodes.
[4] See Section II.A.3 for description of calculation of OASIS Adjustment cost.

CALCULATION FOR NONROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT INCLUDED IN THE HOME HEALTH BENEFIT

Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report [1]	$419,729,371.85
Total number of visits for those providers in the audited cost report sample [2]	298,478,790
Average Cost per visits for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report	$1.41

[1] Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals.
[2] Source: Calendar Year 1997 Episode file.

CALCULATION FOR NONROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT POSSIBLY UNBUNDLED AND BILLED UNDER PART B

Non Routine Medical Supplies possibly unbundled and billed separated to Part B and reimbursed on the Fee Schedule [1]	$92,958,370.81
Total number of visits for all providers in the calendar year 1997 file adjusted for estimated total episodes in FY 2001 [2]	263,144,000
Average Payment per visits for Non Routine Medical Supplies possibly unbundled and billed separately to Part B	$0.35

[1] Source: 1997 National Claims History Part B file extract for 199 codes matched to the 60-day episode file by beneficiary and dates of service.
[2] Calendar Year 1997 Episode file.

5. Methodology Used for Outlier Payments

As discussed above, while we are not statutorily required to make provision for outlier payments, we are proposing outlier payments. Outlier payments are payments made in addition to regular 60-day case-mix-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments would be made for episodes whose estimated cost exceeds a threshold amount for each HHRG. The outlier threshold for each HHRG is defined as the 60-day episode payment for the HHRG plus a fixed dollar loss amount that is the same for all case-mix groups. Outlier payments can be made for 60-day episode payments that reflect a PEP adjustment or SCIC adjustment. The PEP adjustment results in a truncated episode period and a SCIC adjustment results in a total of two proportional payments over a 60-day episode, but these periods could still incur unusually large costs. The outlier threshold for the PEP adjustment is the PEP adjustment plus a fixed dollar loss. The outlier threshold for the SCIC adjustment equals the total SCIC payment plus a fixed dollar loss. The wage adjusted component discussed below will be applied consistently for the 60-day episode payment, the PEP adjustment, and the total SCIC adjustment. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

The fixed dollar loss amount and the loss-sharing ratio are chosen so that estimated total outlier payments are 5 percent of total episode payments. The 5 percent constraint on total outlier payments creates a tradeoff between the values selected for the fixed dollar loss amount and the loss-sharing ratio. For a given level of outlier payments, a higher fixed dollar loss amount reduces the number of cases that receive outlier payments, but makes it possible to select a higher loss-sharing ratio and therefore increase outlier payments per episode. Alternatively, a lower fixed dollar loss amount means that more episodes qualify for outlier payments, but outlier payments per episode must be lower. Therefore, setting these two parameters involves policy choices about the number of outlier cases and their rate of payment.

Estimating the fixed dollar loss amount and loss-sharing ratios that are consistent with the 5 percent constraint requires simulation of payments under the PPS (including PEP adjustment, LUPA, 60-day episode, SCIC adjustments and outlier payments) with and without outlier payments. Feasible choices of fixed dollar loss amounts and loss-sharing ratios must meet the following conditions: First, total payments with and without outlier payments must be equal. Second, for the simulation with outlier payments, total outlier payments must be 5 percent of total payments including outlier payments. In calculating LUPA and 60-day episode payments the standard per-visit and episode amounts are divided by 1.05 as the means of financing the

outlier payments. There will be no retroactive payments or recoupments in the event the projected amounts turn out to be different than the actual payment.

This simulation requires information on the HHRG for each episode with more than four visits in order to calculate the case-mix adjusted episode payment. The case-mix adjusted payment is necessary to determine the outlier threshold. In other words, episodes that qualify for outlier payments cannot be identified without knowing the assigned HHRG. Because the Abt sample data are the only data source that contains HHRG information by episode, they were used to simulate potential outlier policy parameters.

Another data requirement for the policy simulation and also for actual implementation of an outlier payment policy is an estimate of the resource cost of each episode. To calculate outlier payments, two questions must be answered: Does the cost of the episode exceed the outlier threshold, and if so, by how much? Using the Abt data, we estimated the cost of each episode using the same method that we propose to use for the low-utilization. Specifically, the national per-visit cost amounts used in constructing the standard episode payment amount were multiplied by the number of visits in each discipline to estimate a standard cost of the episode. In actually making outlier payments under PPS, the cost of outlier episodes would be calculated using the per-visit ''prices'' for each discipline that are used to pay for low-utilization episodes.

The wage adjustment can be conceptualized in two ways that are mathematically equivalent. First, all components could be wage adjusted: the case-mix adjusted episode amount, the fixed dollar loss amount, and the estimated cost of the episode. Then the difference between the wage-adjusted episode cost and the wage-adjusted outlier threshold would be multiplied by the loss-sharing ratio to obtain the outlier payment for the episode. Alternatively, but equivalently, the outlier threshold and the episode cost could be determined without applying the wage adjustment. Their difference could then be multiplied by the loss-sharing ratio and wage adjusted to obtain the outlier payment.

Simulations using the Abt data provide some guidance about the tradeoffs involved in the choice of outlier policy parameters. As shown below, a loss-sharing ratio of .80 is consistent with a fixed dollar loss of 1.35 times the standard episode payment amount. With these values, 5.5 percent of regular episodes would qualify for outlier payments, and the average outlier payment per outlier episode would be 93 percent of the standard episode payment amount. Decreasing the loss-sharing ratio to .70 supports a fixed dollar loss of 1.22 times the standard episode payment amount and increases the percent of episodes receiving outlier payments to 6.5 percent. For purposes of this rule, we are proposing the outlier policy option of a fixed dollar loss of 1.07 times the standard episode payment amount and a loss sharing ratio of .60. We believe this option provides the most equitable threshold for qualification of an outlier payment in the first year of PPS. The proposed option increases the estimated percent of episodes receiving outlier payment to 7.5 percent while holding estimated outlier outlays at the required 5 percent. We are interested in receiving comments concerning the choice of the outlier policy parameters set forth below.

The data were collected between October 1997 and April 1998, a period that is initially pre-interim payment system and that ends early in the interim payment system experience. Again, the availability of national OASIS data for outlier simulations before finalization of this rule will help us refine our outlier estimates.

OPTIONS FOR OUTLIER POLICY PARAMETERS: THE TRADEOFF BETWEEN THE FIXED DOLLAR LOSS AND THE LOSS SHARING RATIO

Fixed dollar loss	Loss sharing ratio	Outlier payments of total payments	Outlier episodes of total episodes	Outlier payment of std. episode amt.
1.35	.80	5.0	5.5	.93
1.29	.75	5.0	5.9	.93
1.22	.70	5.0	6.5	.72
1.15	.65	5.0	7.0	.66
1.07	.60	5.0	7.5	.62

Example: An HHA serves a beneficiary who resides in Harrisburg, PA. The HHA determines the beneficiary is in HHRG C3F4S0. The episode contained 88 skilled nursing visits and 60 home health aide visits. It qualifies for outlier payments. To simplify matters and demonstrate the determination of outlier payments, the example begins after the case-mix-adjusted episode payment has been calculated. Further, Harrisburg was chosen because its wage-index value is very close to 1.0060, and again for simplicity, the wage-index adjustment has also been omitted.

1. Determine the outlier threshold for C3F4S0 with the fixed dollar loss option of 1.07:
   - Outlier threshold = Fixed Dollar Loss + Case-mix adj. payment Fixed Dollar Loss = 1.07 * $2,037.04 ..... $2,179.63
   - Case-mix adjusted episode payment = ($2,037.04 * 1.4357) $2,924.58
   - Outlier threshold $5,104.21
2. Calculate the standard cost of the episode:
   - 88 skilled nursing visits @ $76.32 ..... $6,716.16
   - 60 hh aide visits @ $34.44 $2,066.40
   - Total cost $8,782.56
3. Calculate the cost in excess of the threshold:
   - $8,782.56 − $5,104.21 ..... $3,678.35
4. Calculate the outlier payment:
   - $3,678.35 * .6 ..... $2,207.01
5. Calculate total payment for the episode:
   - $2,924.58 + $2,207.01 ..... $5,131.59

B. Examples of National Standardized 60-Day Episode Payment Amounts and Low-Utilization Payment Adjustments

For any HHRG group, to compute a case-mix and wage-adjusted 60-day episode prospective payment amount, the standardized prospective payment rate for FY 2001 (see Table 5 of this regulation) is multiplied by the case-mix index from Table 9 for that HHRG

group. To compute a wage-adjusted national 60-day episode payment, the labor-related portion of the 60-day national prospective payment rate for FY 2001 is multiplied by the HHA's appropriate wage-index factor listed in Table 4A or 4B. The product of that calculation is added to the corresponding nonlabor-related component. The resulting amount is the national case-mix and wage-adjusted 60-day episode prospective payment rate for FY 2001.

EXAMPLE 1.—AN HHA IS PROVIDING SERVICES TO A MEDICARE BENEFICIARY IN STATE COLLEGE, PA. THE HHA DETERMINES THE BENEFICIARY IS IN HHRG C2F2S2

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT	
Case mix index from Table 9 for case mix group	1.8275
Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (1.8275 * $2,037.04)	$3,722.69
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 (.77668 * $ 3,722.69)	$2,891.34
Apply wage index factor from Table 4B for patient in State College, PA (0.9449 * $ 2,891.34)	$2,732.03
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001 (.22332 * $3,722.69)	$831.35
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case mix and wage index amounts ($2,732.03 + $831.35)	$3,563.38

EXAMPLE 2. AN HHA SERVES A BENEFICIARY WHO RESIDES IN LAKE PLACID, NY. THE HHA DETERMINES THE PATIENT IS IN HHRG C1F4S3

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT	
Case mix index from Table 9 for case mix group	2.2241
Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (2.2241 * $2,037.04)	$4,530.58
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 .77668 * $4,530.58)	$3,518.81

EXAMPLE 2. AN HHA SERVES A BENEFICIARY WHO RESIDES IN LAKE PLACID, NY. THE HHA DETERMINES THE PATIENT IS IN HHRG C1F4S3—Continued

Apply wage index factor from Table 4A for patient in Lake Placid, NY (0.8588 * $3,518.81)	$3,021.95
Calculate the Nonlabor portion of the Prospective Payment Rate for FY 2001 (.22332 * $4,530.58)	$1,011.77
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and nonlabor portion of the case mix and wage index amounts ($3,021.95 + $ 1,011.77)	$4,033.72

EXAMPLE 3.—HHA SERVES A BENEFICIARY WHO RESIDES IN FORT COLLINS, CO. THE HHA DETERMINES THE BENEFICIARY IS IN HHRG C3F0S0

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT	
Case mix index from Table 9 for case mix group	.9591
Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (.9591 * $ 2,037.04)	$1,953.73
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 (.77668 * $1,953.73)	$1,517.42
Apply wage index factor from Table 4B for patient in Fort Collins, CO (1.0770 * $1,517.42)	$1,634.26
Calculate the Non-Labor portion of the Prospective Payment Rate for FY (2001 .22332 * $1,953.73)	$436.31
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case mix and wage index amounts ($1,634.26 + $ 436.31)	$2,070.57

EXAMPLE 4.—HHA SERVES A BENEFICIARY WHO RESIDES IN GRAND FORKS, ND. THE HHA DETERMINES THE BENEFICIARY IS IN HHRG C0F3S1

COMPUTATION OF CASE MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT	
Case mix index from Table 9 for case mix group	.8537

EXAMPLE 4.—HHA SERVES A BENEFICIARY WHO RESIDES IN GRAND FORKS, ND. THE HHA DETERMINES THE BENEFICIARY IS IN HHRG C0F3S1—Continued

Standardized Prospective Payment Rate for FY 2001	$2,037.04
Calculate the Case Mix adjusted Prospective Payment Rate for FY 2001 (.8537* $2,037.04)	$1,739.02
Calculate the Labor portion of the Prospective Payment Rate for FY 2001 (.77668 * $1,739.02)	$1,350.66
Apply wage index factor from Table 4B for patient in Grand Forks, ND (0.8836 * $1,350.66)	$1,193.44
Calculate the Non-Labor portion of the Prospective Payment Rate for FY (2001 .22332 * $1,739.02)	$388.36
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case mix and wage index amounts ($1,193.44 + $388.36)	$1,581.80

Example 5. An HHA in Baltimore, MD assigns a patient to an HHRG at the start of a 60-day episode. The final claim for the patient indicates that only two visits (one skilled nursing and one home health aide) were furnished during the 60-day episode. The HHA would be paid the low-utilization payment adjustment. Any necessary adjustment to the 50 percent initial payment for the episode would be made on subsequent claims for the HHA.

COMPUTATION OF WAGE INDEX ADJUSTED LOW UTILIZATION PAYMENT

Number and visit discipline type	Final wage standardized and budget neutral per-visit payment amounts per 60-day episode for FY2001 [1]
1 Skilled Nursing Visit	$76.32
1 Home Health Aide Visit	34.44

[1] See Table 6 for the Calculation of Final Wage Standardized and Budget Neutral Per-Visit Payment Amounts Per 60-Day Episode for FY 2001.

Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit—.77668 * $76.32 = $59.28

Apply wage index factor from Table 4B for Baltimore, MD—.9642 * $59.28 = $57.15

Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit—.22332* $76.32 = $17.04

SUBTOTAL-Low Utilization Payment for 1 Wage Adjusted Skilled Nursing Visit rendered in a 60-day episode—$57.15 + $17.04 = $74.19

Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit—.77668* $34.44 = $26.75

Apply wage index factor from Table 4B for Baltimore, MD—.9642* $26.75 = $25.79

Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit—.22332* $34.44 = $7.69

SUBTOTAL—Low Utilization Payment for 1 wage adjusted home health aide visit rendered in a 60-day episode—$25.79 + $7.69 = $33.48

Calculate Total Low Utilization Payment Adjustment for 2 visits provided during the 60-day episode by adding the wage adjusted skilled nursing visit and the wage adjusted home health aide visit—$74.19 + $33.48 = $107.67

C. Design and Methodology for Case-Mix Adjustment of 60-Day Episode Payments

1. Background on Clinical Model Patient Classification System

As discussed above in section I.C. of this regulation, in 1996, we began the current research project. The basic approach to the home health case-mix adjuster development was to use the patient data and other appropriate data to define alternative case-mix adjusters and then estimate their ability to explain variation (R-squared value) in resource use over the course of a 60-day payment period. Compared to the 120-day payment period tested under the Phase II per-episode HHA PPS Demonstration, a 60-day payment period will make payments more responsive to the needs of long-stay home health patients and Medicare (as the payor), as discussed in section I.D.1.a of the preamble to this regulation.

The two basic data sources for the study are case-mix explanatory variables from the patient data on OASIS–B (supplemented by additional patient-specific items) and a resource-use variable from visit data. To arrive at an estimate of resource use from the visit logs (as discussed in section I.C. of this regulation), time is weighted by mean labor cost for the discipline providing the visit. Medicare claims were linked to the OASIS data and the visit log data to verify the visits and provide utilization measures.

Clinical judgment was used to refine the components and structure of a decision tree for assigning patients into case-mix groups. Along with clinical judgment, the relative predictive value of potential case-mix variables, their susceptibility to gaming and subjectivity, and as well as administrative implications were considered in the final resolution of the elements retained in the Clinical Model. The Clinical Model consists of 80 HHRGs and has an R-squared of 32 percent. The information to assign a patient to one of the 80 HHRGs are comprised of 19 OASIS–B elements supplemented by one additional patient status item regarding projected therapy use in the 60-day episode. The non-OASIS items tested in the case-mix research did not significantly increase the predictive value of the model; therefore, the non-OASIS items were not included in the final case-mix methodology.

2. Home Health Resource Group (HHRG) Classification System

In the HHRG case-mix classification system, patient characteristics and health status information from the OASIS–B such as ''primary home care diagnosis,'' ''ability to perform ADLs'' as supplemented by projected therapy use during a 60-day episode, will be used to assign the patient to an HHRG for payment.

The HHRG system measures three dimensions of case mix. Table 7 provides the HHRG system three-level decision tree logic.

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Table 7--Home Health Resource Group Case-Mix Classification

Decision Tree Logic

Clinical Dimension				
OASIS+ Item	**Description**	**Value**	**Points**	**Scoring**
M0230	Primary home care diagnosis	If Orthopedic DG, add If Neurological DG, add If Diabetes DG, add	10 19 16	min = 0-7 low = 8-16 mod = 17-26 high = 27+
M0250	IV/Infusion/ Parenteral/Enteral Therapies	If box 1, add If box 2, add If box 3, add	15 20 24	
M0390	Vision	If box 1 or 2, add	7	
M0420	Pain	If box 2 or 3, add	6	
M0460	Current pressure ulcer stage	If box 1 or 2, add If box 3 or 4, add	15 43	
M0476	Stasis ulcer	If box 3, add	24	
M0488	Surgical wound	If box 2 or 3, add	10	
M0490	Dyspnea	If box 2 - 4, add	5	
M0530	Urinary	If box 1 or 2, add	8	
M0540	Bowel	If box 2 -5, add	11	
M0550	Bowel ostomy	If box 1 or 2, add	10	
M0610	Behavioral	If box 1-6, add	3	

Functional Status Dimension				
OASIS+ Item	**Description**	**Value**	**Points**	**Scoring**
M0650 (current) M0660 (current)	Dressing	If M0650 or M0660 = box 1 - 3, add	4	min = 0-4 low = 5-15 mod = 16-22 high = 23-35 max = 36
M0670 (current)	Bathing	If box 2 - 5, add	8	
M0680 (current)	Toileting	If box 2 - 4, add	3	
M0690 (current)	Transfer-ring	If box 1, add If box 2 - 5, add	3 8	
M0700 (current)	Locomotion	If box 1 or 2, add If box 3 - 5, add	6 13	

Services Utilization Dimension			
Variable	**Description**	**Value**	**Scoring**
M0170 - line 1	NO Hospital discharge past 14 days	If box 1 IS BLANK, add 1 to score	Min = 0-2 Low = 3 Mod = 4-6 High= 7
M0170 - line 2 or 3	Inpatient rehab/SNF discharge past 14 days	If box 2 or 3, add 2 to score	
Receipt of Therapy	8 or more therapy hours	If yes, add 4 to score	

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A patient can be classified in one of 80 possible HHRG categories. The first level of the decision tree is the Clinical Dimension, which is divided into four severity groups. A patient is assigned one of four severity levels in the Clinical Dimension: minimum, low, moderate, or high clinical severity. To determine the severity group, a numeric score is applied to each answer provided to the following 12 clinical OASIS–B items: MO230 primary home health diagnosis, MO250 IV/Infusion/Parenteral/Enteral Therapies, MO390 Vision, MO420 Pain, MO460 Current Pressure Ulcer Stage, MO476 Stasis Ulcer, MO488 Surgical Wound, MO490 Dyspnea, MO530 Urinary Incontinence, MO540 Bowel Incontinence, MO550 Bowel Ostomy, MO610 Behavioral Problems. Table 7 provides the corresponding numeric scores for the responses provided to the items in the four severity groups within the Clinical Dimension. The scores are then summed. The severity level is determined by the value of the summed score. The next level of the subdivision of the decision tree logic is based on patient functional status.

The Functional Dimension is divided into five severity groups. A patient is assigned one of five severity levels in the Functional Dimension: minimum, low, moderate, high, or maximum functional severity. To determine the severity group, a numeric score is applied to each answer provided for the following six OASIS-B items: MO650 and MO660 Dressing Upper and Lower Body, MO670 Bathing, MO680 Toileting, MO690 Transferring, and MO700 Locomotion. Table 7 provides the corresponding numeric scores to the responses provided to the functional status items. The scores are then summed. The severity level for the Functional Dimension is determined by the value of the summed score. The final level of the subdivision of the decision tree logic is the Services Utilization Dimension.

The Services Utilization Dimension is also divided into four severity groups. A patient is assigned to one of the four following severity levels in the Services Utilization Dimension: minimum, low, moderate, or high. To determine the severity group, a numeric score is applied to each answer provided to the following OASIS–B item divided into two questions, and one supplemental item regarding projected receipt of therapy use: MO170 hospital discharge in past 14 days, MO170 inpatient rehabilitation/SNF discharge in past 14 days, and receipt of therapy. Table 7 provides the corresponding scores to the responses provided to the items in the Services Utilization Dimension. The scores are then summed. The severity level for the Services Utilization Dimension is determined by the value of the summed scores.

We are proposing a utilization proxy for the time variable corresponding to the need for 8 or more therapy hours during a 60-day episode. As a result of the Abt case-mix research, Abt determined that 10 visits of physical therapy, occupational therapy, or speech-language pathology services in any combination in a 60-day period equate to 8 hours of physical therapy, occupational therapy, or speech-language pathology services in any combination in a 60-day period. At the inception of HHA PPS, the case-mix treatment variable regarding the need for 8 or more hours of therapy in a 60-day episode will be defined as 10 visits of physical therapy, occupational therapy, or speech-language pathology services in any combination furnished during the 60-day episode.

As discussed above, HHAs will project the therapy need for the patient at the start of the 60-day episode. In accordance with the utilization proxy for time developed by Abt, the need for 8 or more hours of therapy during the 60-day episode will be defined as 10 visits of physical therapy, occupational therapy, or speech-language pathology services in any combination in a 60-day episode. The projection of therapy use

at the start of the 60-day episode (8 hours of therapy as defined as 10 visits) will be confirmed at the end of the 60-day episode with the current line-item date visit billing requirements included on the final claim under PPS. We envision that the pricer logic at the RHHI will confirm the projection of the utilization data at the start of care with the actual utilization data submitted on the final claim. If 8 or more hours of therapy as defined as 10 therapy visits are projected at the start of the episode and confirmed at the end of the episode via the line-item date billing information on the final claim, the episode would be paid at the case-mix index level including the therapy-use variable. This assumes no adjustment for other reasons, for example, medical review etc. However, the reconciliation of projected therapy use with actual therapy use has the potential to decrease the final episode payment if the actual therapy use reported at the end of the episode on the final claim does not correspond to projected therapy use provided at the start of the episode. Depending upon the results of the reporting of 15-minute increment billing, we will of course consider reverting to measure the therapy use in terms of hours by 15-minute increments rather than visits.

We are soliciting comments on the financial impact of this proposal on HHAs as well as suggestions for future research to refine the PPS methodology after implementation. The 60-day payment schedule results in conforming changes to the current time frames governing plan of care certifications and recertifications and the cycle of OASIS assessments. The conforming changes are discussed in section IV. of this regulation.

Application of the case-mix indices to the standardized 60-day payment amount presented in Table 6 results in 80 separate case-mix-adjusted 60-day episode national payment amounts corresponding to the 80 separate HHRG classification groups described above and individually listed in Table 9.

Below is Table 8 designating the acceptable ICD–9 codes corresponding to the orthopedic, neurological, and diabetes diagnosis groups for purposes of case-mix classification.

TABLE 8.—ICD–9 CODES USED TO DEFINE DIAGNOSTIC GROUPS

DG	ICD–9 Code	Description
ORTHO	170	MAL NEO BONE/ARCTIC CART.
ORTHO	171	MAL NEO SOFT TISSUE.
ORTHO	213	BEN NEO BONE/ARCTIC CART.
ORTHO	274	GOUT.
ORTHO	710	DIFF CONNECTIVE TISS DIS.
ORTHO	711	ARTHROPATHY W INFECTION.
ORTHO	712	CRYSTAL ARTHROPATHIES.
ORTHO	713	ARTHROPATH IN OTHER DIS.
ORTHO	714	OTH INFLAMM POLYARTHROP.
ORTHO	716	ARTHROPATHIES NEC/NOS.
ORTHO	717	INTERNAL DERANGEMENT KNEE.
ORTHO	718	OTHER JOINT DERANGEMENT.
ORTHO	720	INFLAM SPONDYLOPATHIES.
ORTHO	721	SPONDYLOSIS ET AL.
ORTHO	722	INTERVERTEBRAL DISC DIS.
ORTHO	723	OTHER CERVICAL SPINE DI.
ORTHO	724	BACK DISORDER NEC & NOS.
ORTHO	725	POLYMYALGIA RHEUMATICA.
ORTHO	728	DIS OF MUSCLE/LIG/FASCIA.
ORTHO	730	OSTEOMYELITIS.
ORTHO	731	OSTEITIS DEFORMANS.
ORTHO	732	OSTEOCHONDROPATHIES.
ORTHO	781	NERV/MUSCULSKEL SYS SYMP.
ORTHO	800	SKULL VAULT FRACTURE.
ORTHO	801	SKULL BASE FRACTURE.
ORTHO	802	FRACTURE OF FACE BONES.
ORTHO	803	OTHER SKULL FRACTURE.
ORTHO	804	MULT FX SKULL W OTH BONE.
ORTHO	805	VERTEBRL FX W/O CORD INJ.
ORTHO	806	VERTEBRAL FX W CORD INJ.
ORTHO	807	FX RIB/STERN/LARYN/TRACH.
ORTHO	808	PELVIC FRACTURE.
ORTHO	809	FRACTURE OF TRUK BONES.
ORTHO	810	CLAVICLE FRACTURE
ORTHO	811	SCAPULA FRACTURE.
ORTHO	812	HUMERUS FRACTURE.
ORTHO	813	RADIUS & ULNA FRACTURE.
ORTHO	814	CARPAL FRACTURE.
ORTHO	815	METACARPAL FRACTURE.
ORTHO	816	FRACTURE PHALANGES, HAND.
ORTHO	817	MULTIPLE HAND FRACTURES.
ORTHO	818	FRACTURE ARM MULT/NOS.
ORTHO	819	FX ARMS W RIB/STERNUM.
ORTHO	820	FRACTURE NECK OF FEMUR.
ORTHO	821	OTHER FEMORAL FRACTURE.
ORTHO	822	PATELLA FRACTURE.
ORTHO	823	TIBIA & FIBULA FRACTURE.
ORTHO	824	ANKLE FRACTURE.
ORTHO	825	FX OF TARSAL/METATARSAL.

TABLE 8.—ICD–9 CODES USED TO DEFINE DIAGNOSTIC GROUPS—Continued

DG	ICD–9 Code	Description
ORTHO	827	LOWER LIMB FRACTURE NEC.
ORTHO	828	FX LEGS W ARM/RIB.
ORTHO	831	SHOULDER DISLOCATION.
ORTHO	832	ELBOW DISLOCATION.
ORTHO	833	WRIST DISLOCATION.
ORTHO	835	DISLOCATION OF HIP.
ORTHO	836	DISLOCATION OF KNEE.
ORTHO	837	DISLOCATION OF ANKLE.
ORTHO	838	DISLOCATION OF FOOT.
ORTHO	846	SPRAIN SACROILIAC REGION.
ORTHO	847	SPRAIN OF BACK NEC/NOS.
ORTHO	88	TRAUMATIC AMPUT ARM/HAND.
ORTHO	896	TRAUMATIC AMPUTAT FOOT.
ORTHO	897	TRAUMATIC AMPUTATION LEG.
ORTHO	927	CRUSHING INJ UPPER LIMB.
ORTHO	928	CRUSHING INJURY OF LEG.
NEURO	13	CNS TUBERCULOSIS.
NEURO	45	ACUTE POLIOMYELITIS.
NEURO	46	CNS SLOW VIRUS INFECTION.
NEURO	47	ENTEROVIRAL MENINGITIS.
NEURO	48	OTH ENTEROVIRAL CNS DIS.
NEURO	49	OTH NONARTHROPOD CNS VIR.
NEURO	191	MALIGNANT NEOPLASM BRAIN.
NEURO	192	MAL NEO NERVE NEC/NOS.
NEURO	225	BENIGN NEO NERVOUS SYST.
NEURO	320	BACTERIAL MENINGITIS.
NEURO	321	OTH ORGANISM MENINGITIS
NEURO	322	MENINGITIS, UNSPECIFIED.
NEURO	323	ENCEPHALOMYELITIS.
NEURO	324	CNS ABSCESS.
NEURO	325	PHLEBITIS INTRCRAN SINU.
NEURO	326	LATE EFF CNS ABSCESS.
NEURO	330	CEREBRAL DEGEN IN CHILD.
NEURO	331	CEREBRAL DEGENERATION.
NEURO	332	PARKINSON'S DISEASE.
NEURO	333	EXTRAPYRAMIDAL DIS NEC.
NEURO	334	SPINOCEREBELLAR DISEASE.
NEURO	335	ANT HORN CELL DISEASE.
NEURO	336	SPINAL CORD DISEASE NEC.
NEURO	337	AUTONOMIC NERVE DISORDER.
NEURO	340	MULTIPLE SCLEROSIS.
NEURO	341	OTHER CNS DEMYELINATION.
NEURO	342	HEMIPLEGIA.
NEURO	343	INFANTILE CEREBRAL PALSY.
NEURO	344	OTH PARALYTIC SYNDROMES.
NEURO	347	CATAPLEXY AND NARCOLEPS.
NEURO	348	OTHER BRAIN CONDITIONS.
NEURO	349	CNS DISORDER NEC/NOS.
NEURO	352	DISORDER CRAN NERVE NEC.
NEURO	356	HERED PERIPH NEUROPATHY.
NEURO	357	INFLAM/TOXIC NEUROPATHY.
NEURO	358	MYONEURAL DISORDERS .
NEURO	392	RHEUMATIC CHOREA.
NEURO	430	SUBARACHNOID HEMORRHAGE.
NEURO	431	INTRACEREBRAL HEMORRHAGE.
NEURO	432	INTRACRANIAL HEM NEC/NOS.
NEURO	433	PRECEREBRAL OCCLUSION.
NEURO	434	CEREBRAL ARTERY OCCLUS.
NEURO	435	TRANSIENT CEREB ISCHEMIA.
NEURO	436	CVA .
NEURO	437	OTH CEREBROVASC DISEASE.
NEURO	741	SPINA BIFIDA.
NEURO	742	OTH NERVOUS SYSTEM ANOM.
NEURO	851	CEREBRAL LACER/CONTUSION.
NEURO	852	MENINGEAL HEM FOLLOW INJ.
NEURO	853	OTH TRAUMATIC BRAIN HEM.
NEURO	854	OTHER BRAIN INJURY.
NEURO	907	LATE EFF NERV SYSTEM INJ.
NEURO	950	INJ OPTIC NERV/PATHWAYS.
NEURO	951	CRANIAL NERVE INJURY NEC.
NEURO	952	SPINAL CORD INJ W/O FX.
NEURO	953	INJ NERVE ROOT/SPIN PLEX.

TABLE 8.—ICD–9 CODES USED TO DEFINE DIAGNOSTIC GROUPS—Continued

DG	ICD–9 Code	Description
NEURO	954	INJURY OTH TRUNK NERVE.
NEURO	955	INJ PERIPH NERV SHLD/ARM.
NEURO	956	INJ PERIPH NERV PELV/LEG.
DM	250	DIABETES MELLITUS.

3. Determining the Case-Mix Indices

As discussed in section I. of this regulation, sections 1895(b)(4)(A)(i) and (b)(4)(B) of the Act require us to establish and make appropriate case-mix adjustments to the episode payment in a manner that explains a significant amount of the variation in cost. Case-mix adjustment takes into account the relative resource use of different patient types served by an HHA. The goal of a case-mix payment system is to measure the intensity of care and services required for each patient and translate it into an appropriate payment level. A patient's need for care resources is represented by an index score or relative weight based on the combination of clinical, functional, and service utilization indicators measured at the start of the 60-day episode. The decision tree logic for the case-mix groups is discussed in section II.C.2. of this regulation.

As also discussed in section I.C. of this regulation, the patient classification system used under the HHA PPS is the Clinical Model developed by Abt, an 80-group patient case-mix classification system (HHRGs), which provides the basis for the case-mix payment indices used both for standardization of the 60-day episode payments and subsequently to establish the case-mix adjustments to the 60-day episode payment for patients with different home health service needs. These indices reflect the weight of relative resource utilization or value of each of the 80 HHRGs relative to all of the groups.

These payment indices are based on patient data (from the OASIS–B supplemented by an additional non-OASIS treatment variable) and average resource use per discipline. To arrive at an estimate of resource use through visit logs, time is weighted by mean labor cost for each of the six disciplines covered under the Medicare home health benefit providing the visit. Medicare claims were linked to the OASIS data and the visit log data to verify the visits and provide utilization measures.

Construction of the Relative Weights for the HHRGs

Each of the 80 HHRGs is assigned a relative weight that, when multiplied by the wage-adjusted standard episode amount, comprises the case-mix-adjusted payment for each episode. The relative weights measure the average resource intensity of the episodes in each HHRG relative to the average resource intensity of all episodes. The data that Abt used to develop the case-mix groups of the HHRG classification system were also used to construct the relative weights reported in Table 9. At this time, they are the only data that contain information on resource intensity by HHRG. Because we are proposing to pay episodes with four or fewer visits on a per-visit basis, we excluded those episodes from the data used to construct the relative weights. The resulting data set contained 19,449 episodes. The measure of resource intensity used in the computation was the same variable that Abt used in developing the HHRG system: the minutes spent on each visit were multiplied by a standard national labor cost per minute for the type of visit (skilled nursing, home health aide, etc.); these standard visit costs were then summed for all visits within the episode to obtain the cost for the episode.

If a large national data set that linked resource utilization and HHRG classifications for 60-day episodes of care were available, we would have computed the relative weights in the following manner: First, we would have calculated the mean cost per episode for each HHRG, as well as the mean cost for all episodes. Then, each mean cost would have been divided by the mean cost of all episodes. Calculating the relative weights in this manner ensures that the relative weight of the average episode is 1.0.

However, since only a sample data set is available, it was necessary to modify this method in order to obtain reliable relative weights. The Abt data set is large enough to establish the case-mix groups and to calculate average resource use for many of the HHRG categories. However, there are also many HHRGs with relatively small numbers of episodes for which reliable estimates cannot be made. As a result, it was necessary to make full use of the information contained in the sample. We are proposing to revise the case mix weights to adjust for changes in patient population, actual changes in home health care practice patterns, and changes in the coding or classification of patients that do not reflect real changes in case mix.

All episodes at each level of the clinical, functional, and service domains were employed to estimate the resource use for specific combinations of clinical, functional, and service levels. For example, in estimating the average cost of HHRG C3F4S1, we used data for all C3 episodes, all F4 episodes, and all S1 episodes. The method involved computing an average cost for each clinical level (C0, C1, C2, and C3), each functional level (F0, F1, F2, F3, and F4), and each service level (S0, S1, S2, and S3). Then the average additional cost of each level above the C0F0S0 base cost was computed: C1–C0, C2–C0, C3–C0; F1–F0, F2–F0, F3–F0, F4–F0; S1–S0, S2–S0, S3–S0. Finally, these average additional cost amounts were added to the base cost (C0F0S0) to obtain the average cost of each HHRG. For example, to calculate the average cost of C1F1S0, take the C0F0S0 amount and add to it the additional cost of C1 cases (C1–C0) and the additional cost of F1 cases (F1–F0); likewise, to obtain the average cost of C3F4S1, start with C0F0S0 and add to it C3–C0, F4–F0, and S1–S0.

In more precise statistical terms, the mean cost estimates described above were obtained using multiple regression analysis. To account for the stratification of the sample, weighted regression was used. We regressed the dependent variable (the Abt resource cost) on categorical variables C1–C3, F1–F4, and S1–S3. By omitting C0, F0, and S0 from the regression, the intercept term measures the mean cost of the C0F0S0 group. The regression coefficients of each of the clinical, functional, and service levels measure the mean difference in cost between the given level and the base cost (C0F0S0). For example, the coefficient of the C2 variable measures the average cost difference, C2–C0.

Example: Calculation of Relative Weight for HHRG C3F4S1

Average cost for HHRG C0F0S0:	$1371.44
Additional average cost of C3:	+1121.77

Additional average cost of F4:	+1239.00	Average cost of C3F4S1:	$3,950.30	Relative weight of C3F4S1: Average cost of C3F4S1 divided by average cost of all episodes: $3950.30/$2599.56=1.5196
Additional average cost of S1:	+218.09			

TABLE 9—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS

HHRG group	HHRG description	Case mix weight
C0F0S0	"Clinical=Min, Functional=Min, Service=Min"	0.5276
C0F0S1	"Clinical=Min, Functional=Min, Service=Low"	0.6115
C0F0S2	"Clinical=Min, Functional=Min, Service=Mod"	1.4400
C0F0S3	"Clinical=Min, Functional=Min, Service=High"	1.6620
C0F1S0	"Clinical=Min, Functional=Low, Service=Min"	0.6015
C0F1S1	"Clinical=Min, Functional=Low, Service=Low"	0.6854
C0F1S2	"Clinical=Min, Functional=Low, Service=Mod"	1.5140
C0F1S3	"Clinical=Min, Functional=Low, Service=High"	1.7360
C0F2S0	"Clinical=Min, Functional=Mod, Service=Min"	0.7234
C0F2S1	"Clinical=Min, Functional=Mod, Service=Low"	0.8073
C0F2S2	"Clinical=Min, Functional=Mod, Service=Mod"	1.6359
C0F2S3	"Clinical=Min, Functional=Mod, Service=High"	1.8579
C0F3S0	"Clinical=Min, Functional=High, Service=Min"	0.7698
C0F3S1	"Clinical=Min, Functional=High, Service=Low"	0.8537
C0F3S2	"Clinical=Min, Functional=High, Service=Mod"	1.6822
C0F3S3	"Clinical=Min, Functional=High, Service=High"	1.9043
C0F4S0	"Clinical=Min, Functional=Max, Service=Min"	1.0042
C0F4S1	"Clinical=Min, Functional=Max, Service=Low"	1.0881
C0F4S2	"Clinical=Min, Functional=Max, Service=Mod"	1.9166
C0F4S3	"Clinical=Min, Functional=Max, Service=High"	2.1386
C1F0S0	"Clinical=Low, Functional=Min, Service=Min"	0.6131
C1F0S1	"Clinical=Low, Functional=Min, Service=Low"	0.6970
C1F0S2	"Clinical=Low, Functional=Min, Service=Mod"	1.5255
C1F0S3	"Clinical=Low, Functional=Min, Service=High"	1.7475
C1F1S0	"Clinical=Low, Functional=Low, Service=Min"	0.6870
C1F1S1	"Clinical=Low, Functional=Low, Service=Low"	0.7709
C1F1S2	"Clinical=Low, Functional=Low, Service=Mod"	1.5995
C1F1S3	"Clinical=Low, Functional=Low, Service=High"	1.8215
C1F2S0	"Clinical=Low, Functional=Mod, Service=Min"	0.8089
C1F2S1	"Clinical=Low, Functional=Mod, Service=Low"	0.8928
C1F2S2	"Clinical=Low, Functional=Mod, Service=Mod"	1.7214
C1F2S3	"Clinical=Low, Functional=Mod, Service=High"	1.9434
C1F3S0	"Clinical=Low, Functional=High, Service=Min"	0.8553
C1F3S1	"Clinical=Low, Functional=High, Service=Low"	0.9392
C1F3S2	"Clinical=Low, Functional=High, Service=Mod"	1.7677
C1F3S3	"Clinical=Low, Functional=High, Service=High"	1.9898
C1F4S0	"Clinical=Low, Functional=Max, Service=Min"	1.0897
C1F4S1	"Clinical=Low, Functional=Max, Service=Low"	1.1736
C1F4S2	"Clinical=Low, Functional=Max, Service=Mod"	2.0021
C1F4S3	"Clinical=Low, Functional=Max, Service=High"	2.2241
C2F0S0	"Clinical=Mod, Functional=Min, Service=Min"	0.7192
C2F0S1	"Clinical=Mod, Functional=Min, Service=Low"	0.8031
C2F0S2	"Clinical=Mod, Functional=Min, Service=Mod"	1.6316
C2F0S3	"Clinical=Mod, Functional=Min, Service=High"	1.8536
C2F1S0	"Clinical=Mod, Functional=Low, Service=Min"	0.7932
C2F1S1	"Clinical=Mod, Functional=Low, Service=Low"	0.8771
C2F1S2	"Clinical=Mod, Functional=Low, Service=Mod"	1.7056
C2F1S3	"Clinical=Mod, Functional=Low, Service=High"	1.9276
C2F2S0	"Clinical=Mod, Functional=Mod, Service=Min"	0.9150
C2F2S1	"Clinical=Mod, Functional=Mod, Service=Low"	0.9989
C2F2S2	"Clinical=Mod, Functional=Mod, Service=Mod"	1.8275
C2F2S3	"Clinical=Mod, Functional=Mod, Service=High"	2.0495
C2F3S0	"Clinical=Mod, Functional=High, Service=Min"	0.9614
C2F3S1	"Clinical=Mod, Functional=High, Service=Low"	1.0453
C2F3S2	"Clinical=Mod, Functional=High, Service=Mod"	1.8738
C2F3S3	"Clinical=Mod, Functional=High, Service=High"	2.0959
C2F4S0	"Clinical=Mod, Functional=Max, Service=Min"	1.1958
C2F4S1	"Clinical=Mod, Functional=Max, Service=Low"	1.2797
C2F4S2	"Clinical=Mod, Functional=Max, Service=Mod"	2.1082
C2F4S3	"Clinical=Mod, Functional=Max, Service=High"	2.3303
C3F0S0	"Clinical=High, Functional=Min, Service=Min"	0.9591
C3F0S1	"Clinical=High, Functional=Min, Service=Low"	1.0430
C3F0S2	"Clinical=High, Functional=Min, Service=Mod"	1.8715
C3F0S3	"Clinical=High, Functional=Min, Service=High"	2.0935
C3F1S0	"Clinical=High, Functional=Low, Service=Min"	1.0331
C3F1S1	"Clinical=High, Functional=Low, Service=Low"	1.1170
C3F1S2	"Clinical=High, Functional=Low, Service=Mod"	1.9455

TABLE 9—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS—Continued

HHRG group	HHRG description	Case mix weight
C3F1S3	"Clinical=High, Functional=Low, Service=High"	2.1675
C3F2S0	"Clinical=High, Functional=Mod, Service=Min"	1.1550
C3F2S1	"Clinical=High, Functional=Mod, Service=Low"	1.2389
C3F2S2	"Clinical=High, Functional=Mod, Service=Mod"	2.0674
C3F2S3	"Clinical=High, Functional=Mod, Service=High"	2.2894
C3F3S0	"Clinical=High, Functional=High, Service=Min"	1.2013
C3F3S1	"Clinical=High, Functional=High, Service=Low"	1.2852
C3F3S2	"Clinical=High, Functional=High, Service=Mod"	2.1138
C3F3S3	"Clinical=High, Functional=High, Service=High"	2.3358
C3F4S0	"Clinical=High, Functional=Max, Service=Min"	1.4357
C3F4S1	"Clinical=High, Functional=Max, Service=Low"	1.5196
C3F4S2	"Clinical=High, Functional=Max, Service=Mod"	2.3481
C3F4S3	"Clinical=High, Functional=Max, Service=High"	2.5702

4. Application of the Clinical Model Patient Classification System

The following are several illustrative examples.

Case 1

An 83-year-old woman was discharged from a hospital 2 days ago after admission for a stroke and referred for home health care. She has residual right hemiparesis and also has diabetes and hypertension. She is able to dress her upper body if clothes are laid out for her, but needs help putting on socks, nylons and sometimes slacks. She needs assistance with bathing to get in and out of the tub and uses a cane for ambulating on flat surfaces and to transfer from sitting to standing, but needs another person's assistance to go up and down stairs. She is occasionally incontinent of urine, especially at night.

Her plan of care includes—

Physical therapy: two 45-minute visits per week for 9 weeks
Occupational therapy: one 45-minute visit per week for 4 weeks
Skilled nursing: one visit per week for 2 weeks, then one visit every other week for 7 weeks
Aide: one visit twice a week for 9 weeks
Scoring: Clinical Severity=19 (for neurologic diagnosis)+8 urinary incontinence=27 high severity
Functional Status Domain=4 (for dressing)+9 (bathing)+6 (locomotion)=19 Moderate severity
Service Domain=2 (hospital discharge)+4 (therapy more than 8 hours) Moderate severity
HRG=C3F2S2

Case 2

A 73-year-old man with amyotrophic lateral sclerosis (ALS) is referred for home health care after a hospitalization for an aspiration pneumonia. Because of his inability to swallow, he had a gastrostomy tube placed during the hospitalization and now receives enteral feeding. He is dependent in all activities of daily living (ADLs).

His plan of care includes—

Skilled nursing three times a week for 9 weeks
Aide services daily for 9 weeks
Scoring
Clinical severity=19 (for neurological)+20 (for enteral feeding) High
Functional status=27 High severity
Service Domain=0 Minimum severity
HRG=C3F3S0

5. Background on Case-Mix Research Project for a National Home Health PPS

In 1996, in anticipation of the Medicare program's eventual adoption of OASIS assessment data, we began research with a sample of 90 HHAs to develop a case-mix adjustment system for use under a future national prospective payment for home health care. The project was conducted under contract to Abt Associates, Inc., of Cambridge, Mass. (Contract Number 500–96–0003/TO2). Agencies participating in the sample have collected OASIS data supplemented by approximately 50 additional assessment items on all patients newly admitted between October 1997 and April 1998 (this group of patients is called the six-month cohort) to enable comparisons among items in terms of their utility in measuring case mix. At the same time, agencies in the study collected data on every home health visit to members of the cohort. Visit information was collected on visit logs specially designed for each home health service discipline (skilled nursing, physical therapy, medical social work, etc.). The visit logs provided the fundamental measure of resource use for developing case-mix groups. This measure is the visit time, which is converted into a standardized resource cost using Bureau of Labor Statistics hourly wage data (see below for further description).

The development of case-mix groups requires identifying groups of patients with similar resource cost and similar clinical and functional characteristics. To do this, data analyses studied the statistical association between clinical and functional characteristics, as measured by the assessments, and resource cost, as measured by the standardized resource cost. In choosing patient characteristics for inclusion in the case-mix adjuster, and in arranging those characteristics into a system of groups, the system's developers gave considerable weight to the clinical diagnostic process. We sought data elements and an overall system that reflected a clinician's perspective when confronted with a patient with care needs to be assessed. We also gave considerable weight to simplicity in the system's overall structure, and thus opted for a straightforward three-dimensional approach. Under this approach, a patient's case-mix classification is found by assessing the patient on each of the three dimensions, and then combining the results from the three dimensions. Further details on the methods of the study and the resulting case-mix system follow.

Methods

Sample Selection

Agencies were recruited for the case-mix research in the spring of 1997. The sample design was intended to permit the computation of nationally representative results. Eight States (Arkansas, California, Florida, Illinois, Massachusetts, Pennsylvania, Texas, and Wisconsin) were selected to be representative of four census geographic regions: northeast, north central, south, and west. Sample selection was also intended to ensure that the four major auspices types (freestanding for-profit, freestanding voluntary/private nonprofit, hospital-based, and

government) and both urban and rural agencies would be included. In addition, selection criteria included the historical practice pattern of the agencies, in order to ensure representation of agencies with relatively low, moderate, and high numbers of visits per episode in their region. When cross-classified, the four selection criteria—region (four classes), auspices (four classes), urban/rural (two classes), and practice pattern (three classes)— produced a theoretical stratification scheme consisting of 96 cells. Target sample sizes for the cells were proportional to the universe populations of the cells (for example, some of the cells had zero agencies in the universe), and totaled 90 agencies for the sample overall. To be selected, agencies had to have active Medicare certification before July 1, 1993, at least 50 Medicare patients in CY 1995, could not be participating in other HCFA demonstrations involving collection of OASIS data, and could not have been participating in the treatment group of the per-visit home health prospective payment demonstration.

Considerable effort was made to recruit and inform potential participants of the study goals and operations, and potential benefits to themselves. Potential participants were told they could expect to receive three main benefits from participation—management reports based on the data to be collected during the study, technical assistance and training on OASIS procedures, and reimbursement for data collection costs. Out of 1,797 eligible providers, approximately 290 agencies actually volunteered to participate in the study. Agencies were randomly selected from among the volunteers within each sampling cell in July 1997. Further details of the recruitment process are provided in Abt Associates, First Interim Report, July 1998 (revised December 1998).

Agency Training

The next phase of the study was training the agencies in data collection procedures. Abt Associates staff developed a Procedures Manual covering the project overview, directions on administering patient assessments using the OASIS and supplemental items (OASIS and the supplemental items were termed OASIS+, data storage and transfer procedures, and information on training techniques for agencies to use internally with their staff. Particular attention was given to item-by-item guidelines for OASIS elements, in part to ensure the reliability of the data collected for developing the case-mix adjuster. The uniform assessments afforded by OASIS were a strength of the project, because reliable data allow analysts to accurately evaluate the contribution of potential case-mix variables to a case-mix adjuster.

Additional training activities included slides and other written materials, and 2-day training sessions for participants. At least one training session was held in each of the 8 States in July and August of 1997. Training sessions were attended by 296 staff from the 90 participating agencies, and covered the meaning and intent of the OASIS and other assessment items, as well as operational procedures and data management. A significant effort was made to educate staff in methods of training and motivating their colleagues at the participating agency. After the sessions, follow-up training activities and other educational contacts were conducted by the contractor. Once the study was underway, Abt Associates continued to promote communication with the agencies, and to foster information-sharing among agencies, through activities such as conference calls, meetings, and an e-mail discussion group.

Data Resources

The two basic data sources for the study are case-mix explanatory variables from the patient assessments and a resource use variable from the visit data. Claims data comprised a third data source, and were used to verify membership in the 6-month cohort and to supply several additional potential case-mix explanatory variables for testing. All three sources of data were collected on the 6-month cohort from admission until the end of home care in the participating agency or March through April 1999, whichever came first.

OASIS data. Study agencies collected patient characteristics data using the OASIS assessment supplemented by additional assessment items at the following points: admission to home health, resumption of care following an inpatient stay, at follow up (every 57 to 62 days until discharge), upon transfer to an inpatient facility, and at discharge or death at home. The 129 patient data elements cover the following domains: patient demographics and health history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, ADLs and IADLs, medications, equipment management, emergent care use, and discharge disposition. The items supplemental to OASIS were integrated in the following OASIS domains: demographics and patient history; living arrangements; supportive assistance; integumentary status; elimination status; neuro/emotional/behavioral status; ADLs and IADLs; and medications. An additional dimension was added to the assessment data set, nutrition/hydration status, as the research literature indicates that nutritional status and the potential for dehydration are important predictors of poorer outcomes. Development of new items was beyond the scope of the project; therefore, supplemental items generally came from previously validated instruments such as the Minimum Data Set for Home Care (MDS–HC) (Morris, J. N., B. E. Fries, and D. Mehr, et al. ''A Comprehensive Clinical Assessment in Community Settings.'' November 1996a, unpublished manuscript; and Morris, J. N. The Minimum Data Set for Home Care. Presentation for ''The Key to Elderly Care in an Aging World'' in Reykjavik, Iceland, 1996b).

Visit log data. Visit information was recorded on a visit log separately tailored for each type of visit (for example, home health aide or medical social worker). The visit log consists of identifying information, starting and ending times, and a column of items for checkoff that detail the services performed during the visit and factors explaining the time spent. The checkoff items were not intended to capture information on all activities performed in the home—only those likely to significantly affect the length of the visits. The starting and ending times allow the calculation of total visit time for the key resource use measure for the study. To arrive at a standardized measure of resource use, time is weighted by the average labor cost for the discipline of the clinician making the visit.

Standardized measure of resource use. Previous research on case mix generally used a measure of resource use based on the count of visits. However, visit lengths may vary substantially, making visit counts a relatively imprecise measure of resource use. The case-mix study measured time spent on visits, rather than the number of visits themselves, to provide a more reliable measure resource use than did previous research. The mean labor cost estimate for the standardized resource use measure was based on hourly wage data from HHA respondents to the U.S. Bureau of Labor Statistics Occupational Employment Survey (OES). The survey collects wage data by occupation and industry. The Standard Industrial Classification industry category used for our estimate excludes agencies under

government auspices and hospital-based agencies where workers are employed by the hospital. However, government civil service grades or hospital pay for specialized occupations may systematically depart from market wage rates. Our mean labor cost included an estimate of benefits. Following our salary equivalency estimates for therapists, the benefits were estimated exclusive of supplemental pay. The occupational category mix within each discipline (for example, registered nurses and licensed practical nurses delivering skilled nursing visits) was estimated from the OES data. For further details on the derivation of the mean labor cost used in the study, see Appendix E in Abt Associates, Inc., First Interim Report, July 1998, Revised December 1998.

Medicare claims. The Medicare claims for the 6-month cohort were linked to the patient characteristics data and visit log data to verify membership in the 6-month cohort and to provide utilization measures (for example, therapy use or institutional health care services received during the episode). The Medicare claims were also used to simulate 60-day episodes, using the from-and through-dates on the claims.

Data collection and management. The project's data management procedures were designed to support agencies in the collection and submission of consistent and reliable data on patient characteristics and service use. Participating agencies entered the patient assessment data into an electronic data file using software provided by Abt Associates or their own data systems. Data entry on site was required because this allowed a computer program to edit the data and to report any errors for correction before the data were submitted to Abt Associates. The visit logs were printed in different colors to minimize the chances for confusion. The forms were designed for optical scanning of the checkoff boxes, and the agencies forwarded the originals directly to an optical scanning contractor. The data were double entered and scanned, and the hard copy forms were sent to Abt Associates, along with the electronic data files, for cleaning. Abt processed all visit log forms received from project agencies, and generated reports for the agencies indicating the outcomes of this editing process. When agencies received the error reports and the associated hard copy logs, their responsibility was to review the problems, make any changes, and resubmit the forms.

Data preparation. The OASIS and other assessment items that had been submitted by agencies had to be merged with the records for cohort patients as defined using the claims data. Iterative matching algorithms, and intensive manual review of potential matches, were used to match assessment records to the claims patient records. Of 21,426 patients identified for the 6-month cohort from claims, 17,351 had one or more assessments that could be matched at the time Abt Associates constructed the analytic file used for case-mix system development. Visit logs on more than 750,000 visits that had been submitted by project agencies and processed by August 1998 were available for matching to claims records. Because of the occasional presence of inaccurate data in the identifying fields on the visit logs, it was necessary to protect against false matching based on incorrect visit log data. Even with an exact match on one key matching field (besides the necessary match on provider, discipline and date), it was required that the rest of the key fields be compatible. To accomplish this, a matching algorithm was developed by Abt Associates and applied to comparisons of all possible match fields. Based on the algorithm, 588,846 logged visits were matched to claims for cohort patients. The remaining logs come from visits to non-cohort Medicare patients at participating providers and visits to non-Medicare patients, inasmuch as some agencies completed logs for all of their home care patients, regardless of payor, to simplify recordkeeping procedures during the study. In addition, some of the unmatched logs likely come from an unknown number of visits to patients in the 6-month cohort whose identifying information was not sufficient to make a match at the time of file construction. (For further details of these matching procedures, see Abt Associates, Second Interim Report, August 1999.)

Analytic file construction. The project data were assembled to simulate a 60-day episode. In order to estimate resource use for each 60-day period of care, we developed certain decision rules for allocating claims and visit logs by discipline to 60-day ''windows'' of time, or episodes. Because we superimposed the 60-day episodes on the pre-existing claims stream, an episode could start and end sometime during the period covered by a claim. Many claims did not show the date of each visit; therefore, an algorithm was needed to allocate visits when a claim period fell into more than one episode. In general, the visit logs were used to make this allocation since they provided individual visit dates. If some logs were missing, the percentages of nonmissing logs falling in the claim service period before and after the episode date boundary were used to allocate visits identified on the claim to the two episodes straddled by the claim. If no logs were available, the visits from claims were allocated to the episodes in proportion to the number of days covered by the claim that fell in each 60-day episode. In episodes with missing logs, additional steps were taken to estimate the missing minutes of care that would have been measured in the missing logs. Efforts were made to use all available patient-and discipline-specific information in the imputation. Combining these procedures with a rule requiring a 60-day gap in service before a new start of care could be initiated for a cohort member resulted in a total of 31,725 payment episodes—an average of approximately 1.4 60-day episodes per cohort member with the data available at the time of file construction. After resources were calculated for all payment segments, analysis of the data revealed the presence of extreme values of mean minutes per visit by discipline within the 60-day episode. Visit lengths in episodes with extreme values (defined as the highest and lowest 0.25 percent of cases within each home health discipline) were replaced with agency-level mean visit lengths by discipline. A total of 335 episodes (1 percent) were adjusted in this manner, resulting in an insignificant change in mean total resources per 60-day episode. These allocation, imputation, and data adjustment procedures are described in detail in Abt Associates, Inc., Second Interim Report, August 1999.

Linking the Assessment Data

To complete the analytic file, the patient assessment data had to be added to the simulated episode file that contained data on visits and resource costs. To protect the reliability of the assessment data for the purpose of case-mix system development, assessments were linked to an episode in the simulation file only if the assessment was conducted within 14 days of the start of the episode.

Analytical Approach

Initial development of the case-mix model used data from 4,303 episodes pertaining primarily to the first 60-day period of care for members of the 6-month cohort who enrolled from October 1997 through December 1997. Subsequent refinement of the model occurred after the analytic file was enlarged with data accumulated later to create an augmented file. The augmented file was partitioned into a

development sample and a validation sample. The development sample, consisting of 10,413 initial 60-day episodes for cohort members and 2,059 subsequent episodes, was used for the refinement phase. The development sample episodes were randomly selected from the augmented file. The remaining episodes—6,963 initial episodes and 1,331 subsequent episodes—were reserved to validate the final model.

The basic approach to case-mix development was to use the patient data and other appropriate data to identify candidate case-mix adjusters or their components, and then estimate their ability to explain variation in resource use over the course of the simulated 60-day episode. The measure of ''explanatory power'' used to evaluate the overall system and its component dimensions as development proceeded was the coefficient of determination, or R-squared.

The R-squared measures the proportion of variation in standardized resource costs that is explained by the case-mix groups. R-squared cannot be negative or greater than one. An R-squared of one would indicate that each case-mix group's average resource cost exactly predicts the individual resource cost of each episode in the case-mix group. In actual applications in social science research, an R-squared of one could be obtained only if each observation comprised its own group. The R-squared for the final home health case-mix model is .32. Based on the R-squared results, the home health case-mix system has predictive accuracy comparable to its counterparts from other payment systems. The diagnosis-related group (DRG) system used for hospital PPS has an R-squared reported in various studies in the range of .26 to .33 (Worthman, Linda G. and Shan Cretin. Review of the Literature on Diagnosis Related Groups, A RAND Note, N–2492–HCFA, Santa Monica, CA, October 1986). The Resource Utilization Groups (RUGS)–III system of 44 case mix groups used for Medicare SNF per diem prospective payment has a reported R-squared as high as .56 (Fries, B. E., D. P. Schneider, and W. J. Foley, et al., ''Refining a Case-Mix Measure for Nursing Homes: Resource Utilization Groups (RUG/II).'' *Medical Care* 32:668–685, 1994). But comparisons between the SNF and home health case-mix measures must recognize that home health resource consumption is being ''predicted'' over a 60-day period rather than on a daily basis, and that factors other than case mix may be a stronger influence on resource consumption under home health, leaving less variation to be explained by case-mix variables. Additionally, there is evidence that the RUGS–III system in actual application under the Medicare program will achieve an R-squared of less than .56 (White, A., S. Pizer, and C. White. Refining Resource Utilization Groups (RUG–III) for a National Skilled Nursing Facility System: Technical Expert Panel Briefing. October 1998).

To construct alternative case-mix groupings, preliminary regression analyses were used to investigate the relative importance of various factors explaining resource use. Then, clinical judgment was used to identify and define clinically meaningful dimensions of case mix, taking into account the results from the regressions. Alternative ways of measuring and constructing the dimensions and relating them to one another in a complete structure were explored in consultation with clinical experts. Along with clinical considerations, policy and incentive implications of alternative variables or structures were also considered—particularly the implications of alternatives for promoting improvement in health and functional status and for making the adjuster vulnerable to manipulation for profit-maximization.

Another consideration was ease of implementing the system. For example, if all of the case-mix elements were available on the OASIS assessment, then adoption of the data collection procedures necessary for PPS would already be accomplished when agencies met the OASIS requirements of the revised Conditions of Participation, pending for the quality system. Thus, the resulting case-mix groupings, and their component dimensions, were evaluated and refined interactively with clinical, policy, and administrative input.

Case-mix development work under the Abt Associates contract produced two alternative case-mix models, dubbed the ''clinical'' model and the ''diagnostic'' model. The two models had many elements in common, but the diagnostic model gave more emphasis to medical diagnosis in measuring case mix. In the diagnostic model, patients were classified into one of seven diagnosis groups based on the home health primary diagnosis from the OASIS. Further subgrouping of the basic seven groups was based on clinical, functional, and utilization-related variables. There has been controversy regarding the relative advantages and disadvantages of a diagnostically-driven model. Proponents believe it more accurately reflects the way clinicians think about patients. It may also have the potential to create more homogeneous patient groupings, providing an opportunity to develop clinical, functional, and utilization criteria customized for different diagnoses. There are several disadvantages of the diagnostically-driven model, however. One is that only a relatively few diagnostic categories (notably orthopedic, neurological, diabetes, and skin wounds/lesions) carried significant explanatory power in the analyses. This suggests that diagnostic classification beyond these few categories brings little or no additional benefit in predictive accuracy. Also, the diagnosis-based approach usually leads to a model with a higher number of end-points that may make it more complex and difficult to use. Another disadvantage is that the use of diagnostic categories is problematic when dealing with a home care population that frequently has multiple diagnoses—the choice of a primary diagnosis to report could be unduly influenced by payment incentives. If the case-mix system were to consider multiple diagnoses simultaneously, the problem of incentive impacts on reporting might be reduced, but at the expense of more complexity in the adjuster. High predictive accuracy could outweigh these disadvantages, but the R-squared of the diagnostic model was not appreciably higher than the simpler clinical model.

The case-mix project analytic work occurred in three stages: early exploratory analyses, clinically driven development work, and refinements.

Early data analyses. We began exploratory analyses with the 4,303 observations available early in the analysis phase. These analyses relied mostly on regression equations to begin to understand which OASIS and other assessment variables might play an important role in an eventual case-mix adjuster, and to gauge how much variation in resource use beyond case mix alone could be explained in a mathematical model that included factors such as agency characteristics, economic characteristics in the agency's environment, and events taking place during the home health visit. These exploratory regressions suggested that up to .47 of the variation in resource use could be explained using regression analyses that accounted for a range of causal factors encompassing more than case mix. The equations included variables to measure clinical, functional, home environment, agency, and economic factors; home health treatment variables; and unusually time-consuming events taking place during

visits. These analyses highlighted several potentially appropriate and powerful variables in the data, such as preadmission location of the patient; certain acute conditions (orthopedic, neurologic, open wounds and lesions, diabetes); the presence of an ostomy; and functional dependence in locomotion. These models further suggested that restricting the explanatory variables to a subset of purely clinical and functional patient characteristics alone would produce an R-squared of approximately .20.

Clinically driven case-mix models: The project's goal from the outset was to develop a case-mix adjuster that defines a number of mutually exclusive patient groups that could be associated with differing resource use. Another criterion for the grouping system is that it should be clinically meaningful to the home health clinicians using it, by making use of recognized clinical categories and by being consistent with the clinical diagnostic process. A further criterion was simplicity; ideally, the system should be comprised of a limited number of mutually exclusive groups, and rules for classifying patients into groups should be straightforward.

As described in their project report (Abt Associates, Inc., Second Interim Report, August 1999), these objectives were approached by the Abt Associates nurse-clinicians through a combination of professional experience and study of previous work in the field reported in the literature. They first focused on identifying clinically significant indicators that address patient care needs from the perspective of the home health clinician. To help identify indicators, they considered the following questions: What level of complexity, severity and instability characterizes the patient's clinical condition? How much and what type of assistance does the patient need with activities of daily living? Does the patient require special therapies or high-tech services? What cognitive impairments, behavioral characteristics, risk factors, and environmental conditions affect the amount and type of care this patient will require? The Abt team then proceeded to review the patient assessment variables as a source of information for the indicators. The resulting list of variables was reviewed in light of several issues:

Policy implications: Some patient characteristics are not suitable as a basis for payment because they raise issues of equity or are otherwise questionable from a policy perspective. For example, the assessment's race and education variables were excluded, as were measures of the patient's social or physical environment (for example, unsanitary or unsafe conditions). Similarly, a case-mix adjustment system should not discourage assistance from family members of home care patients. Although many observers assume that the availability or efficacy of a caregiver is a significant influence on HHA resource consumption, adjusting payment in accordance with caregiver variables does not seem advisable.

Administrative ease: Initially, the list of assessment items capturing clinically significant indicators included some that were supplemental to the OASIS itself. Incorporating these items in the assessment would require modification of the OASIS data collection procedures and complicate the startup phase for OASIS data collection. We carefully examined the explanatory power of the individual items and sought substitutes for them whenever possible from among the existing OASIS items. We were able to find substitutes for almost all of them with little impact on the explanatory power of the model. The only notable exception was an assessment item about a history of falls, which analysis suggests could raise the explanatory power of the model by about one one-hundredth. However, because this was the only remaining variable that was not obtainable from the existing OASIS collection procedure, we weighed its utility against possible delays and confusion in OASIS implementation and decided not to use it. A utilization variable pertaining to inpatient stays occurring during the home health episode was also seriously considered but ultimately dropped because data limitations prevented us from clearly understanding its impact and because it posed an added data collection burden for home health providers. This item would have required the HHA to report whether a Medicare-covered inpatient stay occurred during the 60-day episode and the length of the stay. This information would be used to determine any adjustment to the case-mix group assignment at the end of the episode.

Other criteria: Reliability-related concerns were also a part of the item selection process. If case-mix variables address characteristics that appear subject to varying interpretation by assessing clinicians, the system could be vulnerable to manipulation by providers or patients. When payment increments are at stake, great care must be taken before accepting items even if they have been proved reliable in other circumstances, such as quality assurance research. For example, items on rehabilitative prognosis and overall prognosis were eliminated on these grounds. Some symptoms may be very short-lived, but if they are present at the time of the assessment they would have an impact on the case-mix adjuster if included. An example is a supplemental item such as ''In last 3 days, noticeable decrease in the amount of food client usually eats or fluids usually consumed?'' We determined that basing payment adjustments on potentially transient signs and symptoms captured by these items is ill-advised because their impact on care delivery is uncertain at best. In addition, diagnoses that were candidates for inclusion in broader diagnosis groups were reviewed by a member of our clinical staff from the perspective of their reliability as markers for resource-intensive conditions.

Incentive effects: Unintended incentive effects could result from using variables that reward providers for negative practice patterns, such as the use of a urinary catheter absent clinical need for the device.

Structure of the system for case-mix measurement. In addition to studying individual variables from the perspectives of explanatory power, policy and administrative implications, and reliability, it was necessary to define the system's decision logic, or structure. Examples of other grouping models developed for research purposes, case-mix classification, risk adjustment or care and treatment were studied to suggest ways of categorizing functional impairment, clinical severity, and other patient characteristics—such as whether to group patient characteristics via distinct dimensions of health status (for example, functional versus clinical); whether to consider bifurcations of groups for which partitioning would produce clinical and statistical meaning (that is, ADL ''splits,'' as the RUG–III system uses); the desirability of symmetrical versus asymmetrical models; and whether to create an indexing system or a categorical system. For example, when considering issues such as cognition, we considered whether these variables would be more appropriately captured within a clinical or functional domain, or whether they would provide more clinical meaning (or statistical power) if used as a binary split (that is, yes/no cognitive impairment) after clinical and functional groups were established.

Similarly, in our consideration of existing classification systems, we examined the clinical value of different structural and operational features of systems. The Nursing Severity Index, for example, adds points per each qualifying nursing diagnosis and sums to a total score. The total score, or index, reflects the patient's severity, with a

total index of 34 reflecting the highest severity of illness. Unlike the NSI, the RUG–III classification system is a hierarchical system, with seven general categories that are placed in general order of costs associated with caring for residents. The first category, or top split, is rehabilitation; the last is reduced physical function. As we reviewed these systems, we gave consideration to which type of system seemed least complex for use by home health clinicians, most clinically-intuitive, and most feasible to operationalize, given the nature of the assessment data set.

Abt Associates used a computer package called PC-Group, which creates decision trees whose terminal nodes may be regarded as case-mix groups. This package allows the analyst to ''grow'' the tree interactively, which means considerable judgment can be imposed in selecting and dividing nodes as the tree is constructed.

To produce a workable product with the package, it was necessary for the Abt analysts to summarize their variables first. Based on the conceptual work and literature review conducted during the project, they arrived at a small set of dimensions for summarizing assessment elements. There are separate dimensions for clinical severity; functional status; and service utilization. This organizing principle suggests that patients can be classified along each dimension, and this classification is correlated with resource consumption in home care. In an effort to maximize the clinical utility and explanatory power of the patient classification model, the project team experimented with many variations of each dimension, adding and removing items and examining their effect on the way the models functioned.

The Clinical Severity Dimension. The clinical severity in the final model incorporates three diagnostic categories: Neurologic, Orthopedic, and Diabetes. Specific diagnoses comprising each group were reviewed to ensure that diagnoses used on highly heterogeneous groups of patients would not be included. Inclusion of these diagnoses could weaken the predictive power of the case-mix adjuster. The diagnoses in each group are shown in Table 9. The diagnosis code comes from OASIS item number M230. The clinical dimension also includes the following OASIS items as indicators of clinical severity: status of wounds and ulcers (M0460, M0476, M0488); vision status (M0390); pain frequency (M0420); presence of a bowel ostomy; (M0550) use of parenteral and enteral nutrition, and intravenous therapy or infusion therapy (M0250); dyspnea (M0490); urinary and bowel incontinence (M0530, M0540); and behavioral problems (M0610).

Early versions of the clinical model did not include measures of cognitive, sensory and behavioral impairment which might affect resource use, primarily because statistical analysis did not suggest they were useful in explaining variation. Based upon subsequent review, we determined this was a serious omission from the model, so we renewed attempts to integrate cognition and related indicators into the model. An additional dimension consisting solely of the OASIS neurological, cognitive, sensory, and behavioral (NCSB) variables was created, which produced a minor variance reduction in the overall sample of only .015. Furthermore, the highest degree of cognitive impairment was not consistently related to the highest mean costs.

Since increasing levels of severity of the NCSB variables as a group are not consistently associated with increased resource use, we did not attempt to use them as an independent dimension. Using data from regression analysis, however, we were able to integrate M0390 (vision) and M0610 (behaviors) into the Clinical Severity dimension in a way that did not produce counter-intuitive cost groupings.

Further technical discussion of the statistical results on each variable is found in Abt Associates, Second Interim Report, August 1999, Chapter 3.

The Functional Status dimension. As in the development of the clinical severity dimension, we began by selecting assessment items considered to be potential predictors of increased resource use, focusing on the extent of assistance the patient required with activities of daily living. Early exploration with the available functional indicators suggested OASIS items were equivalent in explanatory power to the supplemental items we tested. We tested restricting the ADLs to late loss ADLs (that is, those ADLs likely to be lost late in life: eating, transferring, toileting, and bed mobility) to see whether the restricted list better predicted resource use in the home-bound elderly, as is the case among the elderly which reside in nursing homes (Williams, Brent C., Brant E. Fries, and William J. Foley, ''Activities of Daily Living and Costs in Nursing Homes,'' *Health Care Financing Review*, 15 (4):117–134 (Summer 1994)). This was not supported. We also experimented with cognition-related variables, based on findings in the literature (Torres, H. A., L. Fratiglioni, Z. Guo, M. Viitanen, E. von Strauss, and B. Winblad, ''Dementia is the Major Cause of Functional Dependence in the Elderly: 3-Year Follow-up Data from a Population-based Study,'' *American Journal of Public Health*, 88:1452–1456 (1998).

In the version of the dimension ultimately used in the Clinical model, ambulation locomotion was integrated and both early-loss and late-loss ADLs were included (while cognitive factors were incorporated into the Clinical Dimension). We dropped the eating and grooming ADLs because they were statistically redundant when the other items (dressing (M0650, M0660), bathing (M0670), toileting (M0680), transferring (M0690), and locomotion (M0700)) were included. M0650 (Dressing Upper body) and M0660 (Dressing lower body) were found to have a significant degree of interaction and therefore were combined. Additional experimentation with the functional status dimension involved testing different schemes for ordering the variables and partitioning subgroups of patients in accordance with measurements on the variables.

None of the variables in the Functional Status Dimension was eliminated due to reliability-related or incentive concerns. Some home health clinicians who reviewed the model in October 1998 commented on the potential of functional status items to be manipulated by providers, who would have an incentive to make patients seem as functionally impaired as possible on admission to home care. However, because the functional status items make an important contribution in predicting home health resource use, and because they are integral to clinical decisionmaking for the home care benefit, they were retained. Furthermore, under the planned Outcome-Based Quality Improvement system for home care, beyond the initial assessment, quality assurance monitoring may help counteract any tendency to overstate the functional dependency of patients. We are soliciting suggestions for approaches, new assessment items, procedures, or other mechanisms that might help guard against mismeasurement of functional status items due to payment incentives.

The Service Utilization Dimension

The Service Utilization dimension contains variables related to services the patient received both before and during the episode of home care. To measure utilization before the start of home care, OASIS item M0170 collects information about inpatient discharges during the 14 days before the assessment. In the analysis of costs associated with pre-admission location, we examined how

responses to M0170 were related to mean resource cost. It should be noted that a Medicare SNF stay is always preceded by an acute care hospital stay, so if a patient has a long SNF stay (exceeding 14 days) the acute care stay probably would not be measured by this item. A similar censoring of an acute care event may also occur with rehabilitation stays, although there is no Medicare requirement that such stays be preceded by an acute care hospital stay. On the other hand, if both an acute care stay and a SNF or rehabilitation inpatient discharge occurred within the previous 14 days, it seems likely that the SNF stay or rehabilitation stay was relatively short. We found that patients who are admitted to home care directly from the community are on average more resource-intensive for home care providers than patients who were recently discharged from an acute care hospital and had no evidence from M0170 that they used post-acute institutional care. Patients experiencing both a hospital and SNF/rehabilitation stay within the past 14 days are about as resource-intensive as the patients with no pre-admission stay. Finally, patients for whom only a SNF/rehabilitation hospital stay is observable within the past 14 days are the most expensive. We theorize that they tended to have relatively long SNF or rehabilitation stays of (at least 14 days), which may suggest that the definition of this group using M0170 is a marker for clinically complicated cases with intensive care needs.

The other variable in the service utilization dimension measures home health therapy hours totaling 8 hours or more during the 60-day episode. In developing the patient classification models, we sought to focus on variables that predicted care needed by the patient, as opposed to care furnished by providers. Ideally, we sought a case-mix adjustor that creates as little incentive as possible for providers to enhance revenues by providing unnecessary services. However, including a variable measuring the receipt of a significant amount of home health therapy (physical, occupational, or speech/language) improved the R-squared of our models by about .20. The RUG–III system for SNF case-mix measurement also includes an indicator for receipt of therapy. An advantage of paying differentially for therapy cases in the case-mix adjuster is that it will help to maintain access to therapy among home health patients who need it. The threshold of 8 hours targets additional payments for home health therapy to patients with a clear need for therapy. We believe this decision rule will motivate home health providers to efficiently plan therapy evaluation visits and therapy delivery for patients who need little or no therapy.

Additional variables were tested for the services utilization dimension. We decided not to use a variable for previous home health utilization in the past 90 days because, under the influence of payment incentives, it carried the potential to encourage readmissions to home care within the 90-day window. The predictive value of the service utilization was lowered by only .0059 as a result. We also tested the value of including inpatient stay events during the episode. This intervening-stay variable modestly improved the total R-squared for the model. However, as discussed above, it may present substantial data collection burdens for providers.

Scoring Patient Variables and Developing Severity Categories

Variables within the clinical and functional dimensions have differing impacts on resource cost. Before the final refinement phase of model development, we assigned a score to each outcome on each variable based on the increase in mean resource cost associated with each outcome. Within each dimension, the sum of scores for the component variables is correlated with resource consumption in home care. This is consistent with our conceptualization of the clinical, functional, and service utilization components as dimensions along which patients can be classified in accordance with their home health resource consumption.

During the refinement phase of model development, we used regression-adjusted mean resource cost to re-examine the scores. The purpose of the regression was to control for all case-mix variables simultaneously to get a more accurate picture of their respective independent contribution to resource use. Having quantified their contribution via the regression, we could derive more accurate scores for the variables. In addition, we looked for results that could signal redundancy among the variables and tested several interaction terms in the regression. (Interaction terms capture potential synergy among variables.) Both the improved scoring and the interaction terms could potentially improve the explanatory power of the case-mix system. The results of the regression analyses changed some of the scoring and resulted in the merging of some items. A few items were eliminated after examining the regressions, which suggested they were redundant.

The next step in model development was to find score intervals along the clinical dimension and the functional dimension that would define patient groups of relative severity along the respective dimension. Whenever possible, we used ''natural breaks'' in the array of scores in the sample to define the intervals. When partitioning the functional dimension scores, we examined the types of dependencies that would be captured in the intervals, particularly at the low and high end of the functional dimension. We determined the number of intervals also in light of the number of groups that would ultimately be created as more intervals are defined. The R-squared does not improve substantially when one or two more breaks are defined, but the number of groups increases greatly, adding to the complexity of the system.

For the clinical dimension, we classified patients into four levels of impact (minimal, low, moderate, and high), and for the functional dimension, five levels of impact (minimal, low, moderate, high, and maximum). The service utilization dimension is actually comprised of categorical variables that partition patients into four groups of increasing impact on resource use. We assigned scores to each of these four groups in accordance with the increasing impact.

Case-mix Groups. Each dimension contains four or five impact levels or intervals (for example, high, moderate, minimum, and low). For every combination of intervals, there is a case-mix group. For example, patients who are high on the clinical dimension, moderate on the functional dimension, and low on the services utilization dimension are grouped together. Since there are four clinical levels, five functional levels, and four service utilization levels, the case-mix system comprises a total of 80 groups. Half of the groups involve patients with therapy use of at least 8 hours.

In the case-mix research sample, the number of patients in each group varies widely, from few or no patients to between 1,000 and 1,500 in several of the groups (unweighted data). The therapy groups comprise a minority of patients in the sample— 15 percent (unweighted). Approximately 30 percent of the sample fell into the minimal clinical level, 30 percent into the low clinical level, 23 percent into the moderate clinical level, and 17 percent into the high clinical level. Approximately 15 percent of the sample fell into the minimal functional level, 30 percent into the low functional level, 36

percent into the moderate functional level, 11 percent into the high functional level, and 7 percent into the maximal functional level.

III. Audited Cost Report Data Sample Methodology

Audited Cost Report Data

Section 1895(b)(1) of the Act requires the prospective payment amount to include all services covered and paid on a reasonable cost basis under the Medicare home health benefit, including medical supplies. Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost report data available to the Secretary. Under section 1895(b)(3)(A)(i) of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ended on or after October 1, 1996 through September 30, 1997).

In February 1998, we directed our fiscal intermediaries (FIs) to conduct comprehensive audits of the cost reports submitted by a sample of HHAs whose cost reporting periods ended in FFY 1997. Each FI received a list of agencies to audit and instructions on how to conduct the audits and report the data obtained.

The sample was designed to be representative of the home health industry in several respects: provider-based versus freestanding, census region, urban versus rural location, and large versus small agencies. Because we anticipated that many agencies in the sample would not be audited because their records were unavailable for a variety of reasons or their cost reporting periods were less than 12 months long, the sample size was adjusted upward by 15 to 20 percent to allow for attrition.

To create national HHA PPS rates, each observation in the final data set is weighted to reflect the national Medicare home health payment experience. For example, the estimates will reflect differences across census regions and urban versus rural areas.

Audit Sample Methodology

To meet these objectives, a statistical sample begins with a list of all HHAs that submit cost reports. The list is referred to as a frame. Considerable effort went into the process of developing the frame for HHAs and identifying units to be included. The frame for this sample excludes all HHAs that are incidental providers (too small) or not likely to yield a full year of cost reporting for the audit period.

Once a frame was developed, we selected a sample. The sample for the HHAs was selected by choosing samples for each provider type (freestanding not-for-profit, freestanding for-profit, freestanding governmental, and provider-based). The provider types are referred to as strata in sampling terms. The design of the sample took into account the number of providers and the variation in cost and beneficiaries in each stratum. The sample was designed to produce estimates from key elements of the audit data with a reasonable level of precision.

A sample selection assumes the frame is complete and each sampling unit appears once and only once in the frame. Unfortunately, after the sample was drawn and fieldwork begun, we found that this assumption was not strictly true for the governmental units.

The problem arises from the fact that multiple providers, referred to as subunits, report under a single cost report. In some cases, multiple providers' numbers corresponding to a single cost report appear on the frame, while in other cases a provider number is a parent possibly with multiple subunits. We then considered the subunits associated with a single cost report as the appropriate sampling unit because there is no way to accurately distribute costs among subunits. The subunits on the frame associated with a single cost report were identified and the listings of individual subunits were regarded as if the appropriate sampling unit had been included a known number of times on the frame list.

This somewhat changed the sample composition. When the sample was drawn for a stratum so that each unit on the list has the same probability of selection (as among the governmental units), the probability that the multiply-listed unit be included in the sample was higher. The higher probability of representation is in proportion to the number of inclusions on the frame list. This is like a drawing in which an individual enters his name (or his family members' names) multiple times to enhance his (or his family's) odds of winning. When one analyzes data from a sample that is biased by giving a higher probability of selection to some units, these units need to be given smaller weights if the estimates are to correctly represent the population that the frame should have enumerated.

That is, the analysis of the sample data must take into account the sampling probabilities by assigning each sampling unit a weight that is less if the probability of inclusion is higher. Indeed, the sample may include the same subunit multiple times, and we retained the values for each time the unit appears in the sample when the proper weights are used.

For purposes of this example, n equals the number of governmental subunits reporting under a single cost report in the frame. Therefore, a governmental cost report is n-times more likely to appear in the sample, and the weights for each occurrence in the sample are reduced by dividing by n. A description of a similar situation involving a household survey based on samples drawn from children in school is described in Morris H. Hansen, William N. Hurwitz, and William G. Madow, *Sample Survey Methods and Theory*, vol. 1 (NY: Wiley, 1953) 59–65. Because households with large families will have a higher probability of being included in the sample, households with large families will be over-represented in the sample unless some adjustment is made. That adjustment can be done, as we did here, by providing weights in the analysis that give less weight to the households that are more likely to be included in the sample.

From the frame we have known totals for the number of units in the cells. Weights were adjusted so that corresponding totals based on the sample match these known cell totals. Even if all units in the sample were successfully audited, the process described above ensures that correct cell totals are obtained from the analysis.

However, when audits are not obtained as intended and the missed units are not in the sample as intended, the weights must be adjusted so that the sample data reproduce the known totals from the frame for key subgroups or cells. The process assigns a larger weight to audited units in the sample similar (in the same cell) to those missed. In the case of the HHA, the cells were defined by the urban or rural area; the four census regions of Northeast, Midwest, South, and West; and provider type. Therefore, the weights were adjusted for the missed sample units to ensure that the units obtained most closely represent the missed units cell by cell.

Summary of the Missing Audits in the Home Health Audit Sample and Results Used to Develop Weights for the Sample

In the home health audit sample design we assumed there would be nonresponse or missing audits for a variety of reasons. The reasons included situations such as the following: the provider no longer existed in order to do the audit, the provider was under

investigation, or the provider filed a short cost report, that is, a cost reporting period less than 12 months. The chart below shows the original sample sizes for each provider type and the oversampling cushion associated with each one. Because we rounded numbers up in the sample size calculations and selection algorithms, the actual oversampling factors exceed 13 percent, as follows:

Stratum	True sample size	Oversample	Oversample percentage
Freestanding nonprofit	161	31	19.3
Freestanding for profit	148	23	15.5
Freestanding government	141	20	14.2
Provider-based	98	23	23.5

After examining the data for missing cases, we found the actual number of missing cases as follows:

Stratum	Sample size	Actual	Percent missed	Percent of target
Freestanding nonprofit	192	171	10.9	107.5
Freestanding for profit	171	142	17	98.0
Freestanding government	161	159	1.2	114.2
Provider-based	121	95	21.5	98.0

From this it is evident that the sample actually obtained generally was within range or close to the specifications. The percent of target is based on the sample size without the allowance for anticipated missed audits.

Freestanding for Non-Profit Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR FREESTANDING FOR NONPROFIT BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	12	0	58
MW—Urban	40	4	195
NE—Rural	9	1	59
NE—Urban	46	3	260
SO—Rural	20	6	112
SO—Urban	25	2	148
WS—Rural	5	3	49
WS—Urban	14	2	74

Freestanding For-Profit Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR FREESTANDING FOR-PROFIT BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	6	0	131
MW—Urban	19	6	520
NE [1]—Urban	18	0	263
SO—Rural	21	2	458
SO—Urban	54	15	1311
WS—Rural	7	1	102
WS—Urban	17	5	489

[1] No sample was obtained in the NE Rural category for this group. This cell was combined with NE Urban in obtaining weights.

Freestanding Governmental Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR FREESTANDING GOVERNMENTAL BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	53	1	222
MW—Urban	11	0	36
NE—Rural	8	0	29
NE—Urban	9	0	42
SO—Rural	49	1	193
SO—Urban	20	0	69
WS—Rural	8	0	25
WS—Urban	1	0	11

Provider-Based Summaries

DISTRIBUTION OF SAMPLE AND FRAME FOR PROVIDER-BASED BY URBAN/RURAL AND CENSUS REGION

Area	Audits	Missed	Frame
MW—Rural	15	2	450
MW—Urban	13	0	293
NE—Rural	2	0	31
NE—Urban	9	3	196
SO—Rural	26	4	567
SO—URBAN	13	11	485
WS—Rural	10	3	195
WS—Urban	7	3	241

Determination of the Weights for the Actual Sample

The weights would essentially be equal for each HHA within a type if all HHAs in the sample had been successfully audited. The weights would be the ratio of the frame to sample size for each type because the units were drawn with equal probability within provider type. However, as noted above, some of the proposed sample units were not successfully audited. Therefore, the numbers for the distribution in the frame given above were used as known control totals. Then the known control totals were used to adjust the weights to the frame control totals. The ratio of the frame to the corresponding sample totals is used as the weight for the corresponding cases in the sample, provided the audits are not missing. If the HHA was not audited and therefore missing, the weight was zero. This process gives more weight to the audited HHA in a cell to account for the missing audits within the cell. This is equivalent to imputing the weighted average of the audited HHAs in the cell to the missed HHAs within the same cell. In one case noted above, cells were combined because there were no providers in the sample in the relatively small NE Rural cell for freestanding for-profit providers.

Weight Adjustment Factors to Account for Governmentals

In the case of the governmental HHAs, the adjustment process was modified to account for the multiple subunits included on the frame. First, it was necessary to examine the provider numbers on the frame for the governmental HHAs. Providers that are subunits have the last four digits in the range 7800–7999. We also used the last four digits to identify parent units. Parents have the last four digits in the ranges 7000–7299 or 7400–7799 or 8000–8499 or 9000–9999. The following

list shows the distribution of subunits and parents on the frame by State.

State	Provider	Subunits	Parents
AL	61	60	1
AR	62	62	0
AZ	5	0	5
CA	7	0	7
CO	8	0	8
CT	8	0	8
DE	1	0	1
FL	2	0	2
GA	3	1	2
IA	56	0	56
ID	2	0	2
IL	29	0	29
IN	3	0	3
KS	21	0	21
KY	18	0	18
LA	6	0	6
MA	3	0	3
MD	10	9	1
MI	18	0	18
MN	31	0	31
MO	26	0	26
MS	16	16	0
MT	4	0	4
NC	39	0	39
ND	2	0	2
NE	2	1	1
NH	2	0	2
NJ	6	0	6
NM	2	0	2
NV	2	0	2
NY	50	0	50
OH	30	0	30
OR	3	0	3
PR	1	0	1
SC	13	13	0
SD	1	0	1
TN	4	0	4
TX	2	0	2
UT	1	0	1
VA	9	0	9
VI	1	0	1
WI	39	0	39
WV	16	15	1
WY	2	1	1

An examination of the data for the few cases with multiple subunits from the same State confirmed that parent numbers were from a single cost report, and subunits, as in Alabama, all had a single cost report but a different parent.

Although there are various possible approaches regarding this issue, the approach taken here is consistent with the HCFA numbering conventions and the data examined to the extent we were able to confirm them from the sample. Therefore, a number of units was assigned to each HHA in the frame for the governmental HHAs. The number of units assigned is one for each parent and the sum of the number of subunits within a State for each subunit within the corresponding State. The same unit numbers were also assigned to the HHAs in the sample.

When totals are computed for the reciprocal of the unit numbers, the result is the number of cost reports. To see how this works, consider the State of Alabama. There are 60 subunits each assigned a unit count of 60, and there is 1 parent assigned a unit count of 1. The sum of the reciprocal of the unit numbers for the 60 subunits is 60 times 1/60 or 1, and the sum of the reciprocal of the unit number of 1 for the parent is 1. Therefore, there would be two cost reports if all of the HHAs from Alabama were audited.

The following summary by State shows the number of governmental providers on the frame and the number of cost reports or audits one would expect to find for each State if all governmental providers on the frame were audited.

State	Provider	Cost reports
AL	61	2
AR	62	1
AZ	5	5
CA	7	7
CO	8	8
CT	8	8
DE	1	1
FL	2	2
GA	3	3
IA	56	56
ID	2	2
IL	29	29
IN	3	3
KS	21	21
KY	18	18
LA	6	6
MA	3	3
MD	10	2
MI	18	18
MN	31	31
MO	26	26
MS	16	1
MT	4	4
NC	39	39
ND	2	2
NE	2	2
NH	2	2
NJ	6	6
NM	2	2
NV	2	2
NY	50	50
OH	30	30
OR	3	3
PR	1	1
SC	13	1
SD	1	1
TN	4	4
TX	2	2
UT	1	1
VA	9	9
VI	1	1
WI	39	39
WV	16	2
WY	2	2

Frame totals for possible audits were obtained by using the assigned unit numbers for each HHA in the governmental stratum. Therefore, the following control totals apply to the governmental stratum.

Area	HHAs	Audits
MW—Rural	222	222.00
MW—Urban	36	36.00
NE—Rural	29	29.00
NE—Urban	42	42.00
SO—Rural	193	61.31
SO—Urban	69	31.69
WS—Rural	25	25.00
WS—Urban	11	11.00

Note that a summary by State yields whole numbers for the audits. However, both the urban and rural classifications occur within a State. Therefore, a single audit may apply to providers within each category.

The corresponding sample totals are as follows:

Area	Providers	Audits
MW—Rural	54	54.00
MW—Urban	11	11.00
NE—Rural	8	8.00
NE—Urban	9	9.00
SO—Rural	50	12.18
SO—Urban	20	8.45
WS—Rural	8	8.00
WS—Urban	1	1.00

These totals are used to obtain the adjusted weights so that the sample totals for audits will match the frame totals. This is as if 458 audits are needed to audit the frame of 627 HHA providers because a single audit covers multiple provider numbers or subunits.

Final Weight Factor Calculations

The weight adjustment was applied to the cells defined by the four major census regions and the Urban/Rural classification. The weight adjustments used the control totals from the frame. Each weight was modified so that the weighted totals using the providers actually audited for each cell matched the corresponding control totals. The adjustment was a simple ratio adjustment. This corrected for the imbalance associated with sampling and the imbalance that arose from the distribution of missed audits.

After completing the weight adjustments, a file was created with the resulting weights, the provider number, provider type, Census 4 (four census regions), and Metropolitan Statistical Area (MSA) code. This file can be merged with the data from the cost reports for the audited providers to compute weighted values for costs and visits in order to compute the average cost-per-visit ratios by discipline. As a check on the computations, the following table is the result of a summary by provider type that agrees with the frame totals.

Type	Sample	Frame No.
FS/F	142	3290
FS/G	159	458
FS/N	171	955
Provider	95	2458

The final audit sample contained 567 audited cost reports which were the basis of the HHA PPS rate calculations.

IV. HHA PPS Framework—How the System Works

We are proposing the following policy framework; however, refinements will be made based on comments, additional national data, and efficiencies realized in the development of the final rule.

As discussed earlier in this regulation, we are proposing a 60-day episode as the ordinary unit of payment for home health PPS. The new 60-day episode begins with the start of care date, which is the first billable service date, and includes the 60th day from start of care date. The 60-day episode payment covers one individual for 60 days of care regardless of the number of days of care actually provided during the 60-day period unless there is a PEP adjustment, SCIC adjustment, LUPA, additional outlier payment, or medical review determination.

The 60-day episode payment will be case-mix adjusted using the OASIS assessment (as mandated by HHA conditions of participation regulations published in the **Federal Register** on January 25, 1999 at 65 FR 3747 and 65 FR 3764) supplemented, as applicable, by one additional patient-specific item regarding projected number of therapy hours received in the 60-day episode period (see section II.C. and IV.L of this regulation). The total case-mix-adjusted 60-day episode payment is based on the initial OASIS assessment and the supplemental item regarding projected therapy hours received submitted at the start of the 60-day episode and the confirmation of projected therapy use submitted via the line-item date visit information reported on the final claim at the end of the 60-day episode.

A. Start of Care

The HHA establishes the plan of care and the patient will be grouped into the appropriate case-mix category via the OASIS assessment and the additional item regarding projected number of therapy hours received in a 60-day episode at the HHA. We are exploring the approach that would allow grouper software at the HHA to interface with the HAVEN software used for State transmission of OASIS quality data. The OASIS assessment supplemented by one additional treatment-specific item on projected therapy use is fed into the grouper logic, and the grouper logic selects the OASIS elements needed to establish the case-mix group and determines the appropriate case-mix category for the patient. The grouper logic generates a code. The code corresponds to the appropriate case-mix category and is placed on the initial claim. The HHA must have all physician orders in the plan of care and a physician's signature for the plan of care before billing. The physician's orders for therapy services will be a key focus of medical review.

The initial claim with the appropriate code is submitted to the RHHI for payment. The pricer computes the initial percentage payment equal to 50 percent of the 60-day case-mix adjusted payment for that HHRG category. The pricer also adjusts the payment by the appropriate wage index corresponding to the site of service delivery. The clean claim is processed, and the initial 50 percent payment is issued to the HHA.

The HHA that initially establishes the plan of care is responsible for billing for all home health services provided under the plan of care, including nonroutine medical supplies and durable medical supplies in a 60-day episode. If a patient transfers during a 60-day episode, the responsibility for consolidating billing moves to the transfer HHA.

The Use of Clinical Model "Grouper" Software

As discussed at the beginning of this section, all data necessary to classify a patient to one of the 80 HHRG categories are contained on the OASIS–B supplemented, as applicable, by one additional item regarding projected therapy use in a given 60-day episode period. Under this PPS, HHAs are required to use the collection reporting requirements for the data elements in the **Federal Register** on January 25, 1999, supplemented by one additional item regarding projected therapy use in a given 60-day episode period for classification of patients for case mix. We expect that the software programs that use OASIS–B supplemented by projected therapy use to assign patients to the appropriate groups, called grouper software, will be available from many software vendors. The version we use will be available at no cost from our future HCFA website on PPS. We are proposing an option to build the grouper logic into the HAVEN software, which is used for transmission of OASIS–B data for purposes of quality via the State system. We may refine the grouper logic with experience and the onset of 15-minute increment billing data in the future.

B. End of Episode

The final claim may contain all of the line-item date visit information for the entire 60-day episode period. As discussed above, the confirmation of actual therapy hours received in the previous 60-day episode period will be captured with a utilization proxy based on the line-item date visit information reported on the final claim. The final claim will be sent to the RHHI and the pricer will compute the final payment equal to 50 percent of the actual case-mix-adjusted episode payment and wage index adjusts the payment. If the actual therapy use does not correspond to the code submitted for the episode, a correction will be necessary.

C. Recertification of 60-Day Episode Period

At the end of the 60-day episode a decision must be made to recertify the patient for another 60-day episode period. An eligible beneficiary who qualifies for a continuous 60-day episode would start the continuous 60-day episode on Day 61. A new OASIS is performed as part of the overall approach to assessment and to determine the appropriate case-mix category for the next episode. The physician's orders for services in the plan of care and the physician's certification of eligibility are required before the HHA submits a bill for the next 60-day episode period.

D. Determining Whether a Beneficiary Is Under an Established Plan of Care

Episodes must be tracked to ensure the case-mix adjusted episode payment is allocated to the appropriate HHA. This tracking requirement, which is needed for payments, proration, and consolidated billing, entails both an ability for internal RHHI systems to inquire and establish the status of HHAs providing services under a home health plan of care in a given 60-day episode period, as well as an external ability for HHAs to query the system to determine whether a beneficiary is already under an established home health plan of care in a given 60-day episode period. The national episode history by beneficiary must be created and maintained that contains beneficiary identification, provider identification, dates of service, utilization, case-mix classification codes, and discharge and transfer status indicators. HCFA is proposing to develop a tracking system available to both providers and RHHIs that would provide information on whether a

beneficiary is under an established home health plan of care.

E. Medical Review

Section 1816 of the Act requires our contractors to conduct audits of providers' records, as needed, to ensure that payments are appropriate for the items or services furnished. Payments under this HHA PPS are per episode prospective payment rates based on the patient's condition as determined by classification into one of the 80 HHRGs. This classification system uses patient assessment data from the OASIS–B supplemented, as applicable, by one additional patient-specific item regarding the amount of therapy hours received in the 60-day episode period. HHAs must complete the OASIS assessment according to an assessment schedule specifically designed for Medicare payment (see section IV.L. of this regulation). HHAs will send each patient's OASIS–B (including, as indicated, projected therapy use) to the State and claims for Medicare payment to the RHHI.

The total case-mix-adjusted 60-day episode payment is based on the initial OASIS assessment and, if applicable, a supplemental item indicating the projected therapy (that is, physical, speech-language pathology, and occupational therapy in any combination) hours to be received in a 60-day episode submitted at the start of the 60-day episode (note: we are proposing to use therapy visit data as a proxy for time). The projected number of therapy hours reported at the start of the 60-day episode (that is, on the initial claim) is confirmed by the actual receipt of therapy identified on the final claim (that is, line-item visit information) at the end of the 60-day episode. The initial claim for each 60-day episode may not contain visit information and may only include the code corresponding to the appropriate case-mix category/HHRGs. The final claim for the 60-day episode may include all of the line-item visit information for the previous 60 days. Adjustment to the HHRG payment is the confirmation of actual therapy use and coverage determinations based on medical review of the claim. These adjustments are in lieu of the partial episode, low-utilization, and outlier payment adjustments (see sections I.D., II.A.4., and II.A.5. of this regulation) discussed in the earlier sections of this proposal.

The medical review process for HHA PPS bills must be consistent with the new total case-mix-adjusted 60-day episode payment process and billing information available on the initial and final claims for each 60-day episodes. Considering the limited information available on the initial claim, prepayment medical review of the initial claim would probably be limited to the technical eligibility for home health services and overall medical necessity of care. For example, the RHHI would determine if the patient is homebound (HCFA=Pub. 11, Sec. 204.1), whether a plan of treatment is established (HCFA=Pub. 11, Sec. 204.2), and skilled services are needed. For the final claim for the 60-day episode, line-item date visit information for the previous 60 days will be considered in confirming actual therapy use and medical necessity coverage determinations. For continuous 60-day episode periods, any payment adjustments (for example, recovery of overpayments) would be made on an ensuing 60-day episode claim for that or other patients. At this time, specific to final closeout claims (see section IV.B. of this regulation), we anticipate no change in the current process for recovering overpayments from an HHA.

Because all Medicare-participating HHAs will be transitioned onto the new payment system on a particular calender date (see section IV.H. of this regulation), the initial medical review strategy for HHA PPS bills will be a parallel approach of random and focused medical review. The purpose of the random review is to get a cross-sectional overview of trends in beneficiary care and utilization of services. The information gained will support HCFA's and RHHI's data needs and aid in developing focused medical review (FMR) criteria that may be unique to a particular RHHI's provider population. In addition to the random review, RHHIs will continue to monitor specific claims or services historically known for potential areas of abuse. As with current medical review guidelines, RHHIs will be required to validate suspected problems before targeting medical review efforts.

After a few months of HHA PPS experience, HCFA and the RHHIs should be able to gain the information needed to identify and study trends in beneficiary care and utilization of services. At that time, medical review efforts will return to a data-driven approach targeting on those areas with the most potential for inappropriate billing, overutilization, and abuse (that is, FMR). Review efforts may be claim specific and driven by patterns of case-mix upcoding or the medical need for the episode(s) of care and technical eligibility. As with current Medicare medical review practice, HCFA will allow RHHIs to supplement their primary prepayment review activities with a limited amount of postpayment review.

Prepayment and postpayment review activity will continue with the capability to deny claims in total or adjust payment to correct case mix. Also, because this case-mix classification system can be supplemented by the amount of therapy hours received in a 60-day episode period, if applicable to the claim, medical review should ensure that the therapy was actually furnished and intensity (for example, time) of those services were reasonable and necessary for the beneficiary's condition. Information, such as the patient's OASIS, medical records, and the billing history will be considered in determining payment for covered services. This same review strategy will also be used to determine the coverage of medical supplies and DME under a home health plan of care (that is, consolidated billing). Finally, if during the review of HHA PPS claims the RHHI becomes suspicious of poor health and safety conditions, case referrals will be made to HCFA staff who will in turn alert the applicable State Agencies. Beneficiary quality of care concerns will also be referred to the applicable Peer Review Organization.

To accomplish this new perspective on medical review of HHA claims, the RHHIs need to have timely information on patients to determine, for example, whether the HHRG rate to be paid is appropriate and accurately reflects the beneficiary's clinical condition. The HHA PPS Inquiry System (see section III.E. of this regulation) will provide the RHHIs with the internal and external real-time query capability to access the information as establishing the status of an HHA providing services under a home health plan of care in a given 60-day episode period, beneficiary identification, provider identification, dates of service, utilization, case-mix classification codes, and discharge and transfer status indicator codes. Also, RHHI access into the national HCFA Repository should help facilitate the data matching and analysis of beneficiary-specific OASIS–B and billing information used to support program integrity functions.

F. Overpayments and Adjustments

If it is determined from proration, medical review, etc. that the preliminary case-mix-adjusted episode payment exceeds the amount ultimately due to an HHA, the overpayment may be offset against future episode payments due to the HHA for the same or other agency patients.

G. Implementation Effective Date for PPS

OCESAA requires all HHAs to be paid under PPS effective upon implementation of the system October 1, 2000. There is no transition by cost reporting period; therefore, all HHAs begin PPS on the same implementation date (October 1, 2000). We are aware that most cost reporting periods do not end with the statutory implementation date of PPS. Rather than requiring the close-out of cost reports with short period cost reports, we are exploring the use of a supplemental schedule in the cost report to allocate costs and limits between pre- and post-PPS.

H. Claims Processing Transition

Under the October 1, 2000 PPS implementation date, all HHAs must bill for all eligible Medicare beneficiaries under a home health plan of care under the PPS. If an HHA has beneficiaries already under an established plan of care, all open bills for services provided September 30, 2000 or earlier will need to be closed as of September 30, 2000.

I. Quality System

Under the Medicare COPs, HHAs must develop, implement, maintain, and evaluate an effective, data-driven quality assessment and performance improvement program. The program must reflect the complexity of the HHA's organization and services, including those services provided directly or under arrangement. The HHA must take actions that result in improvements in the HHA's performance across the spectrum of care. An integral part of this approach is the additional COP requirement that HHAs use a standard core assessment data set, the Outcome and Assessment Information Set (OASIS), when evaluating patients. The OASIS is a set of valid, reliable measures, developed to assess patient outcomes to care provided in the home.

The use of a uniform patient assessment in home health is part of a broader HCFA goal to develop outcome measures for all provider types. The OASIS is expected to become one of the most important aspects of the HHA's quality assessment and performance improvement efforts. By integrating a core standard assessment data set into its own more comprehensive assessment system, an HHA can use this data set as the foundation for valid and reliable information for patient assessment, care planning, and service delivery, as well as to build a strong and effective quality assessment and performance improvement program.

As a part of the COP, Medicare-certified HHAs are required to collect, and report to the States, OASIS data on all adult home health patients served by the agency with the following exceptions: (1) Maternity patients; (2) those under 18; and (3) those receiving other than personal care services or health services, for example, housekeeping and chore services. We will regularly collect OASIS data from the States for storage in a national OASIS repository. Information from the repository will be used to generate national OASIS outcome reports for dissemination through the States to the HHAs to be used for outcome based quality improvement (OBQI).

The general framework for OBQI is a two-stage process of continuous quality improvement. Data are collected at regular time intervals for all adult patients. Outcome measures are computed using the OASIS data reported by the HHAs. Risk adjustment is undertaken, and outcome reports are produced for specific patient conditions (focused reports) and for all adult patients (global reports). These outcome reports are provided to the participating HHAs and are used to determine which outcomes are inferior, thereby providing a focus for agency staff to target problematic care. Exemplary care is also investigated in order to reinforce positive care behaviors. A plan of action allows the agency to monitor the changes in care behavior and through the next round of data collection, determine if targeted outcomes have improved and if reinforcement activities have maintained exemplary outcomes. HHAs are expected to integrate this information into the development of their OBQI programs to care for all home health patients.

The State Agencies will be responsible for disseminating the national aggregate information, generating and disseminating State aggregate information, and providing individual reports for each HHA in their State. Each HHA will have regular access to outcome reports based on its own OASIS data submissions and comparative State and national aggregate reports. Eventually, the individual HHA reports will include case-mix-adjusted outcomes from the HHA's current year and previous year. In addition, through the States, the HHA will have continuous on-line access to case-mix, tabular, and adverse event reports based on its own reported OASIS data.

We will provide support to the States and HHAs to ensure the continuous reporting of OASIS data, the generation of OBQI reports, and the development and use of OBQI programs by HHAs. To assist in the effective use of OBQI, HHAs will be expected to participate in a program specified by the Secretary that involves the targeting of State or specific national quality outcomes for improvement.

J. Illustrative Examples

1. 60-day Episode—No Recertification

In a 60-day episode, a patient is assessed and assigned to HHRG10 by HHA–A. The patient is under a physician certified plan of care with a predicted end date of Day 30. The patient meets the treatment goals and is discharged on Day 30. The patient does not experience a significant change in condition from Day 1–30. The patient does not return to HHA–A during Day 31–60 of the 60-day episode and does not transfer to another HHA during Day 31–60 of the 60-day episode. Even though HHA–A only served the patient from Day 1–30, HHA–A receives the total 60-day episode payment for the patient.

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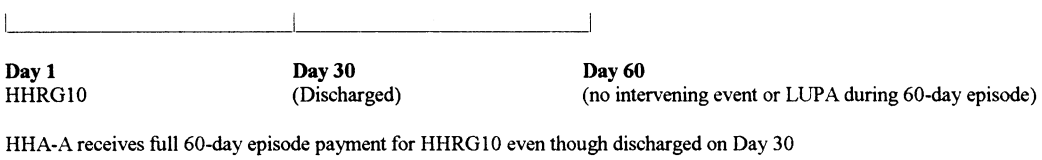

2. 60-Day Episode with Recertification

An eligible home health patient is certified for a 60-day episode period including the start of care date October 1 through and including the last day of the episode November 29. The patient is grouped into HHRG W. No therapy is required for the patient. The corresponding payment amount for

HHRG W is $800. The HHA has obtained a signed plan of care before billing. The HHA submits the initial claim with the code associated with HHRG W to the RHHI. The pricer computes the 50 percent payment for HHRG W, and the RHHI processes the $400 payment to the HHA.

The 60-day payment covers the patient for the 60-day period covering October 1 (the first billable service date) through November 29. At the end of the episode, the HHA reassesses the patient via the OASIS and in conjunction with the physician determines the need for continued home care. At the end of the episode, the HHA submits the final claim for the residual 50 percent payment for HHRG W. The HHA submits the final claim to the RHHI. The pricer computes the 50 percent residual payment and processes the clean claim. The HHA receives the $400 residual payment for the patient.

At the end of the episode, the HHA also completes a follow-up OASIS for purposes of recertification of the 60-day episode. The reassessment OASIS is fed into the grouper logic at the HHA, and a different HHRG code is generated. The HHRG U is placed on the claim, and the HHA will submit an initial claim for the next 60-day episode. The cycle repeats. As discussed above, the recertification of subsequent episodes for continuous home care spans the start of care date plus 60 days. Unlike the PEP adjustment, continuous episode recertifications for eligible beneficiaries do not begin with the first billable visit.

3. Partial Episode Payment Adjustment Examples

The following specific intervening events—

- a beneficiary elected transfer; or
- a discharge and return to the same HHA start a new 60-day episode clock for purposes of payment, OASIS assessment, and physician certification of the plan of care. The original 60-day episode payment is proportionally adjusted to reflect the length of time the beneficiary remained under the agency's care prior to the intervening event. The proportional payment is called the PEP adjustment.

The PEP adjustment is based on the span of days including the start-of-care date (first billable service date through and including the last billable service date) under the original plan of care prior to the intervening event. The PEP adjustment is calculated using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case mix and wage adjusted 60-day episode payment.

Beneficiary Elected Transfer

In a 60-day episode, a patient is assigned to HHRG10=$3000 by HHA–1 and is discharged on Day 20. Day 18 is the last day of the current 60-day episode with a physician ordered/billable visit. The patient transfers to HHA–2 on Day 40. HHA–2 assesses the patient and obtains physician orders for a new plan of care. The first ordered service/billable service is Day 43. Day 43 becomes Day 1 of the new 60-day episode for HHA–2. The PEP adjustment for HHA–1 would equal $3000 * 18/60. The triggering date for the end of the partial episode is the last physician ordered service/billable visit date for the HHA. The triggering date for the new 60-day episode is the first ordered service in the new plan of care corresponding to the new 60-day episode due to the beneficiary elected transfer or transfer to a new HHA that is not under common ownership with original HHA–1.

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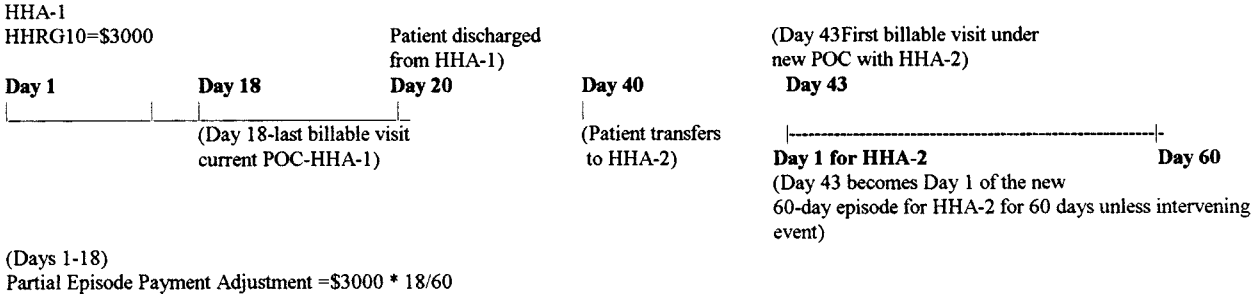
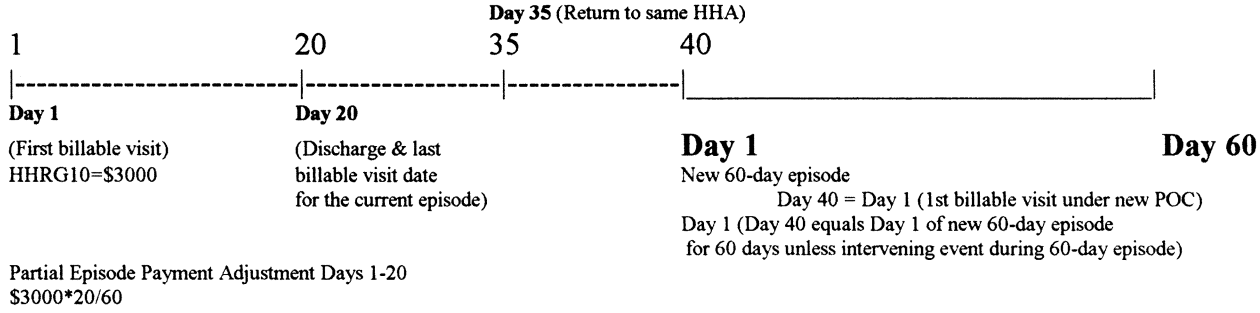


Discharge and Return to the Same HHA During the 60-Day Episode

In a 60-day episode, a patient is discharged on Day 20 and returns to the same HHA on Day 35. The patient met the treatment goals in the original plan of care. The original plan of care was terminated with no anticipated need for home care during the balance of the 60-day episode. The initial percentage payment would be adjusted to recognize the 20 days served by the HHA under the initial case-mix category. The last ordered visit was under the original plan of care coincidentally furnished on Day 20 of the initial 60-day episode. For example, the patient is assigned to HHRG10=3000 episode payment, is discharged on Day 20, and returns to the same HHA on Day 35. The HHA would reassess the patient on or about Day 35 and start a new 60-day clock for physician recertification, OASIS, and case-mix assignment for payment. The start of the new payment clock corresponds to the first physician ordered service/billable service in the new plan of care. For purposes of this example, the first physician ordered service in the new plan of care for the new 60-day episode payment is Day 40. Day 40 of the original episode becomes Day 1 of the new certified period.

The adjusted payment for the partial episode spans the start of care date (Day 1-first physician ordered service) through and including the last day of the 60-day episode that includes the last physician ordered service furnished/billable visit prior to the intervening event as a proportion of 60 days. The adjusted payment for the partial episode spans Day 1 through and including Day 20. Day 20 is the last day of the original episode that includes a physician ordered/billable service. The PEP adjustment would equal $3000 times 20/60. The triggering date that closes the original episode with a PEP adjustment is the last date of service with a physician ordered/billable service prior to the intervening event. The triggering date for the new episode is the first ordered service in the new plan of care corresponding to the new 60-day episode due to discharge and return to the HHA in same episode.



4. Significant Change in Condition Payment Adjustment Examples

As discussed above, we are proposing that the third intervening event over a course of a 60-day episode of home health care that could trigger a change in payment level would be a significant change in the patient's condition. We are proposing the significant change in condition payment adjustment (SCIC Adjustment) to be the proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in treatment approach in the patient's plan of care.

As discussed above, the SCIC adjustment occurs in two parts during the 60-day episode. The first part of the SCIC adjustment uses the span of days of the first billable service date through the last billable service date prior to the intervening event of the patient's significant change in condition that warrants a new case mix assignment for payment. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or LUPA) determined at the final billing of the 60-day episode .

For example, an HHA assigns a patient to a HHRG that equals $2,000 and would be paid the initial 50 percent equaling $1,000 at the start of the episode. The patient's first billable service date is Day 1. The patient experiences a significant change in condition on Day 19. The last billable service date prior to the significant change in condition is Day 20. The HHA completes the OASIS assessment, obtains the necessary physician change orders to alter the course of treatment in the plan of care, and changes the case mix assignment for payment reflecting the patient's change in condition. The HHA has all of the necessary information to begin rendering services under the revised plan of care and at the new case mix level of a HHRG that equals $4,000 on Day 25. The span of days that are used to calculate the first part of the SCIC adjustment are Day 1 through Day 20. Day 25 is the first billable service date under the second part of the SCIC adjustment. Day 60 is the last billable service date at the case mix level HHRG that equals $4,000 prior to the end of the 60-day episode.

The first part of the SCIC adjustment is:

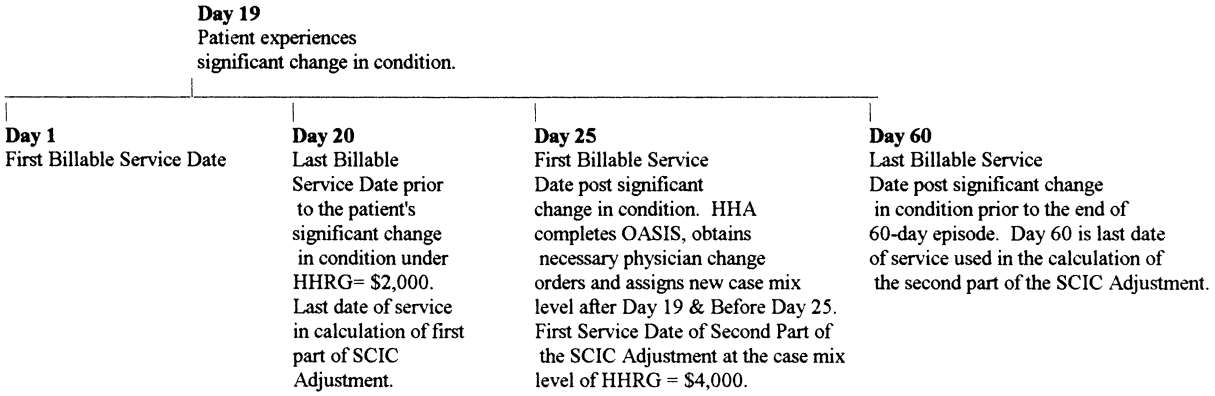
(Day 1–Day 20) $20/60 \times \$2,000 = \$666.67$

The second part of the SCIC adjustment is:

(Day 25–Day 60) $36/60 \times \$4,000 = \$2,400.00$

Total SCIC Adjustment= $3,066.67

The original $1,000 payment (50 percent of the HHRG=$2,000) would be adjusted with $2,066.67. to pay the balance of the total SCIC Adjustment of $3,066.67 unless there is any applicable medical review or LUPA determined at the final billing for the 60-day episode.



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K. Required Schedule for Completing OASIS Supplemented by One Additional Case-Mix Item

As discussed above, sections 1895(b)(4)(A)(i) and (b)(4)(B) of the Act require the Secretary to establish and make appropriate case-mix adjustments to the units of payment in a manner that explains a significant amount of the variation in cost among different units of service. Section 1895(b)(2) of the Act requires the Secretary to provide a general system design for the HHA PPS that provides for continued access to quality services. Further, section 4602(e) of the BBA, effective for cost reporting periods beginning on or after October 1, 1997, the Secretary may require all HHAs to submit additional information that the Secretary considers necessary for the development of a reliable case-mix system.

Required Schedule for Completion of OASIS Supplemented by One Additional Case-Mix Item

As discussed above, the initial OASIS assessment completed at the start of care and the assessment at every subsequent follow-up recertification for beneficiaries who continue to be eligible for home health services will be the only assessments recognized for purposes of payment for the 60-day episode. The start of care OASIS must be completed at the beginning of each 60-day episode. An HHA may not bill for the initial percentage episode payment without the grouper-generated code corresponding to the complete OASIS assessment supplemented, as necessary, by the additional therapy variable for that 60-day episode. We are proposing to amend the current bimonthly completion time frames published in the January 25, 1999 conditions of participation (COP) final rule (64 FR 3764) by revising 42 CFR 484.55, ''Condition of participation: Comprehensive assessment of patients,'' paragraph (d)(1), to state that the standard for the update of the comprehensive assessment would be every 60 days beginning with the start of care date, unless there is an intervening beneficiary elected transfer, a significant change in condition resulting in a new case mix assignment, or a discharge and return to the same HHA during the 60-day episode. We are using discrete 60-day episodes for purposes of payment under PPS, so it is necessary to replace references to the current ''bimonthly period'' to ''every 60 days unless there is an intervening beneficiary elected transfer, a significant change in condition resulting in a new case mix assignment, or a discharge and return to the same HHA during the 60-day episode.'' The initial OASIS assessment completed at the start of care is updated every 60 days. The initial OASIS and subsequent follow-up OASIS supplemented, as applicable, by the treatment variable regarding therapy use will also be updated on a 60-day timetable. Each 60-day follow-up OASIS supplemented by the treatment variable regarding therapy will be the basis for case-mix adjusting each subsequent 60-day episode period for purposes of payment.

One modification to the current OASIS schedule for the follow-up assessment is necessary in order for the case-mix adjustment of each subsequent 60-day episode recertification. The current follow-up assessment schedule does not now include data elements MO230 Primary Home Care Diagnosis and MO390 Vision. Both are necessary elements of the case-mix adjustment methodology. The schedule for follow-up assessments must be modified to include these two case-mix variables. Each follow-up assessment is used as the basis for updating the comprehensive assessment and case-mix adjusting subsequent 60-day episodes for payment purposes. The follow-up assessment schedule must include all 19 OASIS items that have been determined to be necessary for case-mix adjustment.

As discussed above in section IV.A. of this regulation, we are proposing that the grouper logic will be located at the provider level. The grouper logic at the HHA will select and categorize the relevant OASIS items and one treatment variable regarding therapy use necessary to establish a case-mix category for payment purposes. As stated above, under section 4602(e) of the BBA, effective for cost reporting periods beginning on or after October 1, 1997, the Secretary may require all HHAs to submit additional information that the Secretary considers necessary for the development of a reliable case-mix system. Therapy use (physical therapy, speech-language pathology services, and occupational therapy) during the 60-day episode is a significant explanatory variable in the clinical case-mix model. Since actual therapy use cannot be determined until the end of the 60-day episode, we are proposing the projection of therapy use at the start of the 60-day episode and the confirmation of the therapy use at the end of the 60-day episode. As discussed in section II.C. of this regulation, the research has developed a utilization proxy for time. As stated above, 10 therapy visits equate to 8 or more therapy hours during a 60-day episode. We will use the line-item date information from the close-out bill to confirm the projected therapy use incorporated into the code placed on the start of care bill.

The additional case-mix item regarding therapy use during a 60-day episode will be effective October 1, 2000 with the date of PPS implementation.

L. Relationship Between Payment and OASIS

As explained above, each Medicare home health patient is classified into an HHRG group for each 60-day episode period. The group to which the patient is classified is based on the information about the patient's clinical resource needs as reported on the OASIS–B as part of the approach to overall comprehensive assessment as required by 42 CFR 484.55 in the HHA COPs, and the services ordered in the patient's home health plan of care, including but not limited to, a physician's orders for therapy services.

M. Transition of Assessment and Certification Dates for Beneficiaries Under an Established Home Health Plan of Care

For eligible beneficiaries under an established home health plan of care on October 1, 2000, we are providing transition alternatives.

1. Use of Current OASIS Assessment for Purposes of Case-Mix Classification

If a beneficiary is under an established home health plan of care before October, 1, 2000 and the HHA has completed a Start of Care or Follow-Up OASIS earlier than September 1, 2000, the HHA must complete a one-time additional Follow-Up OASIS within 5 days before October 1, 2000 for purposes of case-mix classification. If a beneficiary is under an established home health plan of care before October 1, 2000 and the HHA completed a Start of Care or Follow-Up OASIS on or after September 1, 2000 and does not wish to do a one-time OASIS at the inception of PPS, the HHA may use that earlier version of the OASIS. This is a one-time grace period.

2. Physician Certification Dates for Beneficiaries Under an Established Home Health Plan of Care

If a beneficiary is under an established home health plan of care before October 1, 2000 and the certification date is earlier than September 1, 2000, the HHA in conjunction with a certifying physician must complete a one-time additional recertification of the plan of care before the inception of PPS on October 1, 2000.

If a beneficiary is under an established home health plan of care before October 1, 2000 and the certification date is on or after September 1, 2000 and the HHA in conjunction with a certifying physician does not wish to do a one-time additional recertification of the plan of care at the inception of PPS, the HHA may use the recertification date (September 1, 2000 through September 30, 2000) from the earlier version of the plan of care. This is a one-time grace period.

V. Consolidated Billing

A. Background

Under the HHA Consolidated Billing requirement established by sections 4603(c)(2)(B) and (c)(2)(C) of the BBA, the HHA that establishes the home health plan of care has the Medicare billing responsibility for all of the Medicare-covered home health services listed in section 1861(m) of the Act that the patient receives and are ordered by the physician in the plan of care.

B. HHA Consolidated Billing Legislation

Specific Provisions of the Legislation

Sections 4603(c)(2)(B) and (c)(2)(C) of the BBA amend sections 1842(b)(6) and 1862(a) of the Act, respectively, to require a new consolidated billing and bundling of all home health services while a beneficiary is under the plan of care. The statute now requires payment for all items and services to be made to an agency.

Specifically, the law requires, ''in the case of home health services furnished to an individual who (at the time the item or service is furnished) is under the plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise).''

However, the statute also provides for separate payment amounts for home health care and services currently provided under the DME fee schedule. As discussed above in section I.D.1.a. of this regulation, under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. We believe a separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS. Nevertheless, payment for home health services can only be made to the HHA that establishes the individual's home health plan of care. This requirement would apply even in circumstances in which the services are not provided directly or under arrangement. For example, this would require the HHA to bill when the plan of care specifies DME and an outside supplier provides it.

C. Types of Services That Are Subject to the Provision

Under the consolidated billing requirement, we require that the HHA must submit all Medicare claims for the home health services included in 1861(m) of the Act while the beneficiary is under the home health plan of care established by a physician and is eligible for the home health benefit. The home health services included in consolidated billing are:

- Part-time or intermittent skilled nursing care.
- Part-time or intermittent home health aide services.
- Physical therapy.
- Speech-language pathology.
- Occupational therapy, medical social services.
- Routine and nonroutine medical supplies.
- A covered osteoporosis drug (as defined in section 1861(kk) of the Act—(not paid under PPS rate, see 1833(a)(2)(A)), but excluding other drugs and biologicals).
- DME subject to 20 percent coinsurance whether covered under Part A or Part B.
- Medical services provided by an intern or resident-in-training of the hospital, under an approved teaching program of the hospital in the case of an HHA that is affiliated or under common control with a hospital
- Services at hospitals, SNFs, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

We are seeking comments on the operational feasibility of this requirement.

D. Effects of This Provision

HHAs will no longer be able to ''unbundle'' services to an outside supplier that can then submit a separate bill directly to the Part B carrier. Instead, the HHA itself will have to furnish the home health services either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. The outside supplier must look to the HHA rather than to Medicare Part B for payment. This will be a change, especially regarding nonroutine medical supplies and DME.

The consolidated billing requirement eliminates the potential for duplicative billings for the same services to the RHHI by the HHA and to the Part B carrier by an outside supplier. All covered home health services listed in section 1861(m) of the Act ordered in the patient's plan of care must be billed by the HHA. We are exploring two options for the administrative implementation of this provision. The first option would require that all covered home health services listed in section 1861(m) of the Act ordered in the patient's plan of care must be billed by the HHA to the RHHI. This would include all home health services included in the prospective payment amount (part-time or intermittent skilled nursing services, part-time or intermittent home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, medical social services, and medical supplies) and the separate additional fee schedule payment for durable medical equipment subject to the 20 percent coinsurance would be billed by the HHA to the RHHI. The second option would require all covered home health services listed in section 1861(m) of the Act ordered in the plan of care included in the prospective payment amount (part-time or intermittent skilled nursing services, part-time or intermittent home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, medical social services, and medical supplies) to be billed by the HHA to the RHHI and the separate additional fee schedule payment for durable medical equipment subject to the 20 percent coinsurance billed by the HHA as a supplier to be billed to the Durable Medical Equipment Regional Carrier under Part B. This means the HHA would have to otherwise conform with supplier standards. We solicit public comment on either of these approaches.

As discussed in section II.D.4 of this regulation, the responsibility for consolidated billing moves to the transfer HHA. The consolidated billing requirement enhances the HHA's capacity to meet its existing responsibility to oversee and coordinate the Medicare-covered home health services that each of its patients receives.

Consistent with SNF PPS consolidated billing, the beneficiary exercises his or her freedom of choice for the entire home health benefit of services listed in 1861(m) by choosing the HHA. Once a home health patient chooses a particular HHA, he or she has clearly exercised freedom of choice with respect to all items and services included within the scope of the

Medicare home health benefit. The HHA's consolidated billing role supersedes all other billing situations the beneficiary may wish to establish for home health services covered under the scope of the home health benefit during the certified episode.

Current law is silent regarding the specific terms of an HHA's payment to an outside supplier, and does not authorize the Medicare program to impose any requirements in this regard. We remain concerned, however, over the potential for the provision of unnecessary services, and will continue to evaluate possible legislative and other approaches addressing this concern. One appropriate way to address any abusive practices would be through more vigorous enforcement of existing statutes and regulations (such as medical review procedures). Further, since under current law, an HHA's relationship with its supplier is essentially a private contractual matter, the terms of the supplier's payment by the HHA must be arrived at through direct negotiations between the two parties themselves. Accordingly, we believe that the most effective way for a supplier to address any concerns that it may have about the adequacy or timeliness of the HHA's payment would be for the supplier to ensure that any terms to which it agrees in such negotiations satisfactorily address those concerns. Finally, we note that matters relating to the enforcement of the statutory anti-kickback provisions lie exclusively within the purview of the Office of the Inspector General, and any questions or concerns in this area should be directed to the attention of that agency.

E. Effective Date for Consolidated Billing

The effective date for consolidated billing is October 1, 2000.

VI. Provisions of the Proposed Rule

We are proposing to make a number of revisions to the regulations in order to implement both the prospective payment system and the HHA Consolidated Billing provision. We propose to make conforming changes in 42 CFR parts 409, 424, and 484 to synchronize all timeframes for the plan of care certification, OASIS resumption of care assessment, and episode payments to reflect a 60-day period. In addition, we are proposing to add a new subpart in part 484 to set forth our new payment system for HHAs. These revisions and others are discussed in detail below.

First, we are proposing to revise part 409, subpart E, which discusses the requirements that must be met for Medicare to make payment for home health services. We are proposing to make a conforming change in § 409.43 regarding the plan of care requirements. Specifically, we propose to revise the frequency for review in paragraph (e) of this section by replacing the phrase ''62 days'' with ''60 days unless there is—

- An intervening beneficiary elected transfer;
- A significant change in condition resulting in a new case mix assignment; or
- A discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care.''

In addition, we are proposing to revise subpart H of this part regarding payments of hospital insurance benefits. We are proposing to revise paragraph (a) in § 409.100, which discusses payment for services, to specify the conditions under which Medicare may pay hospital insurance benefits for home health services. We are proposing to provide introductory text to paragraph (a) and to redesignate the current paragraph (a) as paragraph (a)(1). Proposed paragraph (a)(2) of this section would require that Medicare may pay hospital insurance benefits for the home health services specified at section 1861(m) of the Act, when furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We are proposing to make similar changes in part 410, subpart I, which deals with payment of benefits under Part B. We propose to add a new paragraph (b)(19) to § 410.150 to specify the conditions under which Medicare Part B pays for home health services. Specifically, proposed paragraph (b)(19) would specify that Medicare Part B pay a participating HHA, for home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We also propose to revise part 411 subpart A, which discusses excluded services. We propose to add a new paragraph (q) to § 411.15 to specify the conditions under which HHA services are excluded from coverage. Proposed paragraph (q) would specify that a home health service as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA is excluded from coverage unless that HHA has submitted a claim for payment for such services.

We are also proposing to simplify the authority citation for part 413. In § 413.1 in the introduction to the section on principles of reasonable cost reimbursement, we are proposing to add a new paragraph (h) to include the timeframe under which home health services will be paid prospectively. Paragraph (h) under this section would specify that the amount paid for home health services as defined in section 1861(m) of the Act that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter. In addition, we propose to amend § 413.64 concerning payments to providers. Specifically, we propose to amend paragraph (h)(1) of this section by removing Part A and Part B HHA services from the periodic interim payment method.

We also propose to revise part 424, which explains the conditions for Medicare payment. We are proposing to revise § 424.22 regarding the certification requirements as a condition for payment. We are proposing to add a new paragraph (a)(1)(v) that would specify that as a condition for payment of home health services under Medicare Part A or Medicare Part B, a physician must certify that the individual is correctly assigned to one of the HHRGs. We are also proposing to make a conforming change at paragraph (b)(1) of this section regarding the timing of the recertification. Specifically, we propose to amend § 424.22(b) by replacing the phrase ''at least every 2 months'' with ''at least every 60 days,'' and adding the following sentence: ''The recertification is required at least every 60 days unless there is a beneficiary elected transfer, or a discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care.''

We are proposing to add a new statutory authority, section 1895 of the Act, to paragraph (a) of § 484.200, ''Basis and scope.'' Section 1895 provides for the implementation of a prospective payment system for HHAs for portions of cost-reporting periods occurring on or after October 1, 2000.

We are proposing to revise the regulations in 42 CFR part 484, which deal with the conditions that an HHA must meet in order to participate in

Medicare. First, we are proposing to revise the part heading from ''Conditions Of Participation: Home Health Agencies'' to the more generic heading ''Home Health Services.'' We are proposing to make a conforming change in § 484.18(b) by replacing the phrase ''62 days'' with ''60 days unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode.''

Also, we propose to revise § 484.55(d)(1) by replacing ''every second calendar month'' with language that reflects the 60-day episode and possible PEP adjustment or SCIC adjustment. We are proposing to require that the comprehensive assessment be updated and revised as frequently as the patient's condition warrants but not less frequently than every 60 days beginning with the start-of-care date unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode.

In addition, we are proposing to add and reserve a new subpart D, then add a new subpart E, ''Prospective Payment System for Home Health Agencies.'' This new subpart would set forth the regulatory framework of the new prospective payment system. It specifically discusses the development of the payment rates, associated adjustments, and related rules. In § 484.202, ''Definitions,'' we are proposing the following definitions for purposes of this new subpart:

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Clinical model means a system for classifying Medicare-eligible patients under a home health plan of care into mutually exclusive groups based on clinical, functional, and intensity-of-service criteria. The mutually exclusive groups are defined as Home Health Resource Groups (HHRGs).

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

In proposed § 484.205 ''Basis of payment,'' we discuss the Medicare payment to providers of services. Proposed § 484.205(a) describes the method by which the provider will receive payment. Specifically, § 484.205(a)(1) provides that an HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis. We determine this national 60-day episode payment under the methodology set forth in § 484.215. Paragraph (a)(2) would specify that an HHA may receive a low-utilization payment adjustment (LUPA) of a predetermined per-visit rate. We determine the LUPA under the methodology set forth in § 484.230. Paragraph (a)(3) of this section provides that an HHA may receive a PEP adjustment due to an intervening event during an existing 60-day episode that initiates the start of a new 60-day episode payment and a new patient plan of care. We determine the PEP adjustment under the methodology set forth in § 484.235. Paragraph (a)(4) of this section specifies that a HHA may receive a significant change in condition payment adjustment (SCIC) adjustment due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. We determine the SCIC adjustment under a methodology set forth in § 484.237.

Proposed paragraph (b) discusses the 60-day episode payment and circumstances surrounding adjustments to the payment method. This paragraph proposes that the national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis as of August 5, 1997 (the date of the enactment of the BBA) unless the national 60-day episode payment is subject to a low-utilization payment adjustment as set forth in § 484.230, a partial episode payment adjustment as set forth in § 484.235, a significant change in condition payment adjustment set forth in § 484.237 or an additional outlier payment as set forth in § 484.240. All payments under this system may be subject to a medical review adjustment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

In paragraph (c) of this section, we propose the low-utilization payment adjustment to the 60-day episode payment. We would require that an HHA receive a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless we determine at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. We determine a low-utilization payment adjustment under the methodology set forth in § 484.230.

In paragraph (d), we discuss the partial episode payment adjustment (PEP). We describe that an HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless there is an intervening event that warrants the initiation of a new 60-day episode payment and a new physician certification of the new plan of care. The initial HHA receives a PEP adjustment reflecting the length of time the patient remained under its care. The PEP adjustment would not apply in situations of transfers among HHAs of common ownership. Further, the discharge and return to the same HHA is only recognized in those circumstances when a beneficiary reached the goals in the original plan of care. The original plan of care must have been terminated with no anticipated need for additional home health services for the balance of the 60-day episode. We determine a partial episode payment adjustment under the methodology set forth in § 484.235.

In paragraph (e), we discuss the significant change in condition adjustment. We discuss that the HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both before and after the patient experienced a significant change in condition during the 60-day episode.

In paragraph (f), we discuss how we treat payment for outliers. In this paragraph we would provide that an HHA receives a national 60-day episode payment of a predetermined rate for

home health services paid on a reasonable-cost basis as of August 5, 1997, unless the estimated cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. We determine an outlier payment under the methodology set forth in § 484.240.

In the proposed § 484.210, we would specify the data used for the calculation of the national prospective 60-day episode payment. These data include the following:

- Medicare cost data on the most recent audited cost report data available.
- Utilization data based on Medicare claims.
- An appropriate wage index to adjust for area wage differences.
- The most recent projections of increases in costs from the HHA market basket index.
- OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case-mix.

In § 484.215, paragraphs (a) through (e) would specify the methodology used for the calculation of the national 60-day episode payment. Proposed paragraph (a) would specify that in calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, we determine each HHA's costs by summing its allowable costs for the period. We determine the national mean cost per visit.

Proposed paragraph (b) of this section would specify that in calculating the initial unadjusted national 60-day episode payment, we determine the national mean utilization for each of the six disciplines using home health claims data.

Proposed paragraph (c) of this section would specify that we use the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001. For each fiscal year from 2002 or 2003, we update the cost data by a factor equivalent to the annual market basket index percentage minus 1.1 percentage points.

Proposed paragraph (d) of this section would describe how we calculate the unadjusted national average prospective payment amount for the 60-day episode. Specifically, we would calculate this payment amount by—

- Computing the mean national cost per visit;
- Computing the national mean utilization for each discipline;
- Multiplying the mean national cost per visit by the national mean utilization summed in the aggregate for each discipline; then
- Adding to this amount, amounts for nonroutine medical supplies and an OASIS adjustment for estimated ongoing reporting costs.

Proposed paragraph (e) regarding standardization of the data for variation in area wage levels and case-mix would specify that we standardize the cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case mix. We standardize the cost data for geographic variation in wage levels using the hospital wage index. We standardize the cost data for HHA variation in case mix using the case-mix indices and other data that indicate HHA case mix.

Proposed § 484.220 would describe how we calculate the national adjusted prospective 60-day episode payment rate for case-mix and area wage levels. This section would specify that we adjust the national prospective 60-day episode payment rate to account for HHA case mix using a case-mix index to explain the relative resource utilization of different patients. We also adjust the national prospective 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index.

In proposed § 484.225, we explain our methods for annually updating the national adjusted prospective 60-day episode payment rates for inflation. This update is handled in the following manner:

- We update the unadjusted national 60-day episode payment rate on a fiscal year basis.
- For FY 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available market basket factors.
- For fiscal year 2002 or 2003, the unadjusted national 60-day episode payment rate is equal to the rate for the previous period or fiscal year increase by a factor equal to the HHA market basket minus 1.1 percentage point.
- For any subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable HHA market basket index amount.

In proposed § 484.230, we explain the methodology we use for the calculation of the low-utilization payment adjustment. In this section, we would specify that in calculating the low-utilization payment adjustment an episode with four or fewer visits is paid the national average standardized per-visit amount by discipline for each visit type. We would also specify that the national average standardized per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index.

Proposed § 484.235 illustrates the methodology we used to calculate the partial episode payment adjustment. The intervening event of a beneficiary elected transfer, or discharge and return to the same HHA during the 60-day episode warrants a new 60-day episode payment and a new physician certification of a new plan of care. The original 60-day episode payment is adjusted with a partial episode payment that reflects the length of time the beneficiary remained under the care of the original HHA. The partial episode payment is calculated using the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

Proposed § 484.237 illustrates the methodology we used to calculate the significant change in condition payment adjustment. The intervening event, here a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care, initiates the significant change in condition payment adjustment. The significant change in condition adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *prior* to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case mix assignment for payment at the end of the 60-day episode. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end

of the 60-day episode. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment.

Proposed § 484.240 describes the methodology we used to calculate the outlier payment. This methodology for the calculation of the outlier payment involves the following:

- We make an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.
- The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode or the total significant change in condition adjustment for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.
- The outlier payment is a proportion of the amount of estimated cost beyond the threshold.
- We estimate the cost for each episode by applying the standard per-visit amount to the number of visits by discipline reported on claims.
- The fixed dollar loss amount and the loss-sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total episode payment.

Proposed § 484.250 relates to data that must be submitted for the development of a reliable case mix. Specifically, we would require an HHA to submit the OASIS data described at the current § 484.55(b)(1) and (d)(1) (that we propose to revise in this rule) to administer the payment rate methodologies described in § 484.215 (methodology used for the calculation of the national 60-day episode payment), § 484.230 (methodology used for the calculation of the LUPA), § 484.235 (methodology used for the calculation of the PEP adjustment), and § 484.237 (methodology used for the calculation of the SCIC adjustment.

Proposed § 484.260 discusses the limitation for review with regard to our new payment system. In this section, we specify that judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of a payment unit including the national 60-day episode payment rate and the LUPA. This prohibition includes the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the information collection requirements (ICRs) as summarized and discussed below.

Section 484.55 Condition of Participation: Comprehensive Assessment of Patients

Section 484.55(d)(1), ''Update of the comprehensive assessment,'' requires entities to complete OASIS every 60 days beginning with the start of care date. This proposed requirement will revise the current requirement referenced in § 484.55(d)(1) by replacing ''every second calendar month'' with ''every 60 days'' and adding language to address the possible PEP adjustment or SCIC adjustment. The new language would require that the comprehensive assessment be updated and revised as frequently as the patient's condition warrants but not less frequently that every 60 days beginning with the start-of-care date, unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a new case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care. We believe the 60-day episode provides an appropriate time frame for purposes of prospective payment for many reasons. The 60-day episode period is the basic time frame under which HHAs have historically been required to manage and project home health care needs of beneficiaries in order to comply with current plan of care certification requirements for Medicare home health plans of care. The 60-day episode period basically matches the reassessment schedule for OASIS, and this parallel time frame will permit case-mix adjustment of each episode. As discussed above in section I.C., the 60-day episode captures the majority of stays experienced in the per-episode HHA PPS Demonstration.

We do not believe the change in reporting from at least every 62 days to 60 days imposes any additional burden on HHAs. However, we explicitly solicit comments on this revision of reporting requirements.

We are specifically seeking comments on the potential burden associated with the PEP adjustment in terms of acquiring a new physician certification and new plan of care in order to receive a new 60-day episode payment when a patient is discharged and returns to the same HHA during the 60-day episode or a beneficiary elects to transfer to a new HHA during the 60-day episode. We do not believe there is any new burden associated with requiring a new physician certification and new plan of care when a patient elects to transfer to a new HHA during a 60-day episode, as these are current requirements. We also believe the SCIC adjustment reflects the current practice of notifying the physician when the patient's condition changes and obtaining necessary physician change orders to reflect a change in the course of treatment in the beneficiary's existing plan of care. We are, however, seeking comments on the proposal.

Each episode must be identified to establish that a beneficiary is under a plan of care at that primary HHA. The primary HHA is responsible for coordinating the beneficiary's care and

billing for all covered home health services ordered in the plan of care for the 60-day episode. The primary HHA must provide this information to HCFA. Consistent with the patients' rights provisions in the HHA conditions of participation regulation, the HHA must advise patients that as their primary HHA, all covered home health services provided during the episode must be furnished directly or under arrangement with the agency unless the beneficiary elects to transfer to another primary HHA. The acknowledgment that this information has been provided should be retained by the HHA. We do not envision a new specific form requirement for the primary HHA designation. We are specifically seeking comments on the industry's ability to operationally comply with this requirement.

We have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

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

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke, HCFA–1059–P

and

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

IX. Regulatory Impact Statement

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

We estimate, based on a simulation model, that the redistributional effects on HHAs participating in the Medicare program associated with this proposed rule would range from a positive $650 million for freestanding not-for-profit agencies to a negative $983 million for freestanding for-profit agencies in FY 2001. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, (Public Law 104–4), and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Section 1895(b)(3)(A)(i) of the Act requires that the total amounts payable under the HHA PPS be equal to the total amount that would have been paid if this system had not been in effect. Section 1895(b)(3)(A)(ii) of the Act requires the standard prospective payment amounts to be budget neutral to the FY 2001 home health interim payment system limits reduced by 15 percent. Section 4603(e) requires that the 15 percent reduction in interim payment system limits takes place if the PPS is not implemented. Section 5101(d)(2) of OCESAA adds a new section 1895(b)(3)(B)(ii) to the Act to require the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points for FY 2002 or 2003. In addition, for subsequent fiscal years, the law requires the rates to be increased by the applicable home health market basket index change. Thus, subject to these adjustments, the statutory construction of this proposed rule is budget neutral. However, we are aware that there would be a number of organizational accommodations that must be made by HHAs in order to make the transition from the cost-based/interim payment system environment to a prospective payment environment that would result in costs to these entities. On that basis, we are preparing this RIA.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any given year. We believe that the costs associated with this proposed rule that apply to these governmental sectors would fall below this threshold. Therefore, the law does not apply and we have not prepared an assessment of anticipated costs and benefits of this proposed rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most HHAs are considered small entities, either by nonprofit status or by having revenues of $5 million or less annually. Table 10 illustrates the distribution of HHAs by provider type participating in Medicare as of April 13, 1999.

TABLE 10.—NUMBER OF HHAS BY PROVIDER TYPE

HHA provider type	Number
Visiting Nurse Association	484
Combination Government and Voluntary	34
Official Health Agency	1,067
Rehab Facility Based	2
Hospital Based	2,486
Skilled Nursing Facility Based	174
Other	4,612
Total	8,859

Source: HCFA—On Line Survey Certification and Reporting System Standard Report 10—4/13/99.

The following RIA/RFA analysis, together with the rest of this preamble, explains the rationale for and purposes of this rule, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

A. Background

1. General

This proposed rule sets forth a prospective payment system for all costs of home health services under section 1895(b) of the Act. Section 5101(c)(2) of OCESAA amended the statute to require that all HHAs be paid under HHA PPS effective October 1, 2000. Section I. of the preamble details the requirements of the BBA and OCESAA for the development of the HHA PPS. Below we summarize a number of those areas that specifically apply to the impact.

- Section 1895(b)(1) of the Act provides for a transition of not longer than 4 years during which a portion of the prospective payment amount may be agency-specific as long as the blend

does not exceed budget-neutrality targets.

- Section 1895(b)(3)(A)(i) of the Act requires that the prospective payment amounts be standardized to eliminate the effects of case mix and wage levels among HHAs.
- Section 1895(b)(3)(C) of the Act provides for outlier payments. Section 1895(b)(5) of the Act states that total outlier payments cannot exceed 5 percent of either projected or estimated total HHA PPS payments.

Section 1895(b) of the Act allows us broad authority in the establishment of several key elements of the system. Most of these elements, and the alternatives that were considered, are discussed in detail earlier in the preamble of this proposed rule. Several that warrant additional discussion are the length of episode for payment purposes, the case-mix methodology, and proration of prospective payment amounts.

2. 60-Day Episode Definition and Payment Rate

As we explain in section II. of the preamble, we are proposing that the prospective payment unit of payment under the HHA PPS be based on a 60-day episode of Medicare-covered home health care as OASIS data will be captured on a 60-day cycle. Current Medicare plan-of-care certification requirements are also done bimonthly, and most episodes in the HHA per-episode PPS demonstration ended in 60 days or less.

As we explain in section II. of the preamble, the 60-day episode payment rate includes all costs of home health services covered and paid for on a reasonable-cost basis and would be based on the most recently available audited cost-report data. It would be standardized to eliminate the effects of case mix and wage levels among HHAs. It must be budget neutral to the current HHA interim payment system limitation amounts reduced by 15 percent at the inception of the HHA PPS on October 1, 2000. As amended by section 5101(d)(2) of OCESAA, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act require that the standard prospective payment amounts are to be increased by a factor equal to the home health market basket minus 1.1 percentage points for fiscal year 2002 or 2003. Also, it incorporates adjustments to account for provider case mix using a clinical classification system that accounts for the relative resource utilization of different patient types. The classification system used, the Clinical Model from Abt, uses the OASIS patient data set supplemented, as applicable, by one additional patient-specific item regarding number of therapy hours/visits received in the 60-day episode period.

3. Case Mix

The goal of a case-mix payment system is to measure the intensity of care and services required for each patient and translate it into an appropriate payment level. Case-mix adjustment takes into account the relative resource use of different patient types served by an HHA. As we explain in section II. of the preamble, sections 1895(b)(4)(A)(i) and (b)(4)(B) of the Act require us to establish and make appropriate case-mix adjustments to the episode payment amounts in a manner that explains a significant amount of the variation in cost among different units of services. The patient classification system used under the HHA PPS is the Clinical Model from Abt, an 80-group patient classification system, that provides the basis for the case-mix payment indices used both for standardization of the 60-day episode payments and subsequently to establish the case-mix adjustments to the 60-day episode payment for patients with different home health service needs.

B. Alternatives Considered

Several alternatives have been considered in our development of the HHA PPS.

1. Unit of Payment

Section 1895(b)(2) of the Act requires the Secretary in defining a prospective payment amount to consider an appropriate unit of service and the number, type, and duration of visits provided within the unit; and potential changes in the mix of services provided within that unit and their cost. As discussed in section II. of this preamble, we are proposing a 60-day episode for the unit of payment under the HHA PPS. The proposed system provides for a low-utilization payment adjustment (LUPA) and a partial episode payment adjustment (PEP) adjustment. The proposed payment system also provides for a separate cost outlier payment in addition to the 60-day episode payment. Outlier payment alternatives are discussed below.

a. 60-Day National Episode Payment

Recognizing that (1) OASIS data will be captured on a 60-day cycle, (2) current Medicare plan of care certification requirements govern a bimonthly period of time, and (3) most episodes of care will be concluded in 60 days or less in the HHA PPS demonstration, we are proposing a 60-day episode as the unit of payment for HHA PPS. We are proposing that the 60-day episode begins with the start-of-care date as day 1 (first billable date) and ends on and includes the 60th day from start of care. The next continuous episode period would begin on day 61 as the start-of-care date and end on and include day 120. We are proposing the requirement that the 60-day episode payment covers one individual for 60 days of care regardless of the number of days of care actually provided during the 60-day period, unless there is a low-utilization payment adjustment, partial episode payment adjustment, additional outlier payment, or medical review determination. An HHA that accepts a Medicare-eligible beneficiary for home health care for the 60-day episode period and submits a bill for payment may not refuse to treat an eligible beneficiary who has been discharged from the HHA during the 60-day episode, but later requires Medicare-covered home health services during the same 60-day episode period and elects to return to the same HHA.

In order to address the needs of longer stay patients, at this time we are proposing not to limit the number of 60-day episode recertifications in a given fiscal year. There is the potential for unlimited consecutive episodes if eligibility and coverage rules continue to be satisfied. Recertification of and payment for consecutive 60-day episodes is, of course, dependent on OASIS assessment and the patient's eligibility and need for continued medically necessary Medicare home health services. We believe consecutive 60-day episode recertification and payment would ensure continued access to the Medicare home health benefit without exceeding the statutory budget-neutrality targets.

We believe the 60-day episode provides an appropriate time frame for purposes of prospective payment for many reasons. The 60-day episode period is the basic time frame that HHAs have historically been required to manage and project home health care needs of beneficiaries in order to comply with current plan of care certification requirements for Medicare home health plans of care. The 60-day episode period also matches the reassessment schedule for OASIS, and this parallel time frame would permit case-mix adjustment of each episode.

We considered the option of a 120-day episode payment under the national HHA PPS. As discussed in section I. of this preamble, the HHA per-episode PPS demonstration tested a 120-day episode payment. In the HHA per-episode PPS demonstration, the 120-day episode payment was calculated using agency-specific costs in a given base-year

period. The calculation used for the 120-day episode payment in the HHA per-episode PPS demonstration was mean agency-specific cost per discipline multiplied by mean agency-specific utilization per discipline summed in the aggregate. The 60-day national episode payment methodology set forth in this rule parallels the general formula of mean cost multiplied by mean utilization summed in the aggregate. However, the 60-day episode payment for the national system is based on national mean cost and national mean utilization from the audited cost report sample database. The HHA per-episode PPS demonstration reflected an agency-specific methodology.

Another feature of the HHA per-episode PPS demonstration that was not adopted in the national PPS proposal is a prospective per-visit payment approach after completion of the 120-day episode. In the HHA per-episode PPS demonstration, agencies were paid a prospective per-visit amount for beneficiaries who required home health care after the 120-day episode had elapsed. Under the national HHA PPS, we are proposing continuous 60-day case-mix and wage-adjusted episode payments for beneficiaries who continue to be eligible for Medicare-covered home health services.

Based on the HHA per-episode PPS demonstration findings, the 60-day episode captured the majority of stays experienced in the HHA per-episode PPS demonstration. About 60 percent of the HHA per-episode PPS demonstration patients completed their episodes within 60 days. One criterion for the appropriate episode length is that it capture a majority of the patients. We now have evidence from the HHA per-episode PPS demonstration that a 60-day episode will do so. A 120-day episode, as tested in the HHA per-episode PPS demonstration, also meets this criterion, but we do not gain significantly larger completion percentage by lengthening the episode to 120 days. Moreover, a 120-day episode would result in more inequity in payments because of the larger risk of a change in a patient's condition over the span of the longer episode. We are specifically soliciting comments on the utility of a 60-day episode period for purposes of prospective payment and the efficacy of unlimited consecutive episode recertifications for eligible beneficiaries in a given fiscal year. We are also proposing a low-utilization payment adjustment (LUPA).

b. Low-Utilization Payment Adjustment

As discussed in section I. of the preamble, the statute requires that the definition of the unit of payment or episode must take into consideration the number, type, duration, mix, and cost of visits provided within the unit of payment. As a result of our analysis, we determined the need to also recognize a low-utilization payment under the HHA PPS. Low-utilization payment would reduce the 60-day episode payments, the partial episode payment adjustment, or the significant change in condition adjustments to those HHAs that provide minimal services to patients during the time the beneficiary is under their care. A reduced payment for low-utilization episodes would moderate the financial incentive for extreme skimping on services provided within an episode. It would also reduce the incentive to obtain an additional episode payment beyond a current episode by providing a bare minimum of additional services. It also redistributes monies to episodes reflecting higher service intensity.

Episodes with four or fewer visits would be paid the national average standardized per-visit amount times the number of visits actually provided during the episode. Based on analysis of our episode database, we concluded approximately 15 percent of current episodes constitute four or fewer visits. We explored the option of a six-visit threshold for low-utilization payments, but found approximately 20 percent of episodes in our episode database contain six or fewer visits. However, we are soliciting comments on the six or fewer visit threshold as discussed above in section I.D. of this regulation.

c. Partial Episode Payment Adjustment

We are proposing that the 60-day episode payment covers one beneficiary for 60 days of care regardless of the number of the days of care actually furnished during the 60-day episode unless one of the following intervening events occurs during the 60-day episode:

- A beneficiary elected transfer, or
- A discharge and return to the same HHA.

The intervening event described above restarts the 60-day episode clock for purposes of payment, OASIS assessment, and new physician certification of the new plan of care. The original 60-day episode payment is proportionally adjusted to reflect the actual length of time the beneficiary remained under the agency's care prior to the intervening event. The proportional payment is called the partial episode payment adjustment (PEP) adjustment.

The PEP adjustment is based on the span of days including the start of care date (first billable service date through and including the last billable service date) under the original plan of care prior to the intervening event. The PEP adjustment is calculated using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case mix and wage adjusted 60-day episode payment. For example, a patient is assigned to a 60-day episode payment of $3000. Day 1 through Day 30 the patient is served by HHA–1. Day 1 is the first billable service date and Day 30 is the last billable service provided by HHA–1 under the original plan of care. The beneficiary elects to transfer to HHA–2 on Day 35. The first ordered service for the beneficiary under the new plan of care is Day 38. Day 38 starts a new 60-day episode clock for purposes of payment, OASIS assessment, and physician certification of the plan of care. Day 38 becomes Day 1 of the new 60-day episode. The final payment to HHA–1 is proportionally adjusted to reflect the length of time the beneficiary remained under its care. HHA–1 would receive a PEP adjustment of 30/60 * $3000 = $1500.

d. Significant Change in Condition Adjustment

We are proposing the requirement that the 60-day episode payment covers the individual for 60 days of care unless one of three intervening events occurs. The PEP adjustment described above encompasses the two intervening events defined as a beneficiary elected transfer or a discharge and return to the same HHA over the course of a 60-day episode of home health care. We are proposing that the third intervening event over a course of a 60-day episode of home health care that could trigger a change in payment level would be a significant change in the patient's condition. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case mix assignment for purposes of SCIC payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care.

The SCIC adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *prior* to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of

payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment uses the span of days of the first billable service date through the last billable service date prior to the intervening event of the patient's significant change in condition that warrants a new case mix assignment for payment. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode payment amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case mix assignment for payment at the end of the 60-day episode.

The second part of the SCIC adjustment reflects the time the patient is under the care of the HHA after the patient experienced the significant change in condition during the 60-day episode that warranted the new case mix assignment for payment purposes. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end of the 60-day episode. Once the HHA completes the OASIS, obtains the necessary physician change orders reflecting the need for a new course of treatment in the plan of care, and assigns a new case mix level for payment, the second part of the SCIC adjustment begins. The second part of the SCIC adjustment is calculated by using the span of days of the first billable service date through the last billable service date during the balance of the 60-day episode. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or LUPA discussed below) determined at the final billing for the 60-day episode.

2. Outlier Payments

Section 1895(b)(5) of the Act governs the payment option for additions or adjustments to the payments due to unusual variations in the type or amount of medically necessary home health care under the HHA PPS. The total amount for addition or adjustment payments during a fiscal year may not exceed 5 percent of total payments projected or estimated to be made based on the HHA PPS in that year.

We considered the option of a long-stay outlier payment. Because we are proposing that successive episode payments would be made for a beneficiary as long as the beneficiary continues to be eligible and requires covered services, there would be no need for long-stay outlier cases under the HHA PPS. However, we believe outlier payments for 60-day episodes in which the HHA incurs extraordinary costs beyond the regular episode payment amount may be desirable. Outlier payments would provide some protection for beneficiaries whose care needs cost much more than the prospectively determined amount of the episode payment. They would also provide HHAs with some financial protection against possible losses on individual beneficiaries.

As discussed in section I. of the preamble, while we are not statutorily required to make provision for outlier payments, we are proposing outlier payments. Outlier payments are payments made in addition to regular 60-day case-mix-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments would be made for episodes whose estimated cost exceeds a threshold amount for each HHRG. The outlier threshold for each HHRG would be the 60-day episode payment amount for that group plus a fixed dollar loss amount that is the same for all case-mix groups. Outlier payments would be made for 60-day episode payments that have been adjusted by a PEP adjustment or SCIC adjustment. The outlier threshold for the PEP adjustment equals the PEP adjustment plus a fixed dollar loss amount that is the same for all case-mix groups. The outlier threshold for the SCIC adjustment is the total SCIC payment plus a fixed dollar loss amount that is the same for all case mix groups. The outlier payment would be a proportion of the amount of estimated costs beyond the threshold. Costs would be estimated for each episode by applying standard per-visit amounts to the number of visits by discipline reported on claims. The fixed dollar loss amount and the loss-sharing proportion would be chosen so that estimated total outlier payments are no more than 5 percent of total episode payments. As discussed above, there is no need for a long-stay outlier payment because we are not limiting the number of continuous episode payments in a fiscal year that may be made for Medicare home health care to eligible beneficiaries. As described above, the proposed outlier option is a fixed dollar loss of 1.07 times the standard episode payment amount and a loss sharing ratio of .60. The proposed option results in 7.5 percent of total estimated episodes receiving outlier payment, while holding total estimated outlier outlays to the required 5 percent.

3. Transition

Section 1895(b)(1) of the BBA provides discretion on providing for a transition from the current cost-based interim payment system to a full prospective payment system by permitting a blended PPS payment amount. Under such a transition, the law allows us to provide for a PPS amount, with a portion of payments based on agency-specific costs. The law provides for this blended PPS amount for up to 4 years in a budget-neutral manner.

Blending options provides significant practical obstacles. We could in theory blend what would have been paid under the current reasonable-cost reimbursement system and the PPS. A percentage of the payment would be based on reasonable costs building off the current interim payment system and a percentage would be based on the national PPS amount.

While other PPS systems have used a blended agency and national payment amount, the complexities of blending payments under such dissimilar payment methodologies for home health are so great, that we believe it is not a viable option. Moreover, OCESAA requires that we implement the PPS on the same date for all providers, regardless of their cost-report year. This break in cost-report year would further encourage continued use of the cost-based system. Recent legislation also reflects Congressional interest in expediting the transition from the interim payment system to the PPS. We believe proceeding with a highly complicated blended percentage payment system based on historical data from the cost-based interim payment system would not be in the best interest of the industry.

Section 1895(b)(3) also provides the option to recognize regional differences or differences based upon whether the

services or agency are in an urbanized area. We are proposing a national system of payment rates upon PPS implementation. The wage-index adjustment based on site of service reflects the regional differences in wages across urban and rural areas.

4. Operational Options

As discussed above, we envision two claims per beneficiary per 60-day episode. The initial claim submitted at the start of care will contain the appropriate HHRG code for purposes of partial payment for the 60-day episode and the final claim will be submitted at the end of the 60-day episode. The final claim may contain all of the line-item data visit information for the 60-day period and permit payment for the balance due for the episode. We do not believe this billing approach would impose any additional burden on the industry. We are proposing to require that the HHA identify itself as the primary HHA for the beneficiary during the 60-day episode. This is necessary to establish the HHA to which payment is made during the episode. We do not envision a new specific form requirement for this requirement.

5. Consolidated Billing

The requirement to consolidate all durable medical equipment (DME) with the billing for home health services is expected to have a number of positive benefits. By making the HHA accountable for all services furnished to a Medicare patient, the HHA is in a better position to coordinate all aspects of the care being provided. This ensures that the responsibility for managing both the services and the DME needed for the patient's care is located in one place. The coordination will reduce the possibility of duplicate billings for DME and the opportunities for abusive billing practices. Moreover, the patient does not have to deal with two or more entities involved in the patient's care—one providing the skilled care and one or more entities supplying the DME during the time the HHA is in charge of caring for the patient.

However, we are concerned that because the statute requires an HHA to assume responsibility for all DME while the patient is under the care of the HHA, problems may occur for patients who already have a relationship with their current DME supplier. The impact of the consolidated billing provision with regard to DME takes effect when an HHA takes over the care of a patient, the HHA has no agreement with the patient's DME supplier, and the patient's existing relationship with the DME supplier ends. The HHA's DME supplier will replace the previous supplier and the patient will be required to receive his or her equipment from the new DME supplier. When a patient is discharged from the HHA, a similar situation could arise. Unless the patient chooses to continue receiving his or her DME from the HHA's DME supplier, when the patient is discharged, he or she will have to find a new supplier or reestablish contact with the previous supplier.

The problem of switching suppliers as a result of the consolidated billing requirement could be especially acute for a patient who must maintain a long term relationship with a DME supplier. Patients who might be most affected by the consolidated billing requirement include those who need oxygen equipment or complex equipment such as motorized wheelchairs that require periodic maintenance. Switching between DME suppliers could be confusing for patients and could affect a patient's treatment and well being. Currently we have no immediate solutions to these difficulties under the current statutory language and invite public comment.

C. Effects of This Proposed Rule

This proposed rule would establish requirements for the new prospective payment system for home health agencies as required by section 4603 of the BBA, as amended by section 5101 of OCESAA. These include the implementation of a prospective payment system for home health agencies, consolidated billing requirements, and a number of other related changes. The prospective payment system described in this rule replaces the retrospective reasonable cost-based system currently used by Medicare for the payment of home health services subject to interim payment system limits under Part A and Part B.

Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost-report data available to the Secretary. In accordance with this section of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost-report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ending on or after October 1, 1996 through September 30, 1997).

However, Table 11 below illustrates the proportion of HHAs that are likely to be affected.

This table reflects how agencies would be paid under PPS versus how they would be paid under the interim payment system (IPS) with the 15 percent reduction in limits required in FY 2001. The limits under IPS were determined by updating the per-visit limits in effect for FY 2000 by the market basket minus 1.1 percent updating each agency's per-beneficiary cap for FY 2000 by this same percentage. Each of these limits was then reduced by 15 percent. For each agency in the audited cost report data set, we updated their costs from FY 1997 to FY 2001 by our best estimate of HHA cost increases during this period. We then compared each agency's FY 2001 costs to the IPS limits to determine their IPS payment in FY 2001. To determine each agency's payment under PPS, we translated the cost report data into 60-day episodes and used the average case mix for urban/rural and provider type as a proxy. We extrapolated the audited cost report data to reflect the total Medicare HHA distribution. We obtained average case-mix values based on the type of provider and whether the HHA was urban or rural from the Abt data set. We then multiplied the agency's expected number of episodes in FY 2001 by the wage-adjusted and case-mix-adjusted episode payment to obtain the agency's expected PPS payment. The PPS payment was then compared to the IPS payment.

TABLE 11.—IMPACT OF THE HOME HEALTH PROSPECTIVE PAYMENT AMOUNTS ON HOME HEALTH AGENCIES BY TYPE AND LOCATION FOR THE 567 AUDITED COST REPORT SAMPLE AGENCIES

Type of agency	Percentage Change from (IPS—15%) to PPS
ALL AGENCIES	0.0
By Urban/Rural and Provider Type	
Rural:	
Freestanding:	
For-Profit	−17.0
Governmental	46.4
Non-Profit	13.7
Provider Based.	
Urban:	
Freestanding:	
For-Profit	−18.4
Governmental	50.9
Non-Profit	20.5
Provider Based	2.1
By Provider Type	
Freestanding:.	
For-Profit	−18.1
Governmental	47.9
Non-Profit	19.4
Provider Based	3.8

TABLE 11.—IMPACT OF THE HOME HEALTH PROSPECTIVE PAYMENT AMOUNTS ON HOME HEALTH AGENCIES BY TYPE AND LOCATION FOR THE 567 AUDITED COST REPORT SAMPLE AGENCIES—Continued

Type of agency	Percentage Change from (IPS—15%) to PPS
By Urban/Rural	
Rural Agencies	4.2
Urban Agencies	−0.4
By Region	
Midwest States	21.8
Northeast States	21.4
Southern States	−15.5
Western States	−1.3

Table 11 represents the projected effects of the HHA PPS and is based on the 567 providers in the audited cost-report sample weighted to the national total of HHAs. This sample has been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost-reporting periods for the data contained in the database and September 30, 2001.

This impact table compares the effect on categories of HHAs in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology and thus already factors in the effects of the interim payment system minus 15 percent limits. These cost limits have already had the effect of reducing many extremes in the cost of the system; therefore, as a result of the interim payment system, a majority of HHA providers are currently held at the median national cost per beneficiary or below. It should be noted that HHAs will have had 2 or more years experience under this system before PPS implementation.

Column one of this table divides HHAs by a number of characteristics including provider type, region, and urban versus rural location. For purposes of this impact table four regions have been defined: Northeast, South, Midwest, and West. The Northeast Region consists of Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands. The South Region consists of Alabama, Arkansas, the District of Columbia, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The Midwest Region consists of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Dakota, and Wisconsin. The West Region consists of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

Column two shows the percentage change in Medicare payments a particular category of HHAs would experience in moving from the interim payment system limits minus 15 percent payment methodology to the proposed PPS payment methodology. Because the statute requires aggregate payments under the HHA PPS and HHA interim payment system minus 15 percent payment methodology to be budget neutral, the effect on agencies in the aggregate is zero.

Rural freestanding for-profit HHAs experience a 17.0 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Rural freestanding governmental HHAs experience a 46.4 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Rural freestanding nonprofit HHAs experience a 13.7 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Rural provider-based HHAs, in the aggregate, experience a 10.1 percent increase in moving from the interim payment system limits minus 15 percent methodology to the PPS payment methodology. Rural agencies, in the aggregate, experience a 4.2 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

Urban freestanding for-profit HHAs experience an 18.4 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban freestanding governmental HHAs experience a 50.9 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban freestanding nonprofit HHAs experience a 20.5 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban provider-based HHAs, in the aggregate, experience a 2.1 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Urban agencies, in the aggregate, experience a –0.4 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

The current cost limits have been criticized as providing better financial treatment of urban providers relative to rural providers. The HHA PPS system, which is based on patient characteristics, tends to level the playing field; thus, rural providers, in general, fare relatively better than urban providers. The largest impact on urban providers is in the urban freestanding for-profit category where it can be argued that historical costs have been disproportionately high compared to other providers for reasons unrelated to the relative needs of the patients they serve.

Freestanding for-profit HHAs, in the aggregate, experience an 18.1 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Freestanding governmental HHAs, in the aggregate, experience a 47.9 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Freestanding nonprofit HHAs, in the aggregate, experience a 19.4 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. Provider-based HHAs, in the aggregate, experience a 3.8 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

It should be noted that governmental providers fare relatively better under the HHA PPS system than other types of providers. In part, this is because the HHA PPS system is driven primarily by the needs of patients rather than utilization incentives. Thus, governmental providers are less affected by the interim payment system limits minus 15 percent payment methodology because their costs have been historically lower and visit utilization per episode is much lower. On average, governmental agencies have reported lower average costs per visit as well as fewer visits per episode. It should be noted that this category of HHAs accounts for only 2.6 percent of total home health expenditures and therefore the large increase attributed to them has little impact in the aggregate system costs. Although provider-based agencies tended to have, as a group, higher per-

visit costs, the payment differential reflected in this impact table for provider-based agencies is relatively modest and in a positive direction. This can be attributed to the fact that the reduction in the per-visit limit under interim payment system limits minus 15 percent payment methodology has the effect of reducing this cost-per-visit differential, and thus provider-based HHAs actually gain slightly under PPS.

HHAs in the Midwest region experience a 21.8 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. HHAs in the Northeast region experience a 21.4 percent increase in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. HHAs in the South region experience a 15.4 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology. HHAs in the West region experience a 1.3 percent decrease in moving from the interim payment system limits minus 15 percent payment methodology to the PPS payment methodology.

We would have preferred to provide an impact table with more regions; however, the limitations of our data prevented us from obtaining provider data at a lower level than the four major regions. However, this regional breakdown does reflect what one might expect in moving from our current interim payment system cost limitations payment methodology to a national PPS payment methodology. Medicare payments have historically varied by region without regard to the relative needs/conditions of patients; therefore, those regions that had the highest unexplained costs for home health services are the most impacted areas (South region followed by the West region). In contrast, the Northeast region and the Midwest region fare relatively well by comparison. It must be noted that in a payment methodology system that is legislatively required to achieve budget neutrality, any effort to increase payments to those regions more affected by a national payment system necessarily results in a reduction of payments to those regions that have historically restrained costs under home health.

D. Rural Hospital Impact Statement

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

We have not prepared a rural impact statement since we have determined, and the Secretary certifies, that this rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that the proposed rule would not have substantial direct effects on the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

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

PART 409—HOSPITAL INSURANCE BENEFITS

A. Amend part 409 as set forth below:

1. The authority citation for part 409 continues to read as follows:

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

2. In § 409.43, revise paragraph (e) to read as follows:

§ 409.43 Plan of care requirements.

* * * * *

(e) *Frequency of review.* (1) The plan of care must be reviewed by the physician (as specified in § 409.42(b)) in consultation with agency professional personnel at least every 60 days unless there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a change in the case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care.

(2) Each review of a beneficiary's plan of care must contain the signature of the physician who reviewed it and the date of review.

* * * * *

3. In § 409.100, revise paragraph (a) to read as follows:

§ 409.100 To whom payment is made.

(a) *Basic rule.* Except as provided in paragraph (b) of this section—

(1) Medicare pays hospital insurance benefits only to a participating provider.

(2) For home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, payment is made to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Amend part 410 as set forth below:

1. The authority citation for part 410 continues to read as follows:

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

2. In § 410.150, republish the introductory text to paragraph (b) and add new paragraph (b)(19) to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(19) To a participating HHA, for home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

C. Amend part 411 as set forth below:

1. The authority citation for part 411 continues to read as follows:

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

2. In § 411.15, republish the introductory text to the section, and add a new paragraph (q) to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage:

* * * * *

(q) A home health service as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA, unless that HHA has submitted a claim for payment for such services.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

D. Amend part 413 as set forth below:

1. Revise the authority citation for part 413 to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. In § 413.1, add a new paragraph (h) to read as follows:

§ 413.1 Introduction.

* * * * *

(h) *Payment for services furnished by HHAs.* The amount paid for home health services as defined in section 1861(m) of the Act that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter.

§ 413.64 [Amended]

3. In § 413.64, in paragraph (h)(1), remove the phrase ''and for both Part A and Part B HHA services'' at the end of the paragraph.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

E. Amend part 424 as set forth below:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1895hh).

2. In § 424.22, republish the introductory text to paragraph (a)(1), add a new paragraph (a)(1)(v), and revise paragraph (b)(1) to read as follows:

§ 424.22 Requirements for home health services.

* * * * *

(a) *Certification*—(1) *Content of certification.* As a condition of payment of home services under Medicare Part A or Medicare Part B, a physician must certify as follows:

* * * * *

(v) The individual is correctly assigned to one of the Home Health Resource Groups.

* * * * *

(b) *Recertification.* (1) *Timing and signature of recertification.* Recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the plan of care. The recertification is required at least every 60 days unless there is a—

(i) Beneficiary elected transfer; or

(ii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

PART 484—HOME HEALTH SERVICES

F. Amend part 484 as set forth below:

1. The authority citation for part 484 continues to read as follows:

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

2. Revise the heading for part 484 to read as set forth above.

§ 484.18 [Amended]

3. In § 484.18, in paragraph (b), remove the phrase ''62 days'' and in its place add the phrase ''60 days unless there is a beneficiary elected transfer; a significant change in condition resulting in a change in the case-mix assignment; or a discharge and return to the same HHA during the 60-day episode.''

4. In § 484.55, revise paragraph (d)(1) to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

* * * * * *

(d) *Standard: Update of the comprehensive assessment.* * * *

(1) Every 60 days beginning with the start-of-care date, unless there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a new case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

5. Add and reserve a new subpart D.

6. Add a new subpart E, consisting of §§ 484.200, 484.202, 484.205, 484.210, 484.215, 484.220, 484.225, 484.230, 484.235, 484.237, 484.240, 484.250, and 484.260 to read as follows:

Subpart E—Prospective Payment System for Home Health Agencies

Sec.

Subpart E—Prospective Payment System for Home Health Agencies

§ 484.200 Basis and scope.

(a) *Basis.* This subpart implements section 1895 of the Act, which provides for the implementation of a prospective payment system (PPS) for HHAs for portions of cost reporting periods occurring on or after October 1, 2000.

(b) *Scope.* This subpart sets forth the framework for the HHA PPS, including the methodology used for the development of the payment rates, associated adjustments, and related rules.

§ 484.202 Definitions.

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Clinical model means a system for classifying Medicare-eligible patients under a home health plan of care into mutually exclusive groups based on clinical, functional, and intensity-of-service criteria. The mutually exclusive groups are defined as Home Health Resource Groups (HHRGs).

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

§ 484.205 Basis of payment.

(a) *Method of payment.* (1) An HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis. HCFA determines this national 60-day episode payment under the methodology set forth in § 484.215.

(2) An HHA may receive a low-utilization payment adjustment (LUPA) of a predetermined per-visit rate. HCFA determines the LUPA under the methodology set forth in § 484.230.

(3) An HHA may receive a partial episode payment adjustment (PEP) adjustment due to an intervening event defined as a beneficiary elected transfer or a discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment during an existing 60-day episode, that initiates the start of a new 60-day episode payment and a new physician certification of the new plan of care. HCFA determines the PEP adjustment under the methodology set forth in § 484.235.

(4) An HHA may receive a significant change in condition payment adjustment (SCIC Adjustment) due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. The SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. We determine the SCIC Adjustment under a methodology set forth in § 484.237.

(b) *Episode payment.* The national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis as of August 5, 1997 unless the national 60-day episode payment is subject to a low-utilization payment adjustment set forth in § 484.230, a partial episode payment adjustment set forth at § 484.235, or an additional outlier payment set forth in § 484.240. All payments under this system may be subject to a medical review adjustment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

(c) *Low-utilization payment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. HCFA determines a low-utilization payment adjustment under the methodology set forth in § 484.230.

(d) *Partial episode payment adjustment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event, defined as a beneficiary elected transfer, or discharge and return to the same HHA during a 60-day episode, warrants a new 60-day episode payment. The PEP adjustment would not apply in situations of transfers among HHAs of common ownership. The discharge and return to the same HHA during the 60-day episode is only recognized in those circumstances when a beneficiary reached the goals in the original plan of care. The original plan of care must have been terminated with no anticipated need for additional home health services for the balance of the 60-day episode. If the intervening event warrants a new 60-day episode payment and the new physician certification of a new plan of care, the initial HHA receives a partial episode payment adjustment reflecting the length of time the patient remained under its care. HCFA determines a partial episode payment adjustment under a methodology set forth in § 484.235.

(e) *Significant change in condition adjustment.* The HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care occurred. In order to receive a new case mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The total significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode.

(f) *Outlier payment.* An HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis as of August 5, 1997, unless the estimated cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. HCFA determines an outlier payment under the methodology set forth in § 484.240.

§ 484.210 Data used for the calculation of the national prospective 60-day episode payment.

To calculate the national prospective 60-day episode payment, HCFA uses the following:

(a) Medicare cost data on the most recent audited cost report data available.

(b) Utilization data based on Medicare claims.

(c) An appropriate wage index to adjust for area wage differences.

(d) The most recent projections of increases in costs from the HHA market basket index.

(e) OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case mix.

§ 484.215 Methodology used for the calculation of the national 60-day episode payment.

(a) *Determining an HHA's costs.* In calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, HCFA determines each HHA's costs by summing its allowable costs for the period. HCFA determines the national mean cost per visit.

(b) *Determining HHA utilization.* In calculating the initial unadjusted national 60-day episode payment, HCFA determines the national mean utilization for each of the six disciplines using home health claims data.

(c) *Use of the market basket index.* HCFA uses the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001.

(d) *Calculation of the unadjusted national average prospective payment amount for the 60-day episode.* HCFA

calculates the national unadjusted 60-day episode payment in the following manner:

(1) By computing the mean national cost per visit.

(2) By computing the national mean utilization for each discipline.

(3) By multiplying the mean national cost per visit by the national mean utilization summed in the aggregate for the six disciplines.

(4) By adding to this amount, amounts for nonroutine medical supplies and an OASIS adjustment for estimated ongoing reporting costs.

(e) *Standardization of the data for variation in area wage levels and case mix.* HCFA standardizes the cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case mix. HCFA standardizes the cost data for geographic variation in wage levels using the hospital wage index. HCFA standardizes the cost data for HHA variation in case mix using the case-mix indices and other data that indicate HHA case mix.

§ 484.220 Calculation of the national adjusted prospective 60-day episode payment rate for case mix and area wage levels.

HCFA adjusts the national prospective 60-day episode payment rate to account for HHA case mix using a case-mix index to explain the relative resource utilization of different patients. HCFA also adjusts the national prospective 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index.

§ 484.225 Annual update of the national adjusted prospective 60-day episode payment rate.

(a) HCFA updates the unadjusted national 60-day episode payment rate on a fiscal year basis.

(b) For fiscal year 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available market basket factors.

(c) For fiscal year 2002 or 2003, the unadjusted national 60-day episode payment rate is equal to the rate for the previous period or fiscal year increase by a factor equal to the HHA market basket minus 1.1 percentage point.

(d) For subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable HHA market basket index amount.

§ 484.230 Methodology used for the calculation of the low-utilization payment adjustment.

An episode with four or fewer visits is paid the national average standardized per-visit amount by discipline for each visit type. The national average standardized per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index.

§ 484.235 Methodology used for the calculation of the partial episode payment adjustment.

(a) HCFA makes a partial episode payment adjustment to the original 60-day episode payment that is interrupted by an intervening event described in § 484.205(d).

(b) The original 60-day episode payment is adjusted to reflect the length of time the beneficiary remained under the care of the original HHA.

(c) The partial episode payment is calculated by determining the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

§ 484.237 Methodology used for the calculation of the significant change in condition payment adjustment.

(a) HCFA makes a significant change in condition payment adjustment to the original 60-day episode payment that is interrupted by the intervening event defined in § 484.205(e).

(b) The SCIC adjustment is calculated in two parts.

(1) The first part of the SCIC adjustment reflects the adjustment to the level of payment prior to the significant change in the patient's condition during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount.

(2) The second part of the SCIC adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode. The second part of the SCIC adjustment is calculated by using the span of days of the first billable service date through the last billable service date during the balance of the 60-day episode.

(c) The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the total SCIC adjustment determined at the end of the 60-day episode.

§ 484.240 Methodology used for the calculation of the outlier payment.

(a) HCFA makes an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.

(b) The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode or the total significant change in condition adjustment amount for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.

(c) The outlier payment is a proportion of the amount of estimated cost beyond the threshold.

(d) HCFA estimates the cost for each episode by applying the standard per-visit amount to the number of visits by discipline reported on claims.

(e) The fixed dollar loss amount and the loss sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total episode payment.

§ 484.250 Patient assessment data.

HCFA requires an HHA to submit the OASIS data described at § 484.55(b)(1) and (d)(1) to administer the payment rate methodologies described in §§ 484.215, 484.230, 484.235, and 484.237.

§ 484.260 Limitation on review.

Judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of the payment unit, including the national 60-day episode payment rate and the LUPA. This prohibition also includes the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 4, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 21, 1990.

Donna E. Shalala,

Secretary.

[FR Doc. 99–27864 Filed 10–27–99; 8:45 am]

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Federal Register

Thursday
October 28, 1999

Part III

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 2000 Apportionments, Allocations and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2000 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2000 (Pub. L. 106–69) was signed into law by President Clinton on October 9, 1999, and provides fiscal year 2000 appropriations for the Federal Transit Administration (FTA) transit assistance programs. Based upon this Act, the Transportation Equity Act for the 21st Century (TEA–21), and 49 U.S.C, Chapter 53, this notice contains a comprehensive list of apportionments and allocations of the various transit programs.

This notice includes the apportionment of fiscal year 2000 funds in the 2000 DOT Appropriations Act for the: Metropolitan Planning Program and State Planning and Research Program; Urbanized Area Formula Program; Nonurbanized Area Formula Program; Rural Transit Assistance Program; Elderly and Persons with Disabilities Program; and the Capital Investment Program for Fixed Guideway Modernization. This notice also contains the allocations of funds for the New Starts and Bus categories under the Capital Investment Program and the Job Access and Reverse Commute Program. It contains general information about other programs established under TEA–21, including the Over-the-Road Bus Accessibility Program and the Clean Fuels Formula Program.

Information regarding TEA–21 funding authorization levels for use in developing Metropolitan Transportation Improvement Programs (TIPs) and State Transportation Improvement Programs (STIPs) is included. For informational purposes, the notice contains the apportionment of fiscal year 2000 funds for the Federal Highway Administration (FHWA) Metropolitan Planning Program and the estimated apportionment of the fiscal year 2000 State Planning and Research Program.

A listing of prior year unobligated allocations for the Section 5309 New Starts and Bus Programs is included, as in previous years. In addition, the FTA policy regarding pre-award authority to incur project costs and the Letter of No Prejudice Policy are provided. The section on pre-award authority has been revised in relation to New Starts preliminary engineering and final design work. Other pertinent program information is also included.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Patricia Levine, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Rural Transit Assistance Program, the Elderly and Persons with Disabilities Program, the Clean Fuels Formula Program, the Over-the-Road Bus Accessibility Program, or the Capital Investment Program; or Robert Stout, Director, Office of Planning Operations, (202) 366–6385, for general information concerning the Metropolitan Planning Program and the State Planning and Research Program; or Dr. Lewis P. Clopton, Director, Office of Research Management, (202) 366–9157, for information about the Job Access and Reverse Commute Program.

SUPPLEMENTARY INFORMATION:

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I. Background

Metropolitan Planning funds are apportioned by statutory formula to the Governors for allocation to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. State Planning and Research funds are apportioned to states by statutory formula. Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to Governors for capital, operating and administrative assistance in nonurbanized areas. The Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. New Start and Bus allocations identified in the DOT Appropriations Act are included in this notice.

II. Overview

A. Fiscal Year 2000 Appropriations

The fiscal year 2000 appropriation for the FTA program is $5,797,000,000, the guaranteed funding level under TEA–21. The appropriation for the Metropolitan Planning Program is $49,632,000, and the appropriation for the State Planning and Research Program is $10,368,000. The appropriation for formula grants totals $3,098,000,000. Under statutory authority, the distribution of the total formula funds available is as follows: $4,849,950 is set aside for the Alaska Railroad; $50,000,000 is for the Clean Fuels Formula Program, which was transferred and merged with funding for the Capital Bus Program; and $3,700,000 is for the Over-the-Road Bus Accessibility Program. Of the remaining amount of $3,039,450,050, 91.23 percent ($2,772,890,281) is made available to the Urbanized Area Formula Program, 6.37 percent ($193,612,968) is made available to the Nonurbanized Area Formula Program, and 2.4 percent ($72,946,801) is made available to the Elderly and Persons with Disabilities Program.

The other program appropriations contained in this notice are as follows: $5,250,000 for the Rural Transit Assistance Program (RTAP); and $2,501,000,000 for the Capital Investment Program. Of the Capital Investment Program amount, $980,400,000 is for Fixed Guideway Modernization, $980,400,000 is for New Starts, and $490,200,000 is for Bus Capital. In addition, $50,000,000 of formula funds for Clean Fuels was transferred and merged with the Bus Capital Program increasing that program to $540,200,000. An amount of $75,000,000 is for the Job Access and Reverse Commute Program.

Table 1 displays the amounts appropriated by program, including adjustments and final apportioned and allocated amounts. The following text provides a narrative explanation of the funding levels and other factors affecting the apportionments and allocations.

B. TEA–21 Authorized Program Levels

TEA–21 provides a combination of trust and general fund authorizations that total $6,810,000,000 for the fiscal year 2000 FTA program. Of this amount, $5,797,000,000 is guaranteed under the discretionary spending cap. See Table 11 for fiscal years 1998–2003 guaranteed fund levels by program and Table 11A for the total of guaranteed and non-guaranteed levels by program.

Information regarding estimates of the funding levels for 1999–2003 by state and urbanized area is available on the FTA homepage at [www.fta.dot.gov]. The numbers are for planning purposes only as they will be revised in the future but may be used for programming metropolitan transportation improvement programs and statewide transportation improvement programs.

C. Project Management Oversight

Section 5327 of 49 U.S.C. allows the Secretary of Transportation to use not more than one-half percent of the funds made available under the Urbanized Area Formula Program and the Nonurbanized Area Formula Program, and three-quarters percent of funds made available under the Capital Investment Program to contract with any person to oversee the construction of any major project under these statutory programs to conduct safety, procurement, management and financial reviews and audits, and to provide technical assistance to correct deficiencies identified in compliance reviews and audits. Therefore, one-half percent of the funds appropriated for the Urbanized Area Formula Program, and the Nonurbanized Area Formula Program for fiscal year 2000, and three-quarters percent of Capital Investment Program funds were reserved for these purposes before funds were apportioned.

III. Fiscal Year 2000 Focus

A. Y2K

FTA began working on the Year 2000 (Y2K) issue as early as 1996. The goal of FTA's efforts is to ensure that transit services are not interrupted by computer failures resulting from Y2K problems. In order to accomplish this, FTA is providing Y2K information, guidance and assistance to the transit community. A series of ''Dear Colleague Letters'' was sent to FTA grantees, which provided guidance on Y2K and a five-phased approach FTA Y2K Management Plan. The five phases were as follows: (1) Assessment; (2) Renovation/Validation; (3) Certifications; (4) Submission of Business Continuity and Contingency Plan (BCCP) or outline of BCCP; and (5) Reporting test results of the BCCP.

In January 1999, FTA Grantees were required to complete the Assessment Phase, and in March 1999, FTA Grantees were required to complete the Renovation/Validation Phase. On June 30, 1999, the FTA grantees were required to certify Y2K compliance or submit an outline of the contingency plan for continuing operations of their systems while repairing or replacing the calendar year 2000 non-compliant elements. The 30 largest grantees were required to submit a copy of the Business Continuity and Contingency Plan. Other transit operators were asked to submit an outline of their BCCP. All grantees are also to submit to FTA the results of their first two tests of the BCCP by October 31, 1999.

As the changeover approaches, FTA will continue to work with grantees to

ensure a smooth transition. FTA will monitor transit activity during the Y2K changeover, with emphasis on the 30 largest operators. FTA will also serve as a clearinghouse for information during the changeover.

B. Disadvantaged Business Enterprise (DBE) Regulation

The Department of Transportation's (DOT's) new regulation implementing the disadvantaged business enterprise (DBE) program was published February 2, 1999, in the **Federal Register** and was effective March 4, 1999. The DBE program is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a ''level playing field'' and foster equal opportunity in DOT-assisted contracts, improve the flexibility and efficiency of the DBE program, and reduce burdens on small businesses.

FTA grantees were required to submit revised DBE programs by September 1, 1999. FTA has reviewed all programs received. A sample DBE Program has been created for grantees along with DOT approved Q&As for assistance to grant recipients required to submit programs. For more information, contact Arthur Andrew Lopez, Director, Office of Civil Rights, at (202) 366–4018, or Gloria Dixon at (816) 329–3920 or (816) 523–0204, or go to the Office of Small and Disadvantaged Business Utilization website at: [http://osdbuweb.dot.gov/programs/dbe/dbe.htm].

C. Urbanized Area Formula Study

Section 3033 of TEA–21 requires FTA to conduct a study to assess whether the formula for apportioning funds to urbanized areas (at 49 U.S.C. 5336) accurately reflects the transit needs of small urbanized areas that provide an unusually high level of transit service for their size. A **Federal Register** Notice on the commencement of the study was published on July 9, 1999, and numerous comments were received.

In that notice, FTA sought suggestions on conducting the study and comment on the following questions from interested parties: (1) Are population and population density adequate factors for use in apportioning funds to small urbanized areas; (2) Are there specific reasons why other factors should not be applied to these small cities; (3) Should service factors also be applied to small urbanized areas in apportioning formula funds—in particular, should bus revenue vehicle miles be applied to small urbanized areas as well; (4) Should bus passenger miles and operating costs used in the incentive tier be applied to small urbanized areas; (5) Would examining other aid sources available to small urbanized areas be useful and informative; and (6) What other mechanisms besides changing the formula might be practical and useful in order to assist small transit-intensive cities?

The study is to be submitted to Congress by December 31, 1999. For more information, contact Darren Timothy, FTA Office of Policy Development, at (202) 366–0177.

D. Intelligent Transportation Systems (ITS)

Section 5206(e) of TEA–21 requires that Intelligent Transportation Systems (ITS) projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to the National ITS Architecture and Standards. Interim guidance on conformity with National ITS Performance Standards was issued October 2, 1998, jointly by FTA and FHWA. This document provides guidance for meeting this provision of TEA–21 and is available from FTA regional offices and on the FTA website. These standards and requirements apply to fiscal year 2000 allocations included in this notice that contain ITS components.

Questions regarding the applicability of these standards and requirements should be addressed to the FTA regional office or Ronald Boenau, FTA Office of Research, Demonstration and Innovation, at (202) 366–0195.

IV. Section 5303 Metropolitan Planning Program and Section 5313(b) State Planning and Research Program

A. Metropolitan Planning Program

The fiscal year 2000 Metropolitan Planning apportionment to states for MPOs' use in urbanized areas totals $49,642,128. This amount includes $49,632,000 in fiscal year 2000 appropriated funds, and $10,128 in prior year deobligated funds available for reapportionment under this program. A basic allocation of 80 percent of this amount ($39,713,702) is distributed to the states based on the state's urbanized area population as defined by the U.S. Census Bureau for subsequent state distribution to each urbanized area, or parts thereof, within each state. A supplemental allocation of the remaining 20 percent ($9,928,426) is also provided to the states based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 2 contains the final state apportionments for the combined basic and supplemental allocations. Each state, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment, which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the state. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each state formula must include a provision for the minimum MPO allocation. Where the state and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

B. State Planning and Research Program

The fiscal year 2000 apportionment for the State Planning and Research Program totals $10,374,946. This amount includes $10,368,000 in fiscal year 2000 appropriated funds, and $6,946 in prior year deobligated funds, which have become available for reapportionment under this program. Final state apportionments for this program are also contained on Table 2. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a state may authorize a portion of these funds to be used to supplement planning funds allocated by the state to its urbanized areas, as the state deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each state by administrative formula in fiscal year 1991 was used as a ''hold harmless'' base in calculating funding to each State.

D. FHWA Metropolitan Planning Program and State Planning and Research Program

For informational purposes, the fiscal year 2000 apportionment for the FHWA Metropolitan Planning Program (PL) and estimated apportionment for fiscal year 2000 State Planning and Research Program (SP&R) are contained in Table 3. These estimates do not include expected SP&R funding increases from the Revenue Budget Aligned Authority authorized in TEA–21, Section 1105.

E. Local Match Waiver for Specified Planning Activities

(1) *Job Access Planning Activities.* Federal, state and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA permit the waiver of the local match requirement for job access planning activities undertaken with Metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in metropolitan Unified Planning Work Programs and State Planning and Research Programs and meet all other appropriate requirements.

(2) *Contributions to the Development of the Census Transportation Planning Package (CTPP).* In conjunction with the increased emphasis on the use of Census data in the planning process, FTA will permit the waiver of the local match requirement for activities intended to contribute to the development of the CTPP. FHWA PL and SPR funds can be used without match only to purchase the CTPP package through AASHTO.

F. Planning Emphasis Areas for Fiscal Year 2000

The FTA and FHWA cooperatively develop Planning Emphasis Areas (PEAs) to promote priority themes for consideration, as appropriate, in metropolitan and statewide transportation planning processes. Identification as a PEA brings attention to the need for guidance and training for FTA/FHWA, as well as attention to the allocation of planning resources by participants in planning processes. Three planning topics have been identified as PEAs due to their importance in the coming year: Transportation equity/public involvement, the Intelligent Transportation Systems National Architecture, and preparations for the Year 2000 Census. By identifying these as PEAs FTA and FHWA encourage planning organizations to consider expanding and reporting on their work activities on these themes.

(1) Transportation Equity and Public Involvement

Increasingly, concerns for compliance with provisions of Title VI of the Civil Rights Act have been raised by citizens and advocacy groups with regard to broad patterns of transportation investment and impact considered in metropolitan and statewide planning. While Title VI and environmental justice concerns have most often been raised during project development, it is important to recognize that the law applies equally to the processes and products of metropolitan and statewide planning. Public involvement is a major element of this process.

FTA and FHWA are working jointly to develop guidance to support metropolitan areas and states in their efforts to incorporate considerations of transportation equity in their local planning processes and substantiate compliance through demonstrated actions. States and Metropolitan Planning Organizations in their planning processes are generally advised to expand and document their efforts in two categories of work activity:

(a) Expanding the focus of public involvement efforts, with special attempts to include the traditionally under-served and under-represented in the planning process;

(b) Assessing the distribution of benefits and adverse environmental impacts at both the plan and project level.

Over the fiscal year, a range of possible procedural and analytical approaches for complying with provisions of Title VI and the Executive Order on Environmental Justice at the planning stage will be developed and disseminated through guidance and regulation. To support that effort, ''innovative practice'' case study development and training opportunities will be enhanced, based in part on the reported activities and experiences of metropolitan and statewide planning processes in this area.

(2) Intelligent Transportation Systems (ITS) National Architecture

TEA–21 identifies system management and operation as a focal theme and context for transportation investment nationwide. The Act further identifies the need for integrated planning and application of ITS strategies and the role of the ITS National Architecture as a resource for achieving this functional integration. Section 5206(e) of TEA–21 requires all ITS projects funded through the Highway Trust Fund, including the Mass Transit Account, to be consistent with the National Architecture and Standards.

FTA and FHWA have prepared guidance for developing ITS projects and programs in a coordinated way through metropolitan and statewide planning processes, using the ITS National Architecture. This guidance is being disseminated in a number of ways, including training, technical assistance, and formal regulation. FTA and FHWA will work to provide assistance to participants in planning processes to facilitate attention and response to this requirement.

(3) Preparing for the Year 2000 Census

As with prior decennial censuses, the Year 2000 Census will be an invaluable information resource for transportation planning at both the metropolitan and statewide levels. The journey-to-work and other socioeconomic data from it will provide a key baseline for a wide range of planning activities, including regional transportation equity analyses, job access planning, development and validation of travel demand models, and more. The Year 2000 census will be especially important because it will likely be the last to include a ''long form'' questionnaire to collect the types of detailed household, traveler, and travel information most useful to transportation planning. In future years, the Bureau of the Census will initiate a program to collect such data during the next decade as part of a continuous monthly survey called the American Community Survey. Data from the Year 2000 census will be critical for states and MPOs to make the transition to American Community Survey data.

To leverage use of this important information resource, planning processes need to consider a wide range of ancillary work activities, including:

- Aligning census geography with transportation analysis geography in their areas;
- Conducting origin/destination and home interview travel surveys; and
- Expanding travel monitoring programs to develop comprehensive area-wide and corridor inventories.

G. Federal Planning Certification Reviews

Federal certification of the planning process is conducted in a Transportation Management Area (TMA), which is an urbanized area with a population of 200,000 and above or other urbanized areas designated by the Secretary of Transportation (the Secretary). The Secretary is responsible for certifying, at least once every three years, that the metropolitan transportation planning process in the TMA is being carried out under applicable provisions of Federal law.

Dates for site visits for the TMAs to be reviewed in fiscal year 2000 are being established and will be available on the

FTA website at [http://www.fta.dot.gov/office/planning].

For further information regarding Federal certifications of the planning process contact: For FTA: Mr. Charles Goodman, FTA Metropolitan Planning Division, (202) 366–1944; or Scott Biehl, FTA Office of Chief Counsel, (202) 366–4063. For FHWA: Mr. Sheldon Edner, FHWA Metropolitan Planning Division, 202–366–4066; or Reid Alsop, FHWA Office of the Chief Counsel, 202–366–1371.

H. Consolidated Planning Grant

In fiscal year 1997, FTA and FHWA began offering states the option of participating in a pilot Consolidated Planning Grant (CPG) program. FTA and FHWA have now made CPG a permanent pilot. As part of the permanent pilot, additional participants are sought so that FTA and FHWA can benefit from the widest possible range of participant input to improve and further streamline the process.

Since the first CPG grant was awarded in April 1997, almost $159 million has been obligated by the pilot states. Of this total, more than $125 million is from FHWA sources. All but one of the participants have elected to amend the original CPG grant to add new fiscal year funds to treat the CPG more like an FTA grant, but with even greater flexibility. Under the multi-year approach option, the CPG grant would stay open for a period of years to be determined by the state (and MPO, jointly, for Metropolitan Planning funds) with the approval of the Federal Government. New apportionments can be added by grant amendment as funds become available. One state has elected to continue the pilot with new, separate CPG grants for each year. This approach treats the CPG much as FHWA funds are treated currently, that is, as basically annual apportionments with a yearly close-out of project activities and a deobligation and reobligation cycle. The obligation pattern so far is somewhat of a hybrid of the two approaches with at least one state starting out with annual grants and switching in later years to the multi-year grant approach. Those with the multi-year grants can close them at any time and begin the next year with either a new multi-year grant or an annual grant. The ease with which a state can opt for the single year or the multi-year approach to the CPG grant is just one example of the flexibility intended for the pilot.

As part of a survey of experiences in the first two years of the pilot, FTA and FHWA have made two pilot-wide changes in response to recommendations from participants. States can now report metropolitan planning expenditures (to comply with the Single Audit Act) for both FTA and FHWA under the Catalogue of Federal Domestic Assistance (CFDA) number for FTA's Metropolitan Planning Program. Additionally, for states with an FHWA Metropolitan Planning fund matching ratio greater than 80 percent, the state (through FTA) can request a waiver of the 20 percent local share requirement in order that all FTA funds used for metropolitan planning in a CPG can be granted at the higher, FHWA rate. For some states, this Federal match rate can exceed 90 percent.

As in previous years, pre-award authority is granted to both of FTA's planning programs as part of this annual notice. This pre-award authority enables states to continue planning program activities from year to year with the assurance that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency. As part of the pilot, FTA will continue to work with participating states to increase the flexibility and further streamline the consolidated approach to planning grants. For further information on participating in the CPG Pilot, contact Ms. Candace Noonan, Intermodal and Statewide Planning Division, FTA, at (202) 366–1648 or Anthony Solury, Planning and Environment Core Business Unit, FHWA, at (202) 366–5003.

I. New Starts Approval to Enter Preliminary Engineering and Final Design

TEA–21 extends FTA's long-standing authority for approving the advancement of candidate New Starts projects into preliminary engineering (PE) by requiring that FTA also approve entrance into the final design (FD) stage of project development. Specifically, 49 U.S.C. 5309(e)(6) requires that the basis for PE/FD approval is FTA's evaluation of candidate project's New Start criteria, leading to an overall project rating of ''Highly Recommended,'' ''Recommended,'' or ''Not Recommended.'' FTA has established a set of decision rules for approving entrance into preliminary engineering and final design. After first meeting several basic planning, environmental, and project management requirements which demonstrate the ''readiness'' of the project to advance into the next stage of project development, candidate projects are subject to FTA evaluation against the New Starts project justification and local financial commitment criteria. Projects may advance to the next appropriate stage of project development (PE or FD) only if rated ''Recommended'' or ''Highly Recommended,'' based on the criteria. Projects rated ''Not Recommended'' will not be approved to advance.

49 U.S.C. Section 5309(e)(8)(A) exempts projects which request a Section 5309 New Starts share of less than $25 million from the requirements of Section 5309(e). TEA–21 also provides statutory exemptions to certain specific projects. It is important to note that any exemption under 5309(e)(8)(A) applies only to the New Starts criteria serving as the basis for FTA's approval to advance to preliminary engineering and final design for such projects. New Starts projects which request less than $25 million in New Starts funding must still request entrance to the next stage of development, and must fulfill all appropriate planning, environmental, and project management requirements.

Aside from the formal evaluation and rating of (non-exempt) New Starts projects, the general process for approving entrance into FD and PE is largely consistent with FTA's prior procedures for approving entrance into preliminary engineering. FTA is revising its guidance for evaluating and approving local agency requests for advancing projects in the New Starts project development process. These revised procedures will be available in fiscal year 2000.

V. Section 5307 Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 2000 Urbanized Area Formula funds of $2,772,890,281, the apportionment also includes $4,589,012 in deobligated funds which became available for reapportionment for the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

Table 4 displays the amount apportioned for the Urbanized Area Formula Program. After the one-half percent for oversight is set-aside ($13,864,451), the amount of appropriated funds available for apportionment is $2,759,025,830. The funds to be reapportioned, described in the previous paragraph, are then added and increase the total amount apportioned for this program to $2,763,614,842.

An additional $4,849,950 is appropriated for the Alaska Railroad for improvements to its passenger operations. After the one-half percent for oversight is reserved ($24,250),

$4,825,700 is available for the Alaska Railroad.

Table 12 contains the fiscal year 2000 apportionment formula for the Section 5307 Urbanized Area Formula Program.

B. Data Used for Urbanized Area Formula Apportionments

Data from the 1998 NTD (49 U.S.C. 5335) Report Year submitted in late 1998 and early 1999 have been used to calculate the fiscal year 2000 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

C. Urbanized Area Formula Fiscal Year 2000 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each state is shown in Table 4. This table also contains the total apportionment amount attributable to each of the urbanized areas within the state. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below in Section G, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

D. Transit Enhancements

For urbanized areas with populations 200,000 and over, TEA–21 established a minimum annual expenditure requirement of one percent for transit projects and project elements that qualify as enhancements under the Urbanized Area Formula Program. Table 4 indicates the amount set aside for enhancements in these areas. The term ''transit enhancement'' includes projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities.

(1) Eligible Enhancements. The following are transit projects and project elements that may be counted to meet the minimum enhancement expenditure requirement:

(a) Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities);

(b) Bus shelters;

(c) Landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;

(d) Public art;

(e) Pedestrian access and walkways;

(f) Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles;

(g) Transit connections to parks within the recipient's transit service area;

(h) Signage; and

(i) Enhanced access for persons with disabilities to mass transportation.

(2) *Requirements.* One percent of the Urbanized Area Formula Program apportionment in each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. When there are several grantees in an urbanized area, it is not required that each grantee spend one percent of its Urbanized Area Formula Program funds on transit enhancements. Rather, one percent of the urbanized area's apportionment must be expended on projects and project elements that qualify as enhancements. If these funds are not obligated for transit enhancements within three years following the fiscal year in which the funds are apportioned, the funds will lapse and no longer be available to the urbanized area, and will be reapportioned under the Urbanized Area Formula Program.

It will be the responsibility of the MPO to determine how the one percent will be allotted to transit projects. The one percent minimum requirement does not preclude more than one percent being expended in an urbanized area for transit enhancements. Items that are only eligible as enhancements—in particular, operating costs for historic facilities—may be assisted only within the one percent fund level.

(3) *Project Budget.* The project budget for each grant application that includes enhancement funds must include a scope code for transit enhancements and specific budget activity line items for transit enhancements.

(4) *Bicycle Access.* TEA–21 provides that projects providing bicycle access to transit assisted with the FTA enhancement apportionment shall be eligible for a 95 percent Federal share.

(5) *Enhanced Access for Persons with Disabilities.* Enhancement projects or elements of projects designed to enhance access for persons with disabilities must go beyond the requirements contained in the Americans with Disabilities Act.

(6) *Enhancement Report.* The recipient must submit a report to the appropriate FTA Regional Office listing the projects or elements of projects carried out with those funds during the previous fiscal year and the amount awarded. The report must be submitted in the Federal fiscal year's final quarterly report, in the Transportation Electronic Awards and Management System (TEAM). The report should include the following elements: (a) grantee name, (b) urbanized area name and number, (c) FTA project number, (d) transit enhancement category, (e) brief description of enhancement and progress towards project implementation, (f) activity line item code from the approved budget, and (g) amount awarded by FTA for the enhancement.

E. Fiscal Year 2000 Operating Assistance

Fiscal year 2000 funding for operating assistance is available only to urbanized areas with populations under 200,000. For these areas, there is no limitation on the amount of the state apportionment that may be used for operating assistance, and the Federal/local share ratio is 50/50.

TEA–21 provided two exceptions to the prohibition on operating assistance in areas over 200,000 in population. These areas were identified and addressed in fiscal year 1999.

F. Carryover Funds for Operating Assistance

Carryover funds for fiscal years 1997–1998, which were eligible for use as operating assistance are still available for operating assistance. However, the operating assistance limitations remain on the unused fiscal years 1997–1998 funds. These funds continue to be available for obligation at the Federal/local share ratio of 50/50 in fiscal year 2000 and throughout the period of availability. For unused fiscal year 1998 funds for areas under 200,000, operating assistance as a capital project with an 80 percent federal match ratio (without limitation) will continue to be available throughout the period of availability.

G. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. Section 5305. These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160), signed by the Federal Highway Administrator and the Federal Transit Administrator. Additional areas have been designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. During fiscal year 1999, one addition to an existing TMA was formally designated: Titusville, Florida,

is included within the boundaries of the Melbourne/Palm Bay, Florida TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program ''Governor's Apportionment'' funds for urbanized areas with less than 200,000 in population is restricted.

As required by 49 U.S.C. 5307(a)(2), a recipient(s) must be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those urbanized areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This includes those urbanized areas with less than 200,000 in population that may receive TMA designation independently, or those with less than 200,000 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor only has discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future **Federal Register** notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW, Washington, DC 20590, no later than July 1 of each fiscal year. To date, FTA has been notified of the following urbanized areas with less than 200,000 in population that are included within the planning boundaries of designated TMAs:

Designated TMA	Small urbanized area included in TMA boundaries
Baltimore, Maryland	Annapolis, Maryland.
Dallas-Fort Worth, Texas	Denton, Texas; Lewisville, Texas.
Houston, Texas	Galveston, Texas; Texas City, Texas.
Orlando, Florida	Kissimmee, Florida.
Melbourne-Palm Bay, Florida	Titusville, Florida.
Philadelphia, Pennsylvania	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania	Monessen, Pennsylvania; Steubenville-Weirton, OH-WV-PA (PA portion).
Seattle, Washington	Bremerton, Washington.
Washington, DC-MD-VA	Frederick, Maryland (MD portion).

H. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA are also available for highway projects if the following three conditions are met: (1) such use must be approved by the MPO in writing after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) the MPO determines that local transit needs are being addressed.

Urbanized Area Formula funds that are designated for highway projects will be transferred to and administered by the FHWA. The MPO should notify FTA of its intent to program FTA funds for highway purposes.

I. National Transit Database Internet Reporting

The National Transit Database (NTD) is FTA's national database for statistics on the transit industry. Each year, FTA grantees use diskettes to report on their operating and financial statistics to FTA. These grantees receive formula funds based, in part, on the statistics they submit. NTD data is summarized and used to report to Congress on the performance of the transit industry and to assess whether FTA goals have been met. In addition, a profile report is produced for each transit authority that submits data. NTD profile report data is often used in transit planning. These annual NTD summary reports and profile reports have been available on FTA's website for several years.

During the fall of 1999, FTA will begin testing a new Internet reporting system to replace diskette reporting. A number of agencies have volunteered to test this new system of transit operator data input via the Internet. Internet reporting should speed data collection and validation. Internet reporting is scheduled to begin in the fall of year 2000.

VI. Section 5311 Nonurbanized Area Formula Program and Section 5311(b)(2) Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The fiscal year 2000 Nonurbanized Area Formula apportionments to the states total $192,717,384 and are displayed in Table 5. Of the $193,612,968 appropriated, one-half percent ($968,065) was reserved for oversight. In addition to the current appropriation, the funds available for apportionment included $72,481 in deobligated funds from fiscal years prior to 2000. The population figures used in calculating these apportionments are from the 1990 Census.

The Nonurbanized Formula Program provides capital, operating and administrative assistance for areas under 50,000 in population. Each state must spend no less than 15 percent of its fiscal year 2000 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the state are being adequately met. Fiscal year 2000 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor.

B. Rural Transit Assistance Program (RTAP)

The fiscal year 2000 RTAP apportionments to the states total $4,800,180 and are also displayed on Table 5. This amount includes $4,725,000 in fiscal year 2000 appropriated funds, and $75,180 in prior year deobligated funds, which are available for reapportionment.

Of the total $5,250,000 authorized and appropriated for RTAP in fiscal year 2000, FTA set-aside 10 percent in order to fund RTAP activities carried out at

the national level. Due to the limited amount of discretionary funds available this year in the national planning and research program, FTA elected to fund both state and national components from the RTAP appropriation in order to ensure the continuity of national program activities, such as the Transit Resource Center and production and distribution of training materials that support the various states' RTAP activities.

All states will notice a reduction in their apportionment compared to fiscal year 1999 as a result of the 10 percent takedown. However, the impact on the larger states is proportionately greater because the formula includes a minimum allocation of $65,000 to each state. For most states, however, the fiscal year 2000 allocation is greater than, or only slightly less than, their apportionment in fiscal year 1998.

The funds are allocated to the states to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the states' administration of the Nonurbanized Area Formula Program.

VII. Section 5310 Elderly and Persons With Disabilities Program

A total of $72,986,415 is apportioned to the states for fiscal year 2000 for the Elderly and Persons with Disabilities Program. In addition to the fiscal year 2000 appropriation of $72,946,801, the fiscal year 2000 apportionment also includes $39,614 in prior year unobligated funds, which are available for reapportionment under the Elderly and Persons with Disabilities Program. Table 6 shows each state's apportionment.

The formula for apportioning these funds uses 1990 Census population data for persons aged 65 and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the state that there are no non-profit organizations in the area that are readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VIII. Surface Transportation Program and Congestion Mitigation and Air Quality Flexible Funds Used for Transit Purposes (Title 23, U.S.C.)

A. Transfer Process

TEA–21 made changes in how funds are to be transferred from FHWA to FTA. Section 1103(i) of TEA–21, as amended, provides that when funds are transferred or ''flexed,'' obligation authority will be transferred to the receiving agency. Under ISTEA obligation authority was not transferred.

Effective October 1, 1999, new procedures were implemented to accommodate this change for fiscal year 2000 and subsequent years. The transfer process is described below.

Transfer from FHWA to FTA. Flexible funds designated for use in transit projects must result from the metropolitan and state planning and programming process, and must be included in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. To initiate the process the grantee must submit a completed application to the FTA regional office and notify the State Highway Agency that it has submitted an application that requires a transfer of funds. By letter, the State Highway Agencies (SHA) request the transfer of highway funds for a transit project(s) through their FHWA Division. The letter should specify the project, amount to be transferred, apportionment year, State, federal aid apportionment category (i.e. Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ), Interstate Substitute, or Other—Earmarks), and a description of the project as contained in the STIP.

The FHWA Division Office confirms that the apportionment amount is available for transfer and concurs in the transfer by letter to the State Highway Agency and FTA. FHWA then transfers obligation authority and an equal amount of cash to FTA. All CMAQ or STP, or Other funds (FHWA earmarks) will be transferred to one of the three FTA formula programs (i.e. Urbanized Area Formula (Section 5307), Nonurbanized Area Formula (Section 5311) or Elderly and Persons with Disabilities (Section 5310).

The FTA grantee application for the project must specify which transit program (title 49 U.S.C. section) funds will be utilized and the application should be prepared in conformance with the requirements and procedures governing that section. Upon review and approval of the grantee's application, FTA obligates funds for the project.

The flexible funds are treated as FTA formula funds, although they retain a special identifying code. The funds may be used for any purpose eligible under the FTA formula programs. CMAQ funds, however, have to be used for air quality purposes and some eligible projects are defined by the Clean Air Act. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA funds in a single annual grant application.

Transfers from FTA to FHWA. The Metropolitan Planning Organization (MPO) submits a request to the FTA Regional Office for a transfer of FTA Section 5307 formula funds (apportioned to an urbanized area 200,000 and over in population) to FHWA based on its approved use for highway purposes, as contained in the State governor's approved multi-year STIP document. The MPO must certify that: (1) the funds are not needed for capital investments required by the Americans with Disabilities Act; (2) notice and opportunity for comment and appeal has been provided to affected transit providers; and (3) local funds used for non-Federal match are eligible to provide assistance for either highway or transit projects. The FTA Regional Administrator reviews and concurs in the request then forwards the approval to FTA Headquarters, where the grantee's formula apportionmment is reduced, in TEAM (FTA's electronic grant making and management system), by the dollar amount being transferred to FHWA.

For information regarding these procedures, please contact Kristen D. Clarke, FTA Budget Division at (202) 366–2918 or Fred Gessler, FHWA Finance Division at (202) 366–2847.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in states with large areas of Indian and certain public domain lands, and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater

Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA.

The third instance includes the 100 percent Federal safety projects; however, these are subject to a nationwide 10 percent program limitation.

IX. Section 5309 Capital Investment Program

A. Fixed Guideway Modernization

The formula for allocating the Fixed Guideway Modernization funds contains seven tiers. The allocation of funding under the first four tiers, through fiscal year 2003, will be based on data used to apportion the funding in fiscal year 1997. Funding under the last three tiers will be apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old as reported to the National Transit Database.

Table 7 displays the fiscal year 2000 Fixed Guideway Modernization apportionments. Fixed Guideway Modernization funds apportioned for this section must be used for capital projects to maintain, modernize, or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the National Transit Database reporting system to ensure that all eligible fixed guideway data is included in the calculation of the apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of Fixed Guideway mileage under the National Transit Database are not included.

For fiscal year 2000, $980,400,000 was appropriated for fixed guideway modernization. After deducting the three-fourth percent for oversight ($7,353,000), $973,047,000 is available for apportionment to the specified urbanized areas.

Each year, the new fixed guideway modernization formula will allocate funds by seven tiers. A listing of the tiers and the funds available under each are delineated in Table 13. For tiers 5, 6, and 7, allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

B. New Starts

The fiscal year 2000 appropriation for New Starts is $980,400,000, which was fully allocated in the fiscal year 2000 DOT Appropriations Act. However, by statute, this amount is reduced by three-fourth percent ($7,353,000) for oversight activities, leaving $973,047,000 available for allocations to projects. The oversight reduction was applied on a pro-rata basis to all projects specified in the fiscal year 2000 DOT Appropriations Act, yielding the final allocation for each project as shown in Table 8 of this notice. Prior year unobligated appropriations for New Starts in the amount of $542,823,668 remain available for obligation in fiscal year 2000. These carryover amounts are displayed in Table 8A.

C. Bus

The fiscal year 2000 appropriation for Bus is $490,200,000 for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. TEA–21 established a $100,000,000 Clean Fuels Formula Program under Section 5308. The program is authorized to be funded with $50,000,000 from the Bus category of the Capital Investment Program, and $50,000,000 from the Formula Program. However, the fiscal year 2000 DOT Appropriations Act directs FTA to transfer $50,000,000 appropriated under the Formula Program to and merge it with funding provided for the Bus category of the Capital Investment Program. Thus, $540,200,000 of funds appropriated in fiscal year 2000 are available for funding the Bus category of the Capital Program. After deducting the three-fourth percent for oversight ($4,051,500) the amount of fiscal year 2000 appropriated funds available for allocation is $536,148,500. Prior year unobligated funds directed by Congress to be reallocated in the amount of $1,199,750 are then added and increase the total amount allocated to $537,348,250 under the Bus category.

The 2000 DOT Appropriations Act allocated all of the fiscal year 2000 Bus funds to specified states or localities for bus and bus-related projects.

Because the three-fourth percent for oversight was subtracted from the amount appropriated in the DOT Appropriations Act and not the reallocated funds, each bus project receives less than the funding level contained in the DOT Appropriations Act. No funds remain available for discretionary allocation by the Federal Transit Administrator. Table 9 displays the allocations of the fiscal year 2000 Bus funds by area.

Prior year unobligated appropriations for Bus Program earmarks in the amount of $472,955,785 remain available for obligation in fiscal year 2000, and are displayed in Table 9A.

For Section 5309 projects funding battery electric, hybrid electric or fuel cell vehicles, FTA intends to ask for additional information as part of project quarterly progress reports. Grantees will be advised of the specifics of this at a later date. See section XII, Clean Fuels Formula Program, for a discussion of this proposal.

X. Job Access and Reverse Commute Program

The fiscal year 2000 appropriation for the Job Access and Reverse Commute Program is $75,000,000. Of this amount $49,570,000 has been allocated to projects specified in the fiscal year 2000 Conference report. These allocations are listed in Table 10.

This program, established under TEA–21, provides funding for the provision of transportation services designed to increase access to jobs and employment-related activities. Job Access projects are those which transport welfare recipients and low-income individuals in urban, suburban, or rural areas to and from jobs and activities related to their employment. Reverse Commute projects provide transportation services for the general public from urban, suburban, and rural areas to suburban employment opportunities. A total of $10 million from the appropriation can be used for Reverse Commute Projects.

One of the goals of the Job Access and Reverse Commute program is to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations, states, and affected communities and individuals. All projects funded under this program must be derived from an area-wide Job Access and Reverse Commute Transportation Plan, developed through a regional approach which supports the implementation of a variety of transportation services designed to connect welfare recipients to jobs and related activities. A key element of the

program is making the most efficient use of existing public, nonprofit and private transportation service providers.

In fiscal year 1999, FTA undertook a national solicitation of applications for this program and established a competitive process to review all applications. As a result of this process, FTA selected 179 different projects in agencies and organizations in 42 states for funding.

A separate **Federal Register** Notice providing program guidance and application procedures for fiscal year 2000 will be issued for the program. The notice will be also available on the FTA website.

XI. Over-the-Road Bus Accessibility Program

The amount available for the Over-the-Road Bus Accessibility (OTRB) Program in fiscal year 2000 is $3,710,000. In addition to $3,700,000 appropriated for fiscal year 2000, $10,000 remaining from the fiscal year 1999 appropriation is available for award in fiscal year 2000. Of the $3,710,000 available for the program, $2,010,000 is available to providers of intercity fixed-route service, and $1,700,000 is available to other providers of the over-the-road bus services, including local fixed-route service, commuter service, and charter and tour service.

The Over-the-road Bus (OTRB) Accessibility program authorizes FTA to make grants to operators of over-the-road buses to help finance the incremental capital and training costs of complying with the DOT over-the-road bus accessibility final rule, published in a **Federal Register** Notice on September 24, 1998. FTA conducts a national solicitation of applications and grantees are selected on a competitive basis.

In fiscal year 1999, the first year in which the program was implemented, a total of $2 million was available to intercity fixed-route providers. FTA selected 11 applicants from among the 20 applications submitted for funding incremental capital and training costs.

A separate **Federal Register** Notice providing program guidance and application procedures for fiscal year 2000 will be issued for this program. The notice will be available on the FTA website.

XII. Clean Fuels Formula Program

TEA–21 established a $100,000,000 Clean Fuels Formula Grant Program under Section 5308 to assist non-attainment and maintenance areas in achieving or maintaining attainment status and to support markets for emerging clean fuel technologies. Under the program, public transit agencies in maintenance and non-attainment areas (as defined by the EPA) were to apply for formula funds to acquire clean fuel vehicles, to repower or retrofit engines for clean fuels operation, and to construct or improve facilities to support clean fuel vehicles. The legislation specified the program to be funded with $50,000,000 from the Bus category of the Capital Investment Program, and $50,000,000 from the Formula Program. The fiscal year 2000 DOT Appropriations Act transfers $50,000,000 appropriated under the Formula Program to and merges it with funding provided for the replacement, rehabilitation and purchase of buses and related equipment and the construction of bus related facilities under the Bus category of the Capital Investment Program. In addition, in fiscal years 1999 and 2000 Congress allocated the entire Bus category, including the $100,000,000, which TEA–21 provides for funding of the Clean Fuels Formula Program. The appropriation actions of Congress override the provisions established in TEA–21 for the Clean Fuels Formula Program. Therefore, FTA cannot implement this new program in fiscal year 2000. The fiscal year 2000 Bus Allocations on Table 9 include the funding which would have been available for the Clean Fuels Formula Program under TEA–21.

While the Clean Fuels Formula Program was not funded by Congress in fiscal year 2000, as in fiscal year 1999, FTA supports the objectives of the program and is interested in collecting relevant information on the operations and performance of clean fuel technology buses in revenue service to help assess the reliability, benefits, and costs of these technologies compared to conventional vehicle technologies, and to provide more accurate information to transit agencies for future clean fuel and advanced propulsion vehicle purchases. It was FTA's intent to require grantees receiving Clean Fuels Formula funds for projects to purchase or lease buses powered by advanced propulsion technologies (e.g. battery electric, hybrid electric and fuel cell powered vehicles) to provide information to FTA on the operations, performance and maintenance of those vehicles. Since the Clean Fuels Formula Program was not funded in fiscal year 2000, but rather funds were allocated as part of the capital program for bus, FTA intends to require grantees receiving capital funds to purchase or lease buses powered by advanced propulsion technologies (battery electric, hybrid electric, and fuel cell) to report to FTA information that will further the state of the industry's knowledge about operation of these advanced technologies. Grantees receiving funds to purchase or lease alternative fuel technologies such as CNG or LNG may voluntarily provide similar information. Grantees will be advised of the new reporting requirements for the Section 5309 program for these specific bus technologies in the near future.

XIII. Unit Values of Data for the Section 5307 Urbanized Area Formula Program, Section 5311 Nonurbanized Area Formula Program, and Section 5309 Capital Fixed Guideway Modernization

The dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Investment Program—Fixed Guideway Modernization apportionments are displayed in Table 14 of this notice. To determine how an apportionment amount was computed for an area, multiply its population, population density, and data from the NTD by the unit values.

XIV. Period of Availability of Funds

The funds apportioned under the Metropolitan Planning Program and the State Planning and Research Program, the Urbanized Area Formula Program, and the Fixed Guideway Modernization Program, in this notice, will remain available to be obligated by FTA to recipients for three fiscal years following fiscal year 2000. Any of these apportioned funds unobligated at the close of business on September 30, 2003 will revert to FTA for reapportionment under these respective programs.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following fiscal year 2000. Any such funds remaining unobligated at the close of business on September 30, 2002, will revert to FTA for reapportionment among the states under the Nonurbanized Area Formula Program. Funds allocated to states under the Elderly and Persons with Disabilities Program in this notice must be obligated by September 30, 2000. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the states under the Elderly and Persons with Disabilities Program. The fiscal year 2000 DOT Appropriations Act includes a provision requiring that fiscal year 2000 New Starts and Bus funds not obligated for their original purpose as of September 30, 2002, shall be made

available for other discretionary projects within the respective categories of the Capital Investment Program.

XV. Automatic Pre-Award Authority To Incur Project Costs

A. Policy

FTA provides blanket or automatic pre-award authority to cover certain program areas described below. This pre-award authority allows grantees to incur project costs prior to grant approval and retain their eligibility for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions, which are described below, are met to retain eligibility. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Prior to exercising pre-award authority, grantees must comply with the conditions and Federal requirements outlined in paragraphs B and C immediately below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance. In addition, grantees are strongly encouraged to consult with the appropriate regional office if there could be any question regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements.

Authority to incur costs for fiscal year 1998 Fixed Guideway Modernization, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, STP or CMAQ flexible funds to be transferred from the FHWA and State Planning and Research Programs in advance of possible future Federal participation was provided in the December 5, 1997, **Federal Register** Notice. Pre-award authority was extended in the June 24, 1998 **Federal Register** Notice on TEA–21 to all formula funds and flexible funds that will be apportioned during the authorization period of TEA–21, 1998–2003. Pre-award authority also applies to Capital Investment Bus allocations identified in this notice. Pre-award authority does not apply to Capital New Start funds, or to Capital Investment Bus projects not specified in this or previous notices, except as described in D. below. Pre-award authority also applies to preventive maintenance costs incurred within a local fiscal year ending during calendar year 1997, or thereafter, under the formula programs cited above.

For Section 5309 Capital Investment Bus projects, the date that costs may be incurred is the date that the appropriation bill in which they are contained is enacted. For blanket pre-award authority in formula programs described above, the effective date is June 9, 1998.

B. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) The pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before state or local funds are spent on implementing activities such as final design, construction, and acquisition for a project that is expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has issued either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for Bus Capital projects not listed in this notice or previous notices, it must first obtain a written LONP from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

D. Extension of Pre-Award Authority to New Start Projects Approved for Preliminary Engineering and/or Final Design

New Starts Projects are required to follow a federally defined planning process. This process includes, among other things, FTA approval of entry of a project into preliminary engineering and approval to enter final design. The grantee requests for entry into preliminary engineering and the request for entry into final design both document the project and how it meets the New Starts criteria in detail. With FTA approval to enter preliminary engineering, and subsequently approval to enter final design, FTA will automatically extend pre-award authority to that phase of project development. The pre-award authority

to incur costs for final design is strictly limited to design work. No capital items or right of way acquisition is included in this blanket pre-award authority.

This is a new provision and is intended to streamline and eliminate duplicative and unnecessary paperwork and reinforce the importance of these new starts approval actions. New Starts construction or right-of-way acquisition as well as New Starts planning funded with Section 5309 funds not covered by preliminary engineering or final design approval still need to request letters of no prejudice as described below.

XVI. Letter of No Prejudice Policy (Prior Approval of Pre-Award Authority)

A. Policy

Letter of No Prejudice (LONP) Policy authority allows an applicant to incur costs on a future project utilizing non-Federal resources with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should the FTA approve the project at a later date. LONPs are applicable to projects not covered by automatic pre-award authority. The majority of LONPs will be for Section 5309 New Starts funds not covered under a full funding grant agreement or for Section 5309 Bus funds not yet appropriated by Congress. At the end of an authorization period, there may be LONPs for formula funds beyond the life of the current authorization.

Under most circumstances the LONP will cover the total project. Under certain circumstances the LONP may be issued for local match only. In such cases the local match would be to permit real estate to be used for match for the project at a later date.

B. Conditions

The following conditions apply to all LONPs.

(1) LONP pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the LONP will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

As with automatic pre-award authority, FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before state or local funds are spent on implementation activities such as final design, construction, or acquisition for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this pre-award authority requires a grantee to make certain that no Federal requirements are circumvented. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

D. Request for LONP

Before an applicant may incur costs for a project not covered by automatic pre-award authority, it must first submit a written request for an LONP to the appropriate regional office. This written request must include a description of the project for which pre-award authority is desired and a justification for the request.

XVII. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA website, including this Apportionment Notice. Also posted on the website are FTA program Circulars: C9030.1C, Urbanized Area Formula Program: Grant Application Instructions, dated October 1, 1998; C9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated October 1, 1998; C9070.1E, The Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 1, 1998; C9300.1A, Capital Program: Grant Application Instructions, dated October 1, 1998; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1C, Grant Management Guidelines, dated October 1, 1998; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The fiscal year 2000 Annual List of Certifications and Assurances is also posted on the FTA website. Other documents on the FTA website of particular interest to public transit providers and users include the 1998 Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

The FTA Home Page may be accessed at: [http://www.fta.dot.gov]. FTA circulars are listed at: [http://www.fta.dot.gov/fta/library/admin/checklist/circulars.htm]. Other guidance of interest to Grantees can be found at: [http://www.fta.dot.gov/grantees/index.html].

Grantees should check the FTA website frequently to keep up to date on new postings.

XVIII. FTA Fiscal Year 2000 Annual List of Certifications and Assurances

The Fiscal Year 2000 Annual List of Certifications and Assurances is published in conjunction with the Apportionments, as per 49 U.S.C. section 5307(k). It appears as a separate

Part of the **Federal Register** on the same date whenever possible. The fiscal year 2000 list contains several changes to the previous year's **Federal Register** publication. As in previous years, the grant applicant should certify electronically. Under certain circumstances the Applicant may enter its PIN number in lieu of an electronic signature provided by its Attorney, provided the Applicant has on file the current Affirmation of its Attorney in writing dated this Federal fiscal year. The applicant is advised to contact the appropriate FTA Regional Office for electronic procedure information.

The fiscal year 2000 Annual List of Certifications and Assurances is accessible on the Internet at: *http://www.fta.dot.gov/.* Any questions regarding this document may be addressed to the appropriate Regional Office.

XIX. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. FTA utilizes an electronic grant application system known as TEAM and all applications should be filed electronically. FTA has provided exceptions to the requirement for electronic filing of applications for certain new, non-traditional grantees in the Job Access and Reverse Commute and Over the Road Bus programs as well as to a few grantees who have not successfully connected to or accessed TEAM. Formula and Capital Investment grant applications should be prepared in conformance with the following FTA Circulars: Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996; Urbanized Area Formula Program: Grant Application Instructions—C9030.1C, October 1, 1998; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1E, October 1, 1998; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions C9070.1E, October 1, 1998; and Section 5309 Capital Program: Grant Application Instructions—C9300.1A, October 1, 1998. Guidance on preparation of applications for State Planning and Research funds may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Home Page on the Internet.

Applications for STP or CMAQ ''flexible'' fund grants should be prepared in the same manner as for funds under the program to which they are being transferred. The application for flexible funds needs to specifically indicate the type and amount of flexible funds being transferred to FTA. The application should also describe which items are being funded with flexible funds, consistent with the Statewide Transportation Improvement Program (STIP).

Issued on: October 21, 1999.

Gordon J. Linton,

Administrator.

BILLING CODE 4910–57–P

TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 2000 APPROPRIATIONS FOR GRANT PROGRAMS

SOURCE OF FUNDS	APPROPRIATION	
TRANSIT PLANNING AND RESEARCH PROGRAMS		
Planning		
Section 5303 Metropolitan Planning Program	$49,632,000	
Reapportioned Funds Added	10,128	
Total Apportioned	$49,642,128	
Section 5313(b) State Planning and Research Program	$10,368,000	
Reapportioned Funds Added	6,946	
Total Apportioned	$10,374,946	
Research		
Section 5311(b)(2) Rural Transit Assistance Program (RTAP)	$5,250,000	
Less 10 percent for RTAP National Program	(525,000)	
Reapportioned Funds Added	75,180	
Total Apportioned	$4,800,180	
FORMULA PROGRAMS	$3,098,000,000	
Alaska Railroad (Section 5307)	4,849,950	
Less Oversight (one-half percent)	(24,250)	
Total Available	4,825,700	
Section 5308 Clean Fuels Formula Program	(50,000,000)	a/
Over-the-Road Bus Accessibility Program	3,700,000	
Section 5307 Urbanized Area Formula Program		
91.23% of Total Available for Sections 5307, 5311, and 5310	$2,772,890,281	
Less Oversight (one-half percent)	(13,864,451)	
Reapportioned Funds Added	4,589,012	
Total Apportioned	$2,763,614,842	
Section 5311 Nonurbanized Area Formula Program		
6.37% of Total Available for Sections 5307, 5311, and 5310	$193,612,968	
Less Oversight (one-half percent)	(968,065)	
Reapportioned Funds Added	72,481	
Total Apportioned	$192,717,384	
Section 5310 Elderly and Persons with Disabilities Formula Program		
2.4% of Total Available for Sections 5307, 5311, and 5310	$72,946,801	
Reapportioned Funds Added	39,614	
Total Apportioned	$72,986,415	
CAPITAL INVESTMENT PROGRAM	$2,501,000,000	
Section 5309 Fixed Guideway Modernization	$980,400,000	
Less Oversight (three-fourth percent)	(7,353,000)	
Total Apportioned	$973,047,000	
Section 5309 New Starts	$980,400,000	
Less Oversight (three-fourth percent)	(7,353,000)	
Total Allocated	$973,047,000	
Section 5309 Bus	$540,200,000	b/
Less Oversight (three-fourth percent)	(4,051,500)	
Reallocated Funds Added	1,199,750	c/
Total Allocated	$537,348,250	
JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)	$75,000,000	
TOTAL APPROPRIATION (Above Grant Programs)	**$5,689,250,000**	

a/ The FY 2000 Appropriations Act transfers $50 million appropriated for Clean Fuels to the Bus Category.

b/ Includes $490,200,000 plus $50 million transferred from the Cleans Fuels Program.

c/ Conference Report approximated Bus recoveries at $1,470,000. The amount of Bus recoveries made available for reallocation is $1,199,750.

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS

STATE	SECTION 5303 APPORTIONMENT	SECTION 5313(b) APPORTIONMENT
Alabama	$434,813	$113,592
Alaska	198,569	51,875
Arizona	790,795	163,970
Arkansas	198,569	51,875
California	8,463,459	1,572,168
Colorado	645,896	146,797
Connecticut	580,320	151,605
Delaware	198,569	51,875
District of Columbia	267,707	51,875
Florida	2,706,938	628,325
Georgia	958,264	201,301
Hawaii	198,569	51,875
Idaho	198,569	51,875
Illinois	2,900,719	523,440
Indiana	704,204	166,235
Iowa	222,764	58,196
Kansas	257,521	62,884
Kentucky	308,461	78,828
Louisiana	533,037	137,549
Maine	198,569	51,875
Maryland	1,152,512	221,105
Massachusetts	1,405,704	292,035
Michigan	1,810,929	358,838
Minnesota	735,337	146,372
Mississippi	198,569	51,875
Missouri	813,010	171,795
Montana	198,569	51,875
Nebraska	198,569	51,875
Nevada	215,306	56,247
New Hampshire	198,569	51,875
New Jersey	2,461,011	409,281
New Mexico	198,569	51,875
New York	4,997,493	871,467
North Carolina	593,830	155,134
North Dakota	198,569	51,875
Ohio	1,710,750	410,974
Oklahoma	320,052	83,612
Oregon	359,506	87,669
Pennsylvania	2,218,797	444,961
Puerto Rico	538,076	131,205
Rhode Island	198,569	51,875
South Carolina	337,161	88,081
South Dakota	198,569	51,875
Tennessee	524,150	136,931
Texas	3,373,131	702,076
Utah	311,831	81,464
Vermont	198,569	51,875
Virginia	1,109,510	236,432
Washington	884,320	198,465
West Virginia	198,569	51,875
Wisconsin	619,141	152,162
Wyoming	198,569	51,875
TOTAL	$49,642,128	$10,374,946

TABLE 3

FEDERAL HIGHWAY ADMINISTRATION

FY 2000 METROPOLITAN PLANNING PROGRAM (PL)
AND ESTIMATED STATE PLANNING AND RESEARCH (SP&R) PROGRAM APPORTIONMENTS

STATE	PL APPORTIONMENT	EST. TOTAL SP&R APPORTIONMENT	EST. SP&R PLANNING APPORTIONMENT a/
Alabama	$2,096,066	$9,179,493	$6,884,620
Alaska	943,920	6,127,679	4,595,759
Arizona	3,025,679	8,616,667	6,462,500
Arkansas	943,920	6,590,979	4,943,234
California	29,010,697	46,860,901	35,145,676
Colorado	2,708,783	5,974,979	4,481,234
Connecticut	2,797,499	7,639,218	5,729,414
Delaware	943,920	2,318,434	1,738,826
District of Columbia	943,920	1,987,701	1,490,776
Florida	11,594,222	24,687,572	18,515,679
Georgia	3,714,519	17,674,140	13,255,605
Hawaii	943,920	2,571,856	1,928,892
Idaho	943,920	3,710,965	2,783,224
Illinois	9,658,814	16,636,692	12,477,519
Indiana	3,067,463	11,948,882	8,961,662
Iowa	1,073,859	6,034,459	4,525,844
Kansas	1,160,381	5,862,661	4,396,996
Kentucky	1,454,577	8,213,697	6,160,273
Louisiana	2,538,130	7,921,564	5,941,173
Maine	943,920	2,664,230	1,998,173
Maryland	4,079,956	8,139,229	6,104,422
Massachusetts	5,388,792	9,197,062	6,897,797
Michigan	6,621,497	16,439,466	12,329,600
Minnesota	2,700,940	7,344,562	5,508,422
Mississippi	943,920	6,196,025	4,647,019
Missouri	3,170,060	12,402,732	9,302,049
Montana	943,920	5,233,995	3,925,496
Nebraska	943,920	4,051,156	3,038,367
Nevada	1,037,908	3,720,638	2,790,479
New Hampshire	943,920	2,519,838	1,889,879
New Jersey	7,552,289	13,271,150	9,953,363
New Mexico	943,920	4,991,975	3,743,981
New York	16,080,818	25,065,498	18,799,124
North Carolina	2,862,626	13,775,016	10,331,262
North Dakota	943,920	3,419,340	2,564,505
Ohio	7,583,541	17,034,360	12,775,770
Oklahoma	1,542,851	7,863,098	5,897,324
Oregon	1,617,714	5,985,581	4,489,186
Pennsylvania	8,210,690	21,735,865	16,301,899
Rhode Island	943,920	3,089,561	2,317,171
South Carolina	1,625,323	8,598,240	6,448,680
South Dakota	943,920	3,601,039	2,700,779
Tennessee	2,526,726	10,528,697	7,896,523
Texas	12,955,120	39,077,701	29,308,276
Utah	1,503,216	4,028,067	3,021,050
Vermont	943,920	2,353,427	1,765,070
Virginia	4,362,791	13,055,828	9,791,871
Washington	3,662,189	8,803,505	6,602,629
West Virginia	943,920	4,039,926	3,029,945
Wisconsin	2,807,779	10,047,107	7,535,330
Wyoming	943,920	3,619,011	2,714,258
TOTAL	$188,784,075	$502,451,464	$376,838,605

a/ 75 percent of Est. (Estimated) Total SP&R Apportionment

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
OVER 1,000,000 IN POPULATION	$20,258,039	$2,025,803,872
200,000-1,000,000 IN POPULATION	4,693,144	469,314,428
50,000-200,000 IN POPULATION	----------	268,496,542
NATIONAL TOTAL	$24,951,183	$2,763,614,842

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 1,000,000 and Over in Population:		
Atlanta, GA	$390,464	$39,046,432
Baltimore, MD	325,674	32,567,432
Boston, MA	783,137	78,313,708
Chicago, IL-Northwestern IN	1,787,419	178,741,915
Cincinnati, OH-KY	140,266	14,026,602
Cleveland, OH	240,763	24,076,342
Dallas-Fort Worth, TX	401,670	40,167,021
Denver, CO	253,879	25,387,948
Detroit, MI	353,322	35,332,248
Ft Lauderdale-Hollywood-Pompano Beach, FL.	213,610	21,360,999
Houston, TX	432,549	43,254,860
Kansas City, MO-KS	96,806	9,680,601
Los Angeles, CA	1,887,969	188,796,855
Miami-Hialeah, FL	363,636	36,363,571
Milwaukee, WI	183,303	18,330,290
Minneapolis-St. Paul, MN	245,019	24,501,851
New Orleans, LA	155,262	15,526,242
New York, NY-Northeastern NJ	5,750,117	575,011,773
Norfolk-Virginia Beach-Newport News, VA	123,898	12,389,808
Philadelphia, PA-NJ	994,941	99,494,051
Phoenix, AZ	218,885	21,888,483
Pittsburgh, PA	292,821	29,282,128
Portland-Vancouver, OR-WA	229,168	22,916,766
Riverside-San Bernardino, CA	170,474	17,047,416
Sacramento, CA	130,824	13,082,376
San Antonio, TX	181,354	18,135,401
San Diego, CA	400,072	40,007,176
San Francisco-Oakland, CA	1,097,316	109,731,573
San Jose, CA	283,893	28,389,252
San Juan, PR	279,876	27,987,618
Seattle, WA	524,574	52,457,436
St. Louis, MO-IL	232,853	23,285,342
Tampa-St. Petersburg-Clearwater, FL	156,427	15,642,708
Washington, DC-MD-VA	935,796	93,579,648
TOTAL	$20,258,038	$2,025,803,872

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population		
Akron, OH	$56,283	$5,628,302
Albany-Schenectady-Troy, NY	60,601	6,060,114
Albuquerque, NM	50,191	5,019,072
Allentown-Bethlehem-Easton, PA-NJ	47,093	4,709,294
Anchorage, AK	24,165	2,416,472
Ann Arbor, MI	31,484	3,148,399
Augusta, GA-SC	17,074	1,707,442
Austin, TX	112,833	11,283,287
Bakersfield, CA	33,488	3,348,750
Baton Rouge, LA	29,347	2,934,746
Birmingham, AL	37,882	3,788,211
Bridgeport-Milford, CT	66,832	6,683,156
Buffalo-Niagara Falls, NY	112,711	11,271,082
Canton, OH	29,007	2,900,692
Charleston, SC	29,586	2,958,637
Charlotte, NC	59,426	5,942,586
Chattanooga, TN-GA	21,603	2,160,327
Colorado Springs, CO	36,551	3,655,098
Columbia, SC	25,437	2,543,677
Columbus, GA-AL	15,298	1,529,796
Columbus, OH	105,130	10,512,991
Corpus Christi, TX	34,545	3,454,532
Davenport-Rock Island-Moline, IA-IL	26,122	2,612,168
Dayton, OH	110,820	11,082,007
Daytona Beach, FL	29,413	2,941,272
Des Moines, IA	31,947	3,194,707
Durham, NC	31,309	3,130,919
El Paso, TX-NM	75,158	7,515,810
Fayetteville, NC	16,900	1,690,046
Flint, MI	45,639	4,563,910
Fort Myers-Cape Coral, FL	24,931	2,493,140
Fort Wayne, IN	18,590	1,859,045
Fresno, CA	51,064	5,106,436
Grand Rapids, MI	38,732	3,873,229
Greenville, SC	13,298	1,329,753
Harrisburg, PA	30,493	3,049,277
Hartford-Middletown, CT	93,019	9,301,886
Honolulu, HI	224,512	22,451,206
Indianapolis, IN	87,101	8,710,107
Jackson, MS	18,062	1,806,204
Jacksonville, FL	71,351	7,135,108
Knoxville, TN	24,119	2,411,894
Lansing-East Lansing, MI	31,532	3,153,242
Las Vegas, NV	141,519	14,151,912
Lawrence-Haverhill, MA-NH	31,706	3,170,554
Lexington-Fayette, KY	19,370	1,936,953

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population (continued)		
Little Rock-North Little Rock, AR	26,857	2,685,661
Lorain-Elyria, OH	13,663	1,366,277
Louisville, KY-IN	104,245	10,424,528
Madison, WI	45,104	4,510,388
McAllen-Edinburg-Mission, TX	13,438	1,343,765
Melbourne-Palm Bay, FL	30,952	3,095,167
Memphis, TN-AR-MS	88,440	8,844,028
Mobile, AL	19,871	1,987,093
Modesto, CA	27,379	2,737,937
Montgomery, AL	12,021	1,202,063
Nashville, TN	50,699	5,069,927
New Haven-Meriden, CT	109,799	10,979,867
Ogden, UT	30,576	3,057,602
Oklahoma City, OK	47,696	4,769,610
Omaha, NE-IA	53,467	5,346,660
Orlando, FL	139,209	13,920,892
Oxnard-Ventura, CA	65,124	6,512,436
Pensacola, FL	19,613	1,961,267
Peoria, IL	20,235	2,023,545
Providence-Pawtucket, RI-MA	155,761	15,576,051
Provo-Orem, UT	29,383	2,938,314
Raleigh, NC	29,150	2,915,009
Reno, NV	31,795	3,179,497
Richmond, VA	60,381	6,038,138
Rochester, NY	68,651	6,865,124
Rockford, IL	18,217	1,821,740
Salt Lake City, UT	117,076	11,707,570
Sarasota-Bradenton, FL	37,250	3,724,967
Scranton-Wilkes-Barre, PA	29,910	2,991,033
Shreveport, LA	24,850	2,484,956
South Bend-Mishawaka, IN-MI	30,097	3,009,660
Spokane, WA	55,842	5,584,196
Springfield, MA-CT	56,911	5,691,096
Stockton, CA	35,381	3,538,091
Syracuse, NY	42,926	4,292,606
Tacoma, WA	104,779	10,477,857
Toledo, OH-MI	46,650	4,664,987
Trenton, NJ-PA	41,780	4,177,974
Tucson, AZ	76,279	7,627,905
Tulsa, OK	44,221	4,422,131
West Palm Beach-Boca Raton-Delray Bch, FL	149,532	14,953,208
Wichita, KS	29,653	2,965,322
Wilmington, DE-NJ-MD-PA	69,254	6,925,397
Worcester, MA-CT	41,988	4,198,768
Youngstown-Warren, OH	23,767	2,376,670
TOTAL	$4,693,146	$469,314,428

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population	
ALABAMA:	$4,985,156
Anniston, AL	480,853
Auburn-Opelika, AL	385,788
Decatur, AL	440,303
Dothan, AL	369,820
Florence, AL	515,217
Gadsden, AL	455,365
Huntsville	1,445,530
Tuscaloosa, AL	892,280
ALASKA:	$0
ARIZONA:	$1,304,894
Flagstaff, AZ	513,348
Yuma, AZ-CA (AZ)	791,546
ARKANSAS:	$1,904,687
Fayetteville-Springdale, AR	525,660
Fort Smith, AR-OK (AR)	715,567
Pine Bluff, AR	483,565
Texarkana, TX-AR (AR)	179,895
CALIFORNIA:	$29,175,484
Antioch-Pittsburg, CA	1,649,944
Chico, CA	720,399
Davis, CA	874,519
Fairfield, CA	1,062,135
Hemet-San Jacinto, CA	886,135
Hesperia-Apple Valley-Victorville, CA	1,130,450
Indio-Coachella, CA	535,822
Lancaster-Palmdale, CA	1,901,446
Lodi, CA	744,407
Lompoc, CA	457,181
Merced, CA	812,779
Napa, CA	849,265
Palm Springs, CA	1,058,042
Redding, CA	611,778
Salinas, CA	1,609,906
San Luis Obispo, CA	762,395
Santa Barbara, CA	2,490,601
Santa Cruz, CA	1,287,861
Santa Maria, CA	1,171,709
Santa Rosa, CA	2,271,814
Seaside-Monterey, CA	1,526,612
Simi Valley, CA	1,445,047
Vacaville, CA	877,250
Visalia	1,002,011
Watsonville, CA	552,025
Yuba City, CA	880,815
Yuma, AZ-CA (CA)	3,136

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
COLORADO:	$5,375,868
Boulder, CO	1,196,211
Fort Collins, C0	996,330
Grand Junction, CO	567,271
Greeley, CO	796,881
Longmont, CO	726,189
Pueblo, CO	1,092,986
CONNECTICUT:	$20,431,625
Bristol, CT	847,319
Danbury, CT-NY (CT)	3,654,719
New Britain, CT	1,586,597
New London-Norwich, CT	1,276,746
Norwalk, CT	3,825,289
Stamford, CT-NY (CT)	4,677,640
Waterbury, CT	4,563,315
DELAWARE:	$405,570
Dover, DE	405,570
FLORIDA:	$12,360,871
Deltona, FL	410,994
Fort Pierce, F	984,528
Fort Walton Beach, FL	954,371
Gainesville, FL	1,223,087
Kissimmee, FL	569,676
Lakeland, FL	1,250,368
Naples, FL	822,912
Ocala, FL	552,788
Panama City, FL	829,583
Punta Gorda, FL	542,498
Spring Hill, FL	414,710
Stuart, FL	723,599
Tallahassee, FL	1,394,259
Titusville, FL.	399,118
Vero Beach, FL	505,468
Winter Haven, FL.	782,912
GEORGIA:	$5,411,902
Albany, GA.	670,332
Athens, GA.	642,694
Brunswick, GA	369,849
Macon, GA.	1,201,466
Rome, GA.	377,040
Savannah, GA	1,571,991
Warner Robins, GA	578,530
HAWAII:	$1,438,341
Kailua, HI	1,438,341

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
IDAHO:	$2,846,734
Boise City, ID	1,741,957
Idaho Falls, ID	624,457
Pocatello, ID	480,320
ILLINOIS:	$13,039,478
Alton, IL	704,693
Aurora, IL	1,973,637
Beloit, WI-IL (IL)	90,065
Bloomington-Normal, IL	1,135,262
Champaign-Urbana, IL	1,602,075
Crystal Lake, IL	643,251
Decatur, IL	901,814
Dubuque, IA-IL (IL)	21,007
Elgin, IL	1,423,686
Joliet, IL	1,646,194
Kankakee, IL.	646,084
Round Lake Beach-McHenry, IL-WI (IL)	937,528
Springfield, IL.	1,314,182
INDIANA:	$7,605,189
Anderson, IN	614,716
Bloomington, IN	917,307
Elkhart-GosheN, IN	919,374
Evansville, IN-KY (IN)	1,703,133
Kokomo, IN	619,041
Lafayette-West Lafayette, IN	1,230,688
Muncie, IN	904,711
Terre Haute, IN	696,219
IOWA:	$4,140,175
Cedar Rapids, IA	1,286,628
Dubuque, IA-IL (IA)	626,250
Iowa City, IA	741,322
Sioux City, IA-NE-SD (IA)	684,685
Waterloo-Cedar Falls, IA	801,290
KANSAS:	$2,010,184
Lawrence, KS	761,215
St. Joseph, MO-KS (KS)	6,283
Topeka, KS	1,242,686
KENTUCKY:	$1,584,353
Clarksville, TN-KY (KY)	193,324
Evansville, IN-KY (KY)	237,396
Huntington-Ashland, WV-KY-OH ((KY)	473,409
Owensboro, KY	680,224
LOUISIANA:	$4,692,211
Alexandria, LA	684,727
Houma, LA	481,636
Lafayette, LA	1,184,744
Lake Charles, LA	951,685
Monroe, LA	904,907
Slidell, LA	484,512

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MAINE:	$2,042,136
Bangor, ME	419,625
Lewiston-Auburn, ME	487,597
Portland, ME	1,042,595
Portsmouth-Dover-Rochester, NH-ME (ME)	92,319
MARYLAND:	$2,270,953
Annapolis, MD	739,653
Cumberland, MD-WV (MD)	393,387
Frederick, MD	533,696
Hagerstown, MD-PA-WV (MD)	604,217
MASSACHUSETTS	$8,994,014
Brockton, MA	1,642,939
Fall River, MA-RI (MA)	1,602,399
Fitchburg-Leominster, MA	649,363
Hyannis, MA	463,715
Lowell, MA-NH (MA)	2,033,701
New Bedford, MA	1,762,301
Pittsfield, MA	419,770
Taunton, MA	419,826
MICHIGAN:	$7,675,133
Battle Creek, MI	641,018
Bay City, MI	716,120
Benton Harbor, MI	517,989
Holland, MI	581,348
Jackson, MI	715,727
Kalamazoo, MI	1,545,579
Muskegon, MI	942,740
Port Huron, MI	620,436
Saginaw, MI	1,394,176
MINNESOTA:	$2,735,192
Duluth, MN-WI (MN)	665,591
Fargo-Moorhead, ND-MN (MN)	384,849
Grand Forks, ND-MN (MN)	84,346
La Crosse, WI-MN (MN)	41,318
Rochester, MN	750,719
St. Cloud, MN	808,369
MISSISSIPPI:	$2,348,217
Biloxi-Gulfport, MS	1,453,849
Hattiesburg, MS	453,122
Pascagoula, MS	441,246
MISSOURI:	$3,235,877
Columbia, MO	638,845
Joplin, MO	448,646
Springfield, MO	1,507,106
St. Joseph, MO-KS (MO)	641,280

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MONTANA:	$2,154,127
Billings, MT	830,760
Great Falls, MT	774,700
Missoula, MT	548,667
NEBRASKA:	$2,394,728
Lincoln, NE	2,291,136
Sioux City, IA-NE-SD (NE)	103,592
NEVADA:	$0
NEW HAMPSHIRE:	$2,908,063
Lowell, MA-NH (NH)	5,952
Manchester, NH	1,219,106
Nashua, NH	974,879
Portsmouth-Dover-Rochester, NH-ME (NH)	708,126
NEW JERSEY:	$2,203,394
Atlantic City, NJ	1,588,141
Vineland-Millville, NJ	615,253
NEW MEXICO:	$1,199,868
Las Cruces, NM	666,532
Santa Fe, NM	533,336
NEW YORK:	$6,657,249
Binghamton, NY	1,670,995
Danbury, CT-NY (NY)	22,649
Elmira, NY	686,164
Glens Falls, NY	471,864
Ithaca, NY	476,242
Newburgh, NY	618,415
Poughkeepsie, NY	1,299,062
Stamford, CT-NY (NY)	154
Utica-Rome, NY	1,411,704
NORTH CAROLINA:	$10,807,407
Asheville, NC	834,195
Burlington, NC	605,137
Gastonia, NC	886,065
Goldsboro, NC	460,155
Greensboro, NC	1,905,751
Greenville, NC	529,819
Hickory, NC	505,301
High Point, NC	852,125
Jacksonville, NC	822,694
Kannapolis, NC	593,914
Rocky Mount, NC	474,762
Wilmington, NC	776,539
Winston-Salem, NC	1,560,950

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
NORTH DAKOTA:	$2,099,863
Bismarck, ND	605,512
Fargo-Moorhead, ND-MN (ND)	875,726
Grand Forks, ND-MN (ND)	618,625
OHIO:	$5,773,649
Hamilton, OH	1,193,362
Huntington-Ashland, WV-KY-OH (OH)	303,894
Lima, OH	652,210
Mansfield, OH	629,684
Middletown, OH	820,501
Newark, OH	499,922
Parkersburg, WV-OH (OH)	74,027
Sharon, PA-OH (OH)	48,815
Springfield, OH	949,098
Steubenville-Weirton, OH-WV-PA (OH)	341,451
Wheeling, WV-OH (OH)	260,685
OKLAHOMA:	$898,637
Fort Smith, AR-OK (OK)	15,765
Lawton, OK	882,872
OREGON:	$4,686,368
Eugene-Springfield, OR	2,205,976
Longview, WA-OR (OR)	14,671
Medford, OR	681,748
Salem, OR	1,783,973
PENNSYLVANIA:	$12,250,998
Altoona, PA	836,913
Erie, PA	2,152,942
Hagerstown, MD-PA-WV (PA)	7,375
Johnstown, PA	771,765
Lancaster, PA	1,946,538
Monessen, PA	529,730
Pottstown, PA	502,685
Reading, PA	2,272,243
Sharon, PA-OH (PA)	351,927
State College, PA	732,444
Steubenville-Weirton, OH-WV-PA (PA)	2,558
Williamsport, PA	613,984
York, PA	1,529,894
PUERTO RICO:	$11,317,330
Aguadilla, PR	990,114
Arecibo, PR	925,138
Caguas, PR	2,422,805
Cayey, PR	716,333
Humacao, PR	619,973
Mayaguez, PR	1,332,011
Ponce, PR	2,964,121
Vega Baja-Manati, PR	1,346,835

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
RHODE ISLAND:	$720,380
Fall River, MA-RI (RI)	165,142
Newport, RI	555,238
SOUTH CAROLINA:	$3,050,731
Anderson, SC	410,299
Florence, SC	422,024
Myrtle Beach, SC	442,572
Rock Hill, SC	469,916
Spartanburg, SC	819,167
Sumter, SC	486,753
SOUTH DAKOTA:	$1,514,777
Rapid City, SD	482,434
Sioux City, IA-NE-SD (SD)	13,526
Sioux Falls, SD	1,018,817
TENNESSEE:	$2,344,389
Bristol, TN-Bristol, VA (TN)	219,130
Clarksville, TN-KY (TN)	534,276
Jackson, TN	404,396
Johnson City, TN	616,431
Kingsport, TN-VA (TN)	570,156
TEXAS:	$21,706,886
Abilene, TX	770,125
Amarillo, TX	1,428,410
Beaumont, TX	982,435
Brownsville, TX	1,427,936
Bryan-College Station, TX	956,487
Denton, TX	516,668
Galveston, TX	548,067
Harlingen, TX	701,792
Killeen, TX	1,342,335
Laredo, TX	1,695,320
Lewisville, TX	596,449
Longview, TX	586,831
Lubbock, TX	1,671,261
Midland, TX	732,263
Odessa, TX	812,346
Port Arthur, TX	886,146
San Angelo, TX	761,463
Sherman-Denison, TX	381,161
Temple, TX	432,724
Texarkana, TX-AR (TX)	349,173
Texas City, TX	928,170
Tyler, TX	725,803
Victoria, TX	503,143
Waco, TX	1,096,112
Wichita Falls, TX	874,266

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
UTAH:	$433,852
Logan, UT	433,852
VERMONT:	$761,283
Burlington, VT	761,283
VIRGINIA:	$5,053,357
Bristol, TN-Bristol, VA (VA)	156,005
Charlottesville, VA	726,621
Danville, VA	412,634
Fredericksburg, VA	484,443
Kingsport, TN-VA (VA)	29,453
Lynchburg, VA	691,272
Petersburg, VA	876,343
Roanoke, VA	1,676,586
WASHINGTON:	$4,775,510
Bellingham, WA	562,649
Bremerton, WA	1,089,956
Longview, WA-OR (WA)	476,091
Olympia, WA	847,994
Richland-Kennewick-Pasco, WA	884,646
Yakima, WA	914,174
WEST VIRGINIA	$3,670,219
Charleston, WV	1,476,469
Cumberland, MD-WV (WV)	17,659
Hagerstown, MD-PA-WV (WV)	4,460
Huntington-Ashland, WV-KY-OH (WV)	828,947
Parkersburg, WV-OH (WV)	533,119
Steubenville-Weirton, OH-WV-PA (WV)	229,371
Wheeling, WV-OH (WV)	580,194
WISCONSIN:	$10,047,371
Appleton-Neenah, WI	1,839,851
Beloit, WI-IL (WI)	394,376
Duluth, MN-WI (WI)	172,747
Eau Claire, WI	720,646
Green Bay, WI	1,397,379
Janesville, WI	530,354
Kenosha, WI	965,672
La Crosse, WI-MN (WI)	766,630
Oshkosh, WI	669,054
Racine, WI	1,491,481
Round Lake Beach-McHenry, IL-WI (WI)	559
Sheboygan, WI	630,370
Wausau, WI	468,252
WYOMING:	$1,051,862
Casper, WY	482,515
Cheyenne, WY	569,347
TOTAL	$268,496,542

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	SECTION 5311 APPORTIONMENT	SECTION 5311(b) APPORTIONMENT
Alabama	$4,603,405	$99,521
Alaska	686,467	70,148
America Samoa	97,843	10,734
Arizona	2,015,250	80,112
Arkansas	3,680,231	92,598
California	8,982,245	132,357
Colorado	1,917,350	79,378
Connecticut	1,739,218	78,042
Delaware	433,893	68,254
Florida	5,774,183	108,300
Georgia	6,730,668	115,473
Guam	278,536	12,089
Hawaii	755,415	70,665
Idaho	1,524,027	76,429
Illinois	6,175,012	111,306
Indiana	5,964,922	109,731
Iowa	3,836,697	93,771
Kansas	3,051,970	87,887
Kentucky	5,038,137	102,781
Louisiana	4,166,904	96,247
Maine	2,010,694	80,078
Maryland	2,510,254	83,824
Massachusetts	2,690,230	85,174
Michigan	7,285,603	119,634
Minnesota	4,192,444	96,439
Mississippi	4,091,281	95,680
Missouri	4,883,117	101,618
Montana	1,234,582	74,258
Nebraska	1,862,828	78,969
Nevada	608,185	69,561
New Hampshire	1,610,315	77,076
New Jersey	2,302,409	82,266
New Mexico	1,810,042	78,573
New York	8,104,755	125,777
North Carolina	8,609,644	129,563
North Dakota	913,029	71,847
Northern Marianas	90,672	10,680
Ohio	8,765,216	130,730
Oklahoma	3,747,039	93,099
Oregon	2,975,182	87,311
Pennsylvania	9,777,689	138,323
Puerto Rico	2,921,881	86,911
Rhode Island	374,298	67,807
South Carolina	4,309,170	97,314
South Dakota	1,112,911	73,346
Tennessee	5,562,645	106,714
Texas	11,744,291	153,070
Utah	843,648	71,326
Vermont	995,038	72,462
Virgin Islands	212,971	11,597
Virginia	4,931,824	101,984
Washington	3,455,667	90,914
West Virginia	2,938,313	87,034
Wisconsin	5,077,060	103,073
Wyoming	710,084	70,325
TOTAL	$192,717,384	$4,800,180

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	APPORTIONMENT
Alabama	$1,263,045
Alaska	191,890
America Samoa	52,634
Arizona	1,112,627
Arkansas	880,019
California	6,878,982
Colorado	861,153
Connecticut	987,989
Delaware	293,852
District of Columbia	291,611
Florida	4,639,244
Georgia	1,640,232
Guam	133,760
Hawaii	376,045
Idaho	385,025
Illinois	2,996,023
Indiana	1,568,010
Iowa	946,671
Kansas	792,307
Kentucky	1,210,112
Louisiana	1,214,053
Maine	483,465
Maryland	1,219,834
Massachusetts	1,760,613
Michigan	2,562,126
Minnesota	1,237,149
Mississippi	854,719
Missouri	1,590,250
Montana	352,572
Nebraska	556,193
Nevada	411,680
New Hampshire	388,463
New Jersey	2,115,374
New Mexico	488,168
New York	4,912,556
North Carolina	1,866,530
North Dakota	298,904
Northern Marianas	52,406
Ohio	3,127,059
Oklahoma	1,043,154
Oregon	969,236
Pennsylvania	3,750,831
Puerto Rico	919,030
Rhode Island	429,419
South Carolina	1,008,050
South Dakota	323,437
Tennessee	1,492,836
Texas	3,874,080
Utah	454,360
Vermont	265,950
Virgin Islands	136,122
Virginia	1,553,327
Washington	1,392,260
West Virginia	734,389
Wisconsin	1,421,596
Wyoming	224,993
TOTAL	$72,986,415

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE	AREA	APPORTIONMENT
AZ	Phoenix	$1,526,094
CA	Los Angeles	16,061,063
CA	Sacramento	2,547,302
CA	San Diego	7,171,934
CA	San Francisco	59,418,714
CA	San Jose	10,232,718
CO	Denver	1,219,287
CT	Hartford	1,093,013
CT	Southwestern Connecticut	35,804,354
DC	Washington	46,383,358
DE	Wilmington	755,391
FL	Ft. Lauderdale	2,849,955
FL	Jacksonville	70,241
FL	Miami	8,670,657
FL	Tampa	55,068
FL	West Palm Beach	2,177,666
GA	Atlanta	17,521,698
HI	Honolulu	625,993
IL	Chicago/Northwestern Indiana	121,618,120
IN	South Bend	543,128
LA	New Orleans	2,709,022
MD	Baltimore	6,625,409
MD	Baltimore Commuter Rail	16,006,620
MA	Boston	61,234,103
MA	Lawrence-Haverhill	1,300,607
MI	Detroit	440,130
MN	Minneapolis	2,874,132
MO	Kansas City	22,090
MO	St. Louis	1,860,740
NJ	Northeastern New Jersey	76,326,308
NJ	Trenton	1,132,579
NY	Buffalo	1,092,589
NY	New York	315,681,131
OH	Cleveland	12,079,312
OH	Dayton	3,463,546
PA	Harrisburg	414,023
PA	Philadelphia/Southern New Jersey	84,711,646
PA	Pittsburgh	19,675,690
PR	San Juan	1,968,870
OR	Portland	2,868,068
RI/MA	Providence	2,146,509
TN	Chattanooga	71,083
TX	Dallas	732,151
TX	Houston	4,406,131
VA	Norfolk	987,183
WA	Seattle	14,551,881
WA	Tacoma	680,570
WI	Madison	639,123
	TOTAL	$973,047,000

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
AK/HI	Alaska or Hawaii Ferry Projects	$10,322,000
AK	Girdwood, Alaska Commuter Rail Project	9,925,000
AL	Birmingham- Transit Corridor	2,977,500
AZ	Phoenix- Metropolitan Area Transit Project	4,962,500
CA	Sacramento- South Corridor LRT Project	24,812,500
CA	San Francisco- BART Extension to the Airport Project	64,512,500
CA	San Jose- Tasman West Light Rail Project	19,850,000
CA	San Diego- Mission Valley East Light Rail Transit Project	19,850,000
CA	San Diego- Mid-Coast Corridor Project	4,962,500
CA	San Diego- Oceanside-Escondido Light Rail System	1,985,000
CA	Los Angeles- North Hollywood Extension Project	49,625,000
CA	Los Angeles- Mid-City and East Side Corridors Projects	3,970,000
CA	Los Angeles-San Diego LOSSAN Corridor Project	992,500
CA	Orange County-Transitway Project	992,500
CA	Stockton- Altamont Commuter Rail Project	992,500
CA	San Bernardino- Metrolink Extension Project	992,500
CO	Denver- Southwest Corridor Project	34,737,500
CO	Denver- Southeast Corridor Project	2,977,500
CO	Roaring Fork Valley Project	992,500
CT	Stamford- Fixed Guideway Connector	992,500
DE	Wilmington- Downtown Transit Connector	992,500
FL	Fort Lauderdale- Tri-County Commuter Rail Project	9,925,000
FL	Palm Beach, Broward and Miami-Dade Counties Rail Corridor	496,250
FL	Miami Metro-Dade Transit East-West Corridor Project	1,488,750
FL	Tampa Bay- Regional Rail Project	992,500
FL	Pinellas County- Mobility Initiative Project	2,481,250
FL	Orlando- Lynx Light Rail Project [Phase 1]	4,962,500
GA	Atlanta- South DeKalb-Lindbergh Corridor Project	992,500
GA	Atlanta-North Line Extension Project	44,803,440
IL	Chicago- Metra Commuter Rail Project	24,812,500
IL	Chicago- CTA Douglas Branch Line Project	3,473,750
IL	Chicago- CTA Ravenswood Branch Line Project	3,473,750
IN	Indianapolis- Northeast Downtown Corridor Project	992,500
IN	Northern Indiana- South Shore Commuter Rail Project	3,970,000
KS/MO	Kansas City Area- Johnson County, KS, I-35 Commuter Rail Project	992,500
LA	New Orleans- Canal Street Corridor Project	992,500
ME	Calais- Branch Rail Line Regional Transit Program	496,250
MA	Boston- South Boston Piers Transitway	53,490,785
MA	Boston- Urban Ring Project	992,500
MA	Boston- North Shore Corridor Project	992,500
MA/NH	Lowell, MA - Nashua, NH Commuter Rail Project	992,500
MD	MARC Commuter Rail Project	697,730
MD	MARC- Expansion Projects- Silver Spring Intermodal and Penn-Camden Rail Connection	1,488,750
MD	Baltimore- Central LRT Double Track Project	4,714,380
MD	Wash.DC/MD- Washington Metro- Blue Line Extension- Addision Road (Largo) Project	4,714,380

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
MN	Twin Cities- Transitways Projects	2,977,500
MN	Twin Cities- Transitways- Hiawatha Corridor Project	42,479,000
MO/IL	St. Louis- St. Clair MetroLink Light Rail (Phase II) Extension Project	49,625,000
MO	St. Louis- MetroLink Cross County Corridor Project	2,481,250
NC	Charlotte- North-South Corridor Transitway Project	3,970,000
NC	Raleigh-Durham-Chapel Hill- Triangle Transit Project	7,940,000
NJ	Newark Rail Link MOS-1 Project	11,910,000
NJ	New Jersey Hudson-Bergen LRT Project	98,257,500
NJ/NY	Trans-Hudson Midtown Corridor	4,962,500
NJ	West Trenton Rail Project	992,500
NM	Greater Albuquerque Mass Transit Project	6,947,500
NM	Santa Fe/El Dorado Rail Link	2,977,500
NV	Las Vegas- Clark County, Nevada Fixed Guideway Project	3,473,750
NY	New York- Whitehall Ferry Terminal Reconstruction Project	1,985,000
NY	New York- LIRR East Side Access Project	1,985,000
OH	Dayton- Light Rail Study	992,500
OH	Cincinnati- Northeast/Northern Kentucky Corridor Project	992,500
OH	Cleveland- Euclid Corridor Improvement Project	992,500
OH	Canton-Akron-Cleveland Commuter Rail Project	2,481,250
OR	Portland- Westside-Hillsboro Project	10,979,040
OR	Portland- Wilsonville to Washington County, OR Connection to Westside	496,250
PA	Harrisburg- Capitol Area Transit/Corridor One Commuter Rail Project	496,250
PA	Pittsburgh- Stage II Light Rail Project	7,940,000
PA	Pittsburgh- North Shore Central Business District Corridor Project	9,925,000
PA	Philadelphia- SEPTA Cross County Metro	992,500
PA	Philadelphia-Reading -SEPTA Schuylkill Valley Metro Project	3,970,000
PR	San Juan- Tren Urbano Project	31,760,000
SC	Charleston- Monobeam Corridor Project	2,481,250
TN	Memphis- Medical Center Rail Extension Project	2,481,250
TN	Knoxville-MemphisCommuter Rail Feasibility Study	496,250
TN	Nashville- Commuter Rail Project	992,500
TX	Austin- Capital Metro Northwest/north Central Corridor Project	992,500
TX	Dallas- North Central Light Rail Extension Project	49,625,000
TX	Galveston- Rail Trolley Extension Project	1,488,750
TX	Houston- Regional Bus Project	52,374,205
TX	Houston- Advanced Transit Program	2,977,500
UT	Salt Lake City- North/South Light Rail Project	37,643,540
UT	Salt Lake City- Olympic Transportation Infrastructure Investments	9,925,000
VA	Norfolk-Virginia Beach Corridor Project	992,500
VA	Dulles Corridor Project	24,812,500
VA	Virginia Railway Express Commuter Rail Project	2,183,500
WA	Seattle- Puget Sound RTA Link Light Rail Project	24,812,500
WA	Seattle- Puget Sound RTA Sounder Commuter Rail Project	4,962,500
WA	Spokane- South Valley Corridor Light Rail Project	1,985,000
WI	Kenosha-Racine-Milwaukee Rail Extension Project	992,500
	TOTAL ALLOCATION	$973,047,000

a/ An additional $1,488,750 in lapsed FY 1995 New Starts funds is made available to the Clark County, Nevada Fixed Guideway Project IAW Public Law 106-69.

TABLE 8A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 1998 CARRYOVER	FY 1999 CARRYOVER	UNOBLIGATED ALLOCATION
AK/HI	Alaska-Hawaii Ferry Projects	0	10,322,550	10,322,550
AL	Birmingham- Alternatives Analysis & Preliminary Eng.	0	992,550	992,550
AR	Little Rock- River Rail Project	0	992,550	992,550
AZ	Phoenix- Metropolitan Area Transit	0	4,962,765	4,962,765
CA	Los Angeles- Mid-City and East Side Projects	0	420	420
CA	San Bernardino- Metrolink Extension	996,766	992,550	1,989,316
CA	Riverside County- San Jacinto Branch Line Project	0	496,280	496,280
CA	Orange County- Transitway Project	0	2,481,380	2,481,380
CA	San Diego Mission Valley East Extension	996,766	1,488,830	2,485,596
CA	San Diego Mid-Coast Extension	1,495,150	1,985,100	3,480,250
CA	San Diego Oceanside-Escondido Light Rail System	2,990,300	2,977,660	5,967,960
CO	Denver- Southeast Multimodal Corridor Project	0	496,280	496,280
CO	North Front Range Corridor Feasibility Study	0	496,280	496,280
CO	Roaring Fork Valley Rail Project	793,530	0	793,530
CT	Hartford- Griffin Light Rail Project	0	0	993,023
CT	Hartford- Light Rail Project	0	1,488,830	1,488,830
CT	Hartford- Old Saybrook Project	0	496,280	496,280
CT	New London- Waterfront Access Project	0	496,280	496,280
CT	Stamford- Fixed Guideway Connector	0	992,550	992,550
FL	Miami- North 27th Avenue Project	0	2,977,660	2,977,660
FL	Miami- Metro Dade East-West Corridor Project	0	2,977,660	2,977,660
FL	Fort Lauderdale- Tri-County Commuter Rail	0	3,970,210	3,970,210
GA	Atlanta- South DeKalb- Lindbergh Corridor Project	0	992,550	992,550
GA	Savannah- Water Taxi	0	496,280	496,280
HI	Honolulu- Major Investment Analysis of Transit Alternatives	0	2,977,660	2,977,660
IA	Sioux City- Micro Rail Trolley System	0	248,140	248,140
IL	Chicago- Metra Commuter Rail Extensions & Upgrades	0	5,955,320	5,955,320
KS/MO	Johnson County, KS, I-35 Commuter Rail Project	0	992,550	992,550
LA	New Orleans- Canal Street Corridor Project	5,980,594	21,836,160	35,760,937
LA	New Orleans- Desire Streetcar Project	1,993,530	1,985,100	3,978,630
MA	Boston- South Boston Piers Transitway	1	53,580,975	53,580,976
MA	Boston- Urban Ring Project	2	3	5
MA	Boston- North Shore Corridor Project	0	2	2
MA	Boston- North-South Rail Link	0	496,280	496,280
MD	Baltimore- Central Downtown Transit Alternatives MIS	0	496,280	496,280
MD	Largo Blue Line Extension Project	0	992,550	992,550
MD	Route 5 Corridor Study	0	992,550	992,550
MI	Southeast Michigan- Commuter Rail Viability Project	0	198,510	198,510
MN	Twin Cities- Transitways- Hiawatha Corridor Project	122,188	16,873,400	16,995,588
MO	St. Louis-Jefferson City-Kansas City Commuter Rail Project	0	496,280	496,280
MS	Jackson- Intermodal Corridor	2,990,300	0	2,990,300
NC	Charlotte- North-South Corridor	0	2,977,660	2,977,660
NC	Research Triangle Park- Regional Transit Plan	11,961,188	9,925,525	21,886,713
NE	Omaha- Trolley System	0	992,550	992,550
NJ	Hudson-Bergen Project	0	69,478,700	69,478,700
NJ	Newark- Elizabeth Rail Link	0	5,955,320	5,955,320
NJ	West Trenton Rail Project	0	992,550	992,550
NM	Albuquerque- Light Rail Project	0	4,962,765	4,962,765
NV	Las Vegas, Clark County Fixed Guideway Project	0	3,970,210	3,970,210
NY	New York- St. George Ferry	2,491,914	0	2,491,914

TABLE 8A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 1998 CARRYOVER	FY 1999 CARRYOVER	UNOBLIGATED ALLOCATION
NY	New York- Nassau Hub Rail Link EIS	498,383	0	498,383
OH	Cincinnati- NE/N. KY Rail Line Project	0	1,786,595	1,786,595
OH	Cleveland- Euclid Corridor Improvement Project	0	1,985,100	1,985,100
OH	Cleveland- Berea Red Line Extension to Airport	697,736	992,550	1,690,286
OH	Canton-Akron-Cleveland Commuter Rail	0	2,183,615	2,183,615
OR	Portland- Westside-Hillsboro Extension	0	3,000,000	3,000,000
PA	Philadelphia-Reading- SEPTA Schuylkill Valley Metro Proj.	0	2,977,660	2,977,660
PA	Philadelphia- SEPTA Cross County Metro	0	752,550	752,550
PA	Pittsburgh- Airport Busway Phase I	4,983,828	0	4,983,828
PA	Pittsburgh- Stage II Light Rail Project	0	3,970,210	3,970,210
PA	Pittsburgh- North Shore CBD Corridor Project	0	992,550	992,550
PA	Harrisburg- Capital Area Transit/Corridor One Project	0	992,550	992,550
PA	Scranton- Laurel Rail Line Project	498,383	0	498,383
SC	Charleston Monobeam Project	0	2,183,615	2,183,615
TN	Knoxville- Electric Transit Project	0	808,830	808,830
TN	Memphis- Medical Center Rail Extension	2	2,183,615	2,183,617
TN	Nashville- Regional Commuter Rail Project	0	992,550	992,550
TX	Austin- Capital Metro Project	996,766	992,550	1,989,316
TX	Dallas- North Central Light Rail Extension	0	3	3
TX	Dallas- Ft. Worth RAILTRAN	7,974,126	11,910,635	19,884,761
TX	Galveston- Rail Trolley System Project	1,993,530	0	1,993,530
TX	Houston- Regional Bus Plan	50,934,727	59,225,625	110,160,352
UT	Salt Lake City- Airport to University (West/East) Light Rail Proj.	0	4,962,765	4,962,765
UT	Salt Lake City- Regional Commuter Rail	2,787,062	0	2,787,062
VA	Dulles Corridor Project	0	16,873,400	16,873,400
VA	Virginia Railway Express- Commuter Rail Project	1,993,530	1,985,100	6,257,699
VT	Burlington-Essex Commuter Rail	4,843,828	1,985,100	6,828,928
WA	Seattle- Puget Sound RTA- Sounder Commuter Rail Project	0	40,694,660	40,694,660
WA	King County- Water Taxi	0	248,140	248,140
WA	Spokane- South Valley Corridor Light Rail	0	992,550	992,550
WV	Morgantown- Fixed Guideway Modernization Project	0	3,970,210	3,970,210
	TOTAL UNOBLIGATED ALLOCATION	$111,014,130	$420,593,263	$542,823,668

a/ Total carryover includes FY 97 funds for the following projects which were extended for obligation by the FY 2000 Appropriations Conference Report: New Orleans- Canal Street Corridor project ($7,944,183); Hartford, CT- Griffin Line Project ($993,023); and the Virginia Railway Express Quantico Bridge Project ($2,279,069).

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
AK	Anchorage Ship Creek intermodal facility	4,466,325
AK	Fairbanks intermodal rail/bus transfer facility	1,985,033
AK	Juneau downtown mass transit facility	1,488,775
AK	North Star Borough-Fairbanks intermodal facility	2,977,550
AK	Wasilla intermodal facility	992,517
AK	Whittier intermodal facility and pedestrian overpass	1,146,357
AL	Alabama statewide rural bus needs	2,481,292
AL	Baldwin Rural Area Transportation System buses	992,517
AL	Birmingham intermodal facility	1,985,033
AL	Birmingham-Jefferson County buses	1,240,646
AL	Cullman, buses	496,258
AL	Dothan Wiregrass Transit Authority vehicles and transit facility	992,517
AL	Escambia County buses and bus facility	99,252
AL	Gees Bend Ferry facilities, Wilcox County	99,252
AL	Huntsville Airport international intermodal center	3,473,808
AL	Huntsville, intermodal facility	1,240,646
AL	Huntsville Space and Rocket Center intermodal center	3,473,808
AL	Jasper buses	49,626
AL	Jefferson State Community College/University of Montevallo pedestrian walkway	198,503
AL	Marshall County, buses	496,258
AL	Mobile waterfront terminal complex	4,962,583
AL	Montgomery Union Station intermodal center and buses	3,473,808
AL	Valley bus and bus facilities	109,177
AR	Arkansas Highway and Transit Department buses	1,985,033
AR	Arkansas state safety and preventative maintenance facility	794,013
AR	Fayetteville, University of Arkansas Transit System buses	496,258
AR	Hot Springs, transportation depot and plaza	1,548,326
AR	Little Rock, Central Arkansas Transit buses	297,755
AZ	Phoenix bus and bus facilities	3,721,937
AZ	Phoenix South Central Avenue transit facility	496,258
AZ	San Luis, bus	69,476
AZ	Tucson buses	2,535,880
AZ	Yuma paratransit buses	124,065
CA	California Mountain Area Regional Transit Authority fueling stations	79,401
CA	Contra Costa County Connection buses	248,129
CA	Culver City, CityBus buses	1,240,646
CA	Davis, Unitrans transit maintenance facility	620,323
CA	Healdsburg, intermodal facility	992,517
CA	I-5 Corridor intermodal transit centers	1,240,646
CA	Livermore automatic vehicle locator program	992,517
CA	Lodi, multimodal facility	843,639
CA	Los Angeles County Metropolitan transportation authority buses	2,977,550
CA	Los Angeles County Foothill Transit buses and HEV vehicles	1,736,904
CA	Los Angeles Municipal Transit Operators Coalition	2,233,162
CA	Los Angeles, Union Station Gateway Intermodal Transit Center	1,240,646
CA	Maywood, Commerce, Bell, Cudahy, California buses and bus facilities	794,013
CA	Modesto, bus maintenance facility	620,323
CA	Monterey, Monterey-Salinas buses	620,323
CA	Orange County, bus and bus facilities	1,985,033
CA	Perris bus maintenance facility	1,240,646

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
CA	Redlands, trolley project	794,013
CA	Sacramento CNG buses	1,240,646
CA	San Bernardino Valley, CNG buses	992,517
CA	San Bernardino train station	2,977,550
CA	San Diego North County buses and CNG fueling station	2,977,550
CA	San Francisco, Islais Creek maintenance facility	1,240,646
CA	Santa Barbara buses and bus facility	1,736,904
CA	Santa Clarita bus maintenance facility	1,240,646
CA	Santa Cruz buses and bus facilities	1,741,867
CA	Santa Maria Valley/Santa Barbara County, buses	238,204
CA	Santa Rosa/Cotati, Intermodal Transportation Facilities	744,387
CA	Westminster senior citizen vans	148,877
CA	Windsor, Intermodal Facility	744,387
CA	Woodland Hills, Warner Center Transportation Hub	620,323
CO	Boulder/Denver, RTD buses	620,323
CO	Colorado Association of Transit Agencies	7,940,133
CO	Denver, Stapleton Intermodal Center	1,240,646
CT	New Haven bus facility	2,233,162
CT	Norwich buses	2,233,162
CT	Waterbury, bus facility	2,233,162
DC	Fuel cell bus and bus facilities program, Georgetown University	4,813,706
DC	Washington, D.C. Intermodal Transportation Center, District	2,481,292
DE	Delaware buses and bus facility	496,258
DE	New Castle County buses and bus facilities	1,985,033
FL	Daytona Beach, Intermodal Center	2,481,292
FL	Gainesville hybrid-electric buses and facilities	496,258
FL	Jacksonville buses and bus facilities	992,517
FL	Lakeland, Citrus Connection transit vehicles and related equipment	1,240,646
FL	Miami Beach, electric shuttle service	744,387
FL	Miami-Dade Transit buses	2,729,421
FL	Orlando, Lynx buses and bus facilities	1,985,033
FL	Orlando, Downtown Intermodal Facility	2,481,292
FL	Palm Beach, buses	992,517
FL	Tampa HARTline buses	496,258
GA	Atlanta, MARTA buses	13,398,973
GA	Chatham Area Transit Bus Transfer Center and buses	3,473,808
GA	Georgia Regional Transportation Authority buses	1,985,033
GA	Georgia statewide buses and bus-related facilities	2,729,421
HI	Hawaii buses and bus facilities	2,233,162
HI	Honolulu, bus facility and buses	1,985,033
IA	Ames transit facility expansion	694,762
IA	Cedar Rapids intermodal facility	3,473,808
IA	Clinton transit facility expansion	496,258
IA	Fort Dodge, Intermodal Facility (Phase II)	878,377
IA	Iowa City intermodal facility	1,488,775
IA	Iowa statewide buses and bus facilities	2,481,292
IA	Iowa/Illinois Transit Consortium bus safety and security	992,517
IL	East Moline transit center	645,136

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
IL	Illinois statewide buses and bus-related equipment	8,138,636
IN	Gary, Transit Consortium buses	1,240,646
IN	Indianapolis buses	4,962,583
IN	South Bend Urban Intermodal Transportation Facility	1,240,646
IN	West Lafayette bus transfer station/terminal (Wabash Landing)	1,736,904
KS	Girard, buses and vans	694,762
KS	Girard Southeast Kansas Community Action Agency maintenance facility	476,408
KS	Johnson County, farebox equipment	248,129
KS	Kansas City buses	744,387
KS	Kansas Public Transit Association buses and bus facilities	1,488,775
KS	Topeka Transit downtown transfer facility	595,510
KS	Wichita, buses and bus facilities	2,481,292
KY	Kentucky (southern and eastern) transit vehicles	992,517
KY	Lexington (LexTran), maintenance facility	992,517
KY	River City, buses	1,488,775
KY	Transit Authority of Northern Kentucky (TANK) buses	2,481,292
LA	Louisiana statewide buses and bus-related facilities	4,962,583
MA	Attleboro intermodal transit facility	496,258
MA	Brockton intermodal transportation center	1,091,768
MA	Greenfield Montague, buses	496,258
MA	Merrimack Valley Regional Transit Authority bus facilities	464,002
MA	Montachusett, bus and park-and-ride facilities	1,240,646
MA	Pioneer Valley, alternative fuel and paratransit vehicles	645,136
MA	Pittsfield intermodal center	3,573,060
MA	Springfield, Union Station	1,240,646
MA	Swampscott, buses	64,514
MA	Westfield, intermodal transportation facility	496,258
MA	Worcester, Union Station Intermodal Transportation Center	2,481,292
MD	Maryland statewide bus facilities and buses	11,413,940
MI	Detroit, transfer terminal facilities	3,933,343
MI	Detroit, EZ Ride program	284,852
MI	Menominee-Delta-Schoolcraft buses	248,129
MI	Michigan statewide buses	22,331,623
MI	Port Huron, CNG fueling station	496,258
MN	Duluth, Transit Authority community circulation vehicles	992,517
MN	Duluth, Transit Authority intelligent transportation systems	496,258
MN	Duluth, Transit Authority Transit Hub	496,258
MN	Greater Minnesota transit authorities	496,258
MN	Northstar Corridor, Intermodal Facilities and buses	9,925,165
MN	Twin Cities metroplitan buses and bus facilities	9,925,165
MO	Columbia buses and vans	496,258
MO	Franklin County buses and bus facilities	198,503
MO	Jackson County buses and bus facilities	496,258
MO	Kansas City Area Transit Authority buses and Troost transit center	2,481,292
MO	Missouri statewide bus and bus facilities	3,473,808
MO	OATS Transit	1,488,775
MO	Southeast Missouri transportation service rural, elderly, disabled service	1,240,646
MO	Southwest Missouri State University park and ride facility	992,517

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MO	St. Joseph buses and vans	496,258
MO	St. Louis, Bi-state Intermodal Center	1,240,646
MO	St. Louis , buses	1,985,033
MS	Harrison County multimodal center	2,977,550
MS	Jackson, maintenance and administration facility project	992,517
MS	North Delta planning and development district, buses and bus facilities	1,191,020
MT	Missoula urban transportation district buses	595,510
NC	Greensboro multimodal center	3,314,013
NC	Greensboro, Transit Authority buses	1,488,775
NC	North Carolina statewide buses and bus facilities	2,473,351
ND	North Dakota statewide buses and bus-related facilities	992,517
NH	New Hampshire statewide transit systems	2,977,550
NJ	New Jersey Transit alternative fuel buses	4,962,583
NJ	New Jersey Transit jitney shuttle buses	1,736,904
NJ	Newark intermodal and arena access improvements	1,637,652
NJ	Newark, Morris & Essex Station access and buses	1,240,646
NJ	South Amboy, Regional Intermodal Transportation Initiative	1,240,646
NM	Albuquerque West Side transit facility	1,985,033
NM	Albuquerque, buses	1,240,646
NM	Las Cruces buses and bus facilities	744,387
NM	Northern New Mexico Transit Express/Park and Ride buses	2,729,421
NM	Santa Fe, buses and bus facilities	1,985,033
NV	Clark County Regional Transportation Commission buses and bus facilities	2,481,292
NV	Lake Tahoe CNG buses	694,762
NV	Washoe County transit improvements	2,233,162
NY	Babylon Intermodal Center	1,240,646
NY	Buffalo, Auditorium Intermodal Center	1,985,033
NY	Dutchess County, Loop System buses	517,101
NY	Ithaca intermodal transportation center	1,116,581
NY	Ithaca, TCAT bus technology improvements	1,240,646
NY	Long Island, CNG transit vehicles and facilities and bus replacement	1,240,646
NY	Mineola/Hicksville, LIRR intermodal centers	1,240,646
NY	New York City Midtown West 38th Street ferry terminal	992,517
NY	New York, West 72nd St. Intermodal Station	1,736,904
NY	Putnam County, vans	466,483
NY	Rensselaer intermodal bus facility	5,955,100
NY	Rochester buses and bus facility	992,517
NY	Syracuse, buses	2,977,550
NY	Utica Union Station	2,084,285
NY	Westchester County DOT, articulated buses	1,240,646
NY	Westchester County, Bee-Line transit system fareboxes	971,674
NY	Westchester County, Bee-Line transit system shuttle buses	992,517
OH	Cleveland, Triskett Garage bus maintenance facility	620,323
OH	Dayton, Multimodal Transportation Center	4,094,131
OH	Ohio statewide buses and bus facilities	8,942,823
OK	Oklahoma statewide bus facilities and buses	4,962,583

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
OR	Corvallis buses and automated passenger information system	297,755
OR	Lane County, Bus Rapid Transit, buses and facilities	4,367,073
OR	Lincoln County Transit District buses	248,129
OR	Portland, Tri-Met bus maintenance facility	645,136
OR	Portland, Tri-Met buses	1,736,904
OR	Salem Area Mass Transit District natural gas buses	496,258
OR	Sandy buses	99,252
OR	South Metro Area Rapid Transit (SMART) maintenance facility	198,503
OR	Sunset Empire Transit District intermodal transit facility	297,755
PA	Allegheny County buses	1,488,775
PA	Altoona bus testing	2,977,550
PA	Altoona, Metro Transit Authority buses and transit system improvements	835,699
PA	Armstrong County-Mid-County, bus facilities and buses	148,877
PA	Bethlehem, intermodal facility	992,517
PA	Cambria County, bus facilities and buses	570,697
PA	Centre Area Transportation Authority buses	1,240,646
PA	Chester County, Paoli Transportation Center	992,517
PA	Erie, Metropolitan Transit Authority buses	992,517
PA	Fayette County, intermodal facilities and buses	1,260,496
PA	Lackawanna County Transit System buses	595,510
PA	Lackawanna County, intermodal bus facility	992,517
PA	Mid-Mon Valley buses and bus facilities	248,129
PA	Norristown, parking garage (SEPTA)	992,517
PA	Philadelphia, Frankford Transportation Center	4,962,583
PA	Philadelphia, Intermodal 30th Street Station	1,240,646
PA	Reading, BARTA Intermodal Transportation Facility	1,736,904
PA	Robinson, Towne Center Intermodal Facility	1,488,775
PA	Somerset County bus facilities and buses	173,690
PA	Towamencin Township, Intermodal Bus Transportation Center	1,488,775
PA	Washington County intermodal facilities	625,285
PA	Westmoreland County, Intermodal Facility	198,503
PA	Wilkes-Barre, Intermodal Facility	1,240,646
PA	Williamsport bus facility	1,191,020
PR	San Juan Intermodal access	595,510
RI	Providence, buses and bus maintenance facility	3,269,350
SC	Central Midlands COG/Columbia transit system	2,679,795
SC	Charleston Area regional transportation authority	1,885,782
SC	Clemson Area Transit buses and bus equipment	545,884
SC	Greenville transit authority	496,258
SC	Pee Dee buses and facilities	893,265
SC	Santee-Wateree regional transportation authority	397,007
SC	South Carolina Statewide Virtual Transit Enterprise	1,210,870
SC	Transit Management of Spartanburg, Incorporated (SPARTA)	595,510
SD	South Dakota statewide bus facilities and buses	1,488,775
TN	Southern Coalition for Advanced Transportation (SCAT) (TN, GA, FL, AL) electric buses	3,473,808
TX	Austin buses	1,736,904
TX	Beaumont Municipal Transit System buses and bus facilities	992,517
TX	Brazos Transit Authority buses and bus facilities	992,517
TX	El Paso Sun Metro buses	992,517

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 2000 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
TX	Fort Worth bus replacement (including CNG vehicles) and paratransit vehicles	2,481,292
TX	Fort Worth intermodal transportation center	3,076,802
TX	Galveston buses and bus facilities	992,517
TX	Texas statewide small urban and rural buses	4,962,583
UT	Ogden Intermodal Center	794,013
UT	Salt Lake City Olympics bus facilities	2,481,292
UT	Salt Lake City Olympics regional park and ride lots	2,481,292
UT	Salt Lake City Olympics transit bus loan project	496,258
UT	Utah Transit Authority, intermodal facilities	1,488,775
UT	Utah Transit Authority/Park City Transit, buses	6,451,358
VA	Alexandria, bus maintenance facility	992,517
VA	Alexandria, Transit Center	992,517
VA	Dulles Corridor Park-and-Ride Express Bus Program	1,985,033
VA	Fair Lakes League	198,503
VA	Loudoun Transit multi-modal facility	992,517
VA	Potomac and Rappahannock Transportation Commission fleet replacement	1,786,530
VA	Prince William County Agency on the Aging bus replacement	84,364
VA	Richmond, GRTC bus maintenance facility	1,240,646
VA	Richmond Main Street Station	2,332,414
VT	Burlington multimodal center	2,679,795
VT	Chittenden County Transportation Authority buses	794,013
VT	Essex Junction multimodal station rehabilitation	496,258
VT	Killington-Sherburne satellite bus facility	248,129
WA	Bremerton multimodal center--Sinclair's Landing	744,387
WA	Everett, Multimodal Transportation Center	1,935,407
WA	Grant County, Grant Transit Authority	496,258
WA	Grays Harbor County, buses and equipment	1,240,646
WA	King Country Metro King Street Station	1,985,033
WA	King County Metro Atlantic and Central buses	1,488,775
WA	King County park and ride expansion	1,339,897
WA	Mount Vernon, buses and bus related facilities	1,736,904
WA	Pierce County Transit buses and bus facilities	496,258
WA	Seattle, intermodal transportation terminal	1,240,646
WA	Sequim, Clallam Transit multimodal center	992,517
WA	Snohomish County, Community Transit buses, equipment and facilities	1,240,646
WA	Spokane, HEV buses	1,488,775
WA	Tacoma Dome Station	248,129
WA	Vancouver Clark County (C-TRAN) bus facilities	992,517
WA	Washington State DOT combined small transit system buses and bus facilities	1,985,033
WI	Milwaukee County, buses	5,955,100
WI	Wisconsin statewide bus facilities and buses	14,143,361
WV	Huntington intermodal facility	11,910,198
WV	Parkersburg, intermodal transportation facility	4,466,325
WV	West Virginia Statewide Intermodal Facility and buses	4,962,583
	TOTAL ALLOCATION	$537,348,250

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
FY 1999 Unobligated Allocations:		
AK	Anchorage	$4,267,750
AK	Fairbanks	1,985,000
AK	North Slope Borough	496,250
AK	Whittier	694,750
AL	Birmingham	1,985,000
AL	Birmingham-Jefferson County	1,240,625
AL	Dothan Wiregrass Transit Authority	496,250
AL	Huntsville	992,500
AL	Jasper	49,625
AL	Lee-Russell Council	784,075
AL	Mobile	4,762,052
AL	Pritchard	496,250
AL	Tuscaloosa	1,935,375
AL	University of North Alabama	794,000
AR	Statewide	1,488,750
AR	Arkansas Highway and Transit Department	198,500
AR	Fayetteville	496,250
AR	Hot Springs	555,800
AZ	Phoenix	3,970,000
AZ	Tucson	992,500
CA	Central Contra Costa County	198,500
CA	Culver City	1,240,625
CA	Davis/Sacramento Area	942,875
CA	Folsom	992,500
CA	Healdsburg	992,500
CA	Humboldt	992,500
CA	Huntington Beach	198,500
CA	Lake Tahoe	496,250
CA	Livermore	992,500
CA	Los Angeles	2,481,250
CA	Modesto	1,344,838
CA	Monterey, Monterey-Salinas	620,313
CA	Morango Basin	645,125
CA	North San Diego County Transit District	1,736,875
CA	Perris	1,240,625
CA	Riverside Transit Agency	992,500
CA	Sacramento	1,240,625
CA	San Bernardino	992,500
CA	San Diego	992,500
CA	San Fernando Valley	297,750
CA	San Francisco	1,240,625
CA	San Joaquin (Stockton)	992,500
CA	Santa Clara Valley Transportation Authority	992,500
CA	Santa Clarita	2,233,125
CA	Santa Rosa, Cotati, and Rohnert Park	744,375
CA	Santa Rosa/Cotati	744,375
CA	Solano Links	992,500
CA	Ukiah	496,250
CA	Windsor	744,375
CA	Woodland Hills	322,563
CA	Yolo County	1,191,000
CO	Colorado	2,225,277
CO	Denver	1,240,625
CT	Hartford	794,000

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
CT	New Haven	2,233,125
CT	Norwich	2,233,125
CT	Waterbury	2,233,125
DC	Washington, D.C.	136,964
DC	Washington, D.C.	2,481,250
DE	DELAWARE Statewide	992,500
FL	Clearwater	2,481,250
FL	Gainesville	1,488,750
FL	Jacksonville	992,500
FL	Lakeland	1,240,625
FL	Miami Beach	744,375
FL	Miami Beach	992,500
FL	Tampa	1,240,625
GA	Atlanta	11,909,994
GA	Savannah/Chatham Area Transit	3,473,750
HI	Honolulu	977,625
IA	Fort Dodge	878,363
IA	Iowa/Illinois Transit Consortium	992,500
IL	Statewide	723,667
IL	Rock Island	2,481,250
IN	City of East Chicago	198,500
IN	Gary	930,469
IN	Indianapolis	4,962,500
IN	South Bend	1,240,625
KY	Northern Kentucky Area Development District	99,250
KY	Owensboro	198,500
KY	Southern and Eastern Kentucky	1,985,000
LA	Louisiana Statewide	
LA	Baton Rouge	198,500
LA	Jefferson Parish	347,375
LA	Monroe	446,625
LA	New Orleans	8,014,438
LA	Shreveport	397,000
LA	State Infrastructure bank, transit account	347,375
LA	St. Tammany Parish	99,250
MA	Essex and Middlesex	1,408,000
MA	New Bedford/Fall River	248,125
MA	Pittsfield	4,565,500
MA	Springfield	1,240,625
MD	Maryland statewide	9,925,000
MN	Duluth Transit Authority	992,500
MN	Duluth Transit Authority	352,250
MN	Duluth Transit Authority	496,250
MN	Northstar Corridor	5,955,000
MN	Twin Cities Area Metro Tranist	9,428,750
MO	St. Louis	1,240,625
MO	Statewide	1,916,950
MS	Harrison County	1,885,750
MS	High Street, Jackson	1,985,000
MS	Jackson	660,550
MT	Butte	1,488,750
NC	Greensboro	3,314,950
NC	Greensboro	1,488,750
NC	Greensboro	318,593
NC	Statewide	4,962,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
ND	Statewide	1,228,226
NH	Berlin	119,100
NH	Carroll County	198,500
NH	Concord Area Transit	744,375
NH	Greater Laconia Transit Agency	446,625
NH	Keene HCS community care	99,250
NH	Lebanon	148,875
NH	Statewide	992,500
NJ	New Jersey Transit	1,736,875
NJ	Newark, Morris & Essex Station	1,240,625
NJ	South Amboy	1,240,625
NJ	Statewide	7,443,750
NM	Albuquerque	3,721,875
NM	Northern New Mexico	1,985,000
NV	Reno	1,240,625
NV	Washoe County	2,233,125
NY	Babylon	1,240,625
NY	Brookhaven Town	223,313
NY	Brooklyn-Staten Island	794,000
NY	Broome County	893,250
NY	Buffalo	2,977,500
NY	Dutchess County	517,093
NY	East Hampton	99,250
NY	Ithaca	1,240,625
NY	Long Beach	744,375
NY	Mineola/Hicksville	1,240,625
NY	New York City	1,488,750
NY	New York	1,736,875
NY	Niagara Frontier Transportation Authority	496,250
NY	Riverhead	124,063
NY	Rome	397,000
NY	Shelter Island	99,250
NY	Smithtown	124,063
NY	Southampton	124,063
NY	Southold	99,250
NY	Suffolk County	99,250
NY	Ulster County	992,500
NY	Utica and Rome	496,250
NY	Utica	2,084,250
NY	Westchester County	971,658
NY	Westchester County	992,500
NY	Westchester County	1,240,625
OH	Cleveland	620,313
OH	Toledo Mud Hens transit center study	198,500
OK	Oklahoma statewide	4,962,500
OR	Lane County	4,367,000
OR	Portland	1,736,875
OR	Rogue Valley Transit District	992,500
OR	Salem Area Mass Transit System	992,500
OR	Wilsonville	397,000
PA	Altoona	420,820
PA	Altoona	794,000
PA	Armstrong County-Mid-County	48,875
PA	Chambersburg Transit Authority	297,750
PA	Chambersburg Transit Authority	992,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
PA	Fayette County	1,260,475
PA	Mercer County	744,375
PA	Monroe County Transportation Authority	992,500
PA	Philadelphia	1,240,625
PA	Philadelphia	744,375
PA	Reading	1,736,875
PA	Red Rose	992,500
PA	Robinson Towne Center	1,488,750
PA	Schuykill County	218,350
PA	Somerset County	173,688
PA	Towamencin Township	1,488,750
PA	Washington County	625,275
PA	Westmoreland County	198,500
PA	Wilkes-Barre	1,240,625
PR	San Juan	942,875
SC	Columbia	1,091,750
SC	Pee Dee	1,240,625
SD	South Dakota	794,000
SD	South Dakota	2,606,842
TN	Statewide	992,500
TN	Chattanooga	992,500
TX	Austin	2,233,125
TX	Brazos Transit Authority	1,488,750
TX	Corpus Christi Transit Authority	992,500
TX	Galveston	992,500
UT	Ogden	794,000
UT	Utah	1,488,750
VA	Alexandria	992,500
VA	Alexandria	1,091,750
VA	Harrisonburg	198,500
VA	Lynchburg	198,500
VA	Richmond	1,240,625
VA	Roanoke	198,500
VA	Statewide	4,014,663
VA	Falls Church	397,000
VA	Franconia-Springfield	645,125
VA	Manassas Transit Depot	277,900
VA	Richmond	1,985,000
VA	Stringfellow Road/Interstate 66	992,500
VA	Warrenton Circuit Rider	24,813
VT	Brattleboro	2,481,250
VT	Burlington	992,500
WA	Anacortes	496,250
WA	Bremerton	992,500
WA	Central Puget Sound Seattle	7,940,000
WA	Chelan-Douglas	893,250
WA	Everett	1,935,375
WA	Grant County	595,500
WA	Mount Vernon	1,736,875
WA	Port Angeles center	992,500
WA	Seattle	1,240,625
WA	Snohomish County	992,500
WA	Tacoma Dome	1,736,875
WA	Thurston County	992,500
WA	Tri-Cities Area	992,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
WA	Vancouver Clark County (C-Tran)	992,500
WI	Wisconsin statewide	1,490,832
WI	Appleton, Green Bay, Shawano, Menominee Tribe and Oneida Tribe	2,059,438
WI	LaCrosse, Onalaska, Prairie Du Chien, Rice Lake, Viroqua and Ho Chuck Nation	992,500
WI	Ashland, Chippewa Falls, Eau Claire, Ladysmith, Marshfield, Rhinelander, Rusk County	297,750
WI	Milwaukee	992,500
WI	Waukesha	496,250
WV	Huntington	7,940,000
WV	West Virginia statewide	6,451,250
	Total FY 1999 Unobligated Allocation	*$329,490,836*
FY 1998 Unobligated Allocations:		
AL	Birmingham/Jefferson County	$2,931,588
AL	Birmingham	5,863,178
AL	Huntsville	4,885,981
AL	Mobile	977,196
AL	Mobile	977,196
AL	Mobile	200,448
AL	Mobile	5,374,579
AL	Tuscaloosa	977,196
AZ	Tuscon	977,196
CA	Folsom	1,465,794
CA	I-5 Consortium Cities Joint Powers Authority	3,885,981
CA	Inglewood	488,598
CA	Lake Tahoe	977,196
CA	Modesto	1,710,093
CA	Rialto	1,074,916
CA	Riverside County	977,196
CA	Sacramento	977,196
CA	San Joaquin (Stockton)	1,954,393
CA	Santa Clara	2,442,991
CA	Sonoma County	977,196
CO	Statewide	60,043
CT	Bridgeport	1,954,393
CT	Bridgeport	3,664,486
CT	New Haven	1,172,636
DE	Statewide	1,465,794
FL	Florida Citrus Connection	1,465,794
FL	Lakeland	977,196
FL	Tampa (Hillsborough County)	1,465,794
GA	GA Chatham	3,908,785
GA	MARTA	2,060,830
LA	Monroe	781,757
LA	New Orleans	937,912
LA	St. Tammany Parish	293,159
MN	Metropolitan Council transit Operations	8,794,766
MN	St. Paul	1,465,794

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	AREA	UNOBLIGATED ALLOCATION
MS	Jackson	1,954,393
NC	Statewide	3,340,000
NJ	Statewide	5,863,178
NM	Las Cruces, Santa Fe and Albuquerque	977,196
NM	Statewide	1,707,666
NY	New Rochelle	1,465,794
NY	New York City	7,328,971
NY	NFTA	977,196
NY	Poughkeepsie	1,954,393
NY	Staten Island/Brooklyn	977,196
NY	Suffolk County	2,100,972
NY	Yonkers	1,954,393
OR	Salem and Corvallis	678,164
PA	Fayette and Somerset	125,998
PA	Lawrence County	977,196
PA	New Castle area transit authority	732,897
PA	Schuykill County	195,439
PA	Towanda Borough	1,954,393
PA	Wilkes-Barre	1,465,794
PA	Statewide	244,299
SC	Columbia	1,954,393
SC	Pee Dee Regional Planning Authority	1,143,908
TX	Brazos Transit Authority	409,748
TX	Corpus Christi	1,905,533
TX	El Paso	977,196
TX	Galveston	1,954,393
UT	Utah Transit Authority Olympic	788,553
UT	Utah Transit Authority	824,332
UT	Utah Transit Authority Olympic	22,527
UT	Statewide	692,198
VA	Clarendon canopy project	244,299
VA	Dulles corridor	2,442,991
VA	Richmond	2,442,991
VT	Burlington	1,465,794
VT	Statewide	76,420
WA	Bremerton	412,166
WA	Chelan- Douglas	977,196
WA	Everett	2,442,991
WA	King County	977,196
WA	King County	1,465,794
WA	King County	4,885,981
WI	Milwaukee	977,196
WV	Huntington	6,440,374
	Total FY 1998 Unobligated Allocation	*$143,464,950*
	TOTAL UNOBLIGATED ALLOCATION	**$472,955,785** a/

a/ In addition, the FY 2000 Appropriations Conference Report extended the availability for San Joaquin ($2,729,375) and New Rochelle, NY Intermodal facility ($1,235,000).

TABLE 10

FEDERAL TRANSIT ADMINISTRATION

FY 2000 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
AK	Matanuska-Susitna borough, Alaska	300,000
AL	Alliance for children and families, Alabama	$1,000,000
AL	Troy State University, Alabama-Rosa Parks Center	1,000,000
CA	Los Angeles County Metropolitan Transit Authority, California	1,000,000
CA	San Bernardino, California	600,000
CA	San Diego metropolitan transit development board, California	650,000
DC	District of Columbia	1,250,000
FL	Hillsborough area regional transit authority, Florida	500,000
FL	Miami-Dade Transit Authority, Florida	1,100,000
FL	Palm Beach County, Florida	500,000
GA	Atlanta regional commission, Georgia	1,000,000
GA	Central Kenai peninsula public transportation task force	500,000
IA	Iowa public transit association	2,700,000
IL	Chicago-DuPage area, Illinois	100,000
IL	DuPage County, Illinois	120,000
IL	National Welfare to Work Center at the University of Illinois, Illinois	1,000,000
IL	Transportation opportunities training, Chicago, Illinois	1,000,000
IN	Gary, Indiana	1,000,000
IN	Indianapolis, Indiana	1,000,000
IN	Lafayette, Indiana	200,000
KS	Kansas City, Kansas JOBLINKS	850,000
KS	Wichita, Kansas	725,000
KY	Kentucky human services transportation delivery system (including Hardin County, Owensboro, Barren River, central Kentucky community action agency, Audubon area community services organization, Kentucky River Foothills express, Blue Grass Ultra-transit services, Lexington-Fayette county area), Kentucky	2,500,000
KY	Mariba, Kentucky	125,000
LA	State of Louisiana, small urbanized and rural areas	1,000,000
MA	Northern Tier community transportation, Massachusetts	550,000
MD	State of Maryland, Baltimore and Washington metropolitan areas, small urban and rural areas	3,000,000
MN	Minnespolis/St. Paul, Minnesota	1,500,000
MO	Mid-America regional council, Missouri	1,000,000
MO	Southeast Missouri State University	600,000
NJ	State of New Jersey	2,000,000
NM	Albuquerque access to jobs	1,000,000
NV	State of Nevada	1,500,000
NY	Westchester County, New York job access support centers	1,000,000
OH	Ohio-Kentucky-Indiana regional council of governments	515,000
PA	Philadelphia, Pennsylvania reverse commute grants	1,000,000
PA	Pittsburgh, Pennsylvania reverse commute grants	1,000,000
SC	State of South Carolina	2,000,000
TN	State of Tennessee, small urban areas	1,300,000
TX	Dallas, Texas	1,500,000
VA	Loudon County, Virginia	300,000
VA	Lynchburg, Virginia	100,000
VA	Springfield, Virginia	350,000
VT	State of Vermont	1,385,000
WI	State of Wisconsin	4,000,000
WV	State of West Virginia	1,000,000
---	JOBLINKS	1,250,000 a/
	TOTAL ALLOCATION	$49,570,000

a/ To be used for demonstration projects, technical assistance for demonstration projects and technical assistance to small and urban and rural community providers.

TABLE 11

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED FUNDING ONLY)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,548,190,791	$2,772,890,281	$2,997,316,081	$3,220,601,506	$3,445,939,606	$17,283,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	250,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	451,400,000	490,200,000	529,200,000	568,200,000	607,200,000	3,046,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
New Starts (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
Job Access and Reverse Commute Program	0	50,000,000	75,000,000	100,000,000	125,000,000	150,000,000	500,000,000
Metropolitan Planning (Section 5303)	39,500,000	43,841,600	49,632,000	52,113,600	55,422,400	60,385,600	300,895,200
State Planning & Research (Section 5313(b))	8,250,000	9,158,400	10,368,000	10,886,400	11,577,600	12,614,400	62,854,800
National Planning & Research (Section 5314)	32,750,000	27,500,000	29,500,000	29,500,000	31,500,000	31,500,000	182,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	54,000,000	60,000,000	64,000,000	67,000,000	73,000,000	363,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	$4,643,738,000	$5,315,000,000	$5,797,000,000	$6,271,000,000	$6,747,000,000	$7,226,000,000	$35,999,738,000

-- Fiscal Years 1999-2003 funding for the Clean Fuels Program established under TEA-21 equals $100,000,000. $50,000,000 is shown under the Cleans Fuels Program (Section 5308) and $50,000,000 is included under the Bus and Bus Related (Section 5309).

TABLE 11A

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED AND NONGUARANTEED FUNDING)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,698,190,791	$2,922,890,281	$3,147,316,081	$3,370,601,506	$3,595,939,606	$18,033,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	551,400,000	590,200,000	629,200,000	668,200,000	707,200,000	3,546,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	1,002,800,000	1,080,400,000	1,158,400,000	1,236,400,000	1,314,400,000	6,592,400,000
New Starts (Section 5309)	800,000,000	1,302,800,000	1,390,400,000	1,478,400,000	1,566,400,000	1,644,400,000	8,182,400,000
Job Access and Reverse Commute Program	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Metropolitan Planning (Section 5303)	39,500,000	70,312,000	76,929,600	80,238,400	84,374,400	90,164,800	441,519,200
State Planning & Research (Section 5313(b))	8,250,000	14,688,000	16,070,400	16,761,600	17,625,600	18,835,200	92,230,800
National Planning & Research (Section 5314)	32,750,000	58,500,000	60,500,000	62,500,000	64,500,000	65,500,000	344,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	67,000,000	74,000,000	80,000,000	84,000,000	91,000,000	441,738,000
TOTAL FUNDING ALL PROGRAMS:	$4,643,738,000	$6,341,000,000	$6,810,000,000	$7,274,000,000	$7,737,000,000	$8,194,000,000	$40,999,738,000

TABLE 12

FEDERAL TRANSIT ADMINISTRATION

FY 2000 APPORTIONMENT FORMULA FOR FORMULA PROGRAMS

Percent of Formula Funds Available

Section 5310: 2.4% States - allocated to states based on state's population of elderly and persons with disabilities

Section 5311: 6.37% Nonurbanized Areas - allocated to states based on state's nonurbanized area population

Section 5307: 91.23% Urbanized Areas (UZA)

UZA Population and Weighting Factors

50,000-199,000 in population : 9.32% of available Section 5307 funds
(Apportioned to Governors)
50% apportioned based on population
50% apportioned based on population x population density

200,000 and greater in population: 90.68% of available Section 5307 funds
(Apportioned to UZAs)
33.29% (Fixed Guideway Tier*)
95.61% (Non-incentive Portion of Tier)
--- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
60% - fixed guideway revenue vehicle miles
40% - fixed guideway route miles

4.39% ("Incentive" Portion of Tier)
-- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
-- fixed guideway passenger miles x fixed guideway passenger miles/operating cost

66.71% ("Bus" Tier)
90.8% (Non-incentive Portion of Tier)
73.39% for UZAs with population 1,000,000 or greater
50% - bus revenue vehicle miles
25% - population
25% - population x population density
26.61% for UZAs pop. < 1,000,000
50% - bus revenue vehicle miles
25% - population
25% - population x density
9.2% ("Incentive" Portion of Tier)
-- bus passenger miles x bus passenger miles/operating cost

*Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

TABLE 13

FEDERAL TRANSIT ADMINISTRATION

FY 1998 - 2003 SECTION 5309 FIXED GUIDEWAY MODERNIZATION PROGRAM APPORTIONMENT FORMULA

Tier 1 First $497,700,000 to the following areas:

Baltimore	$	8,372,000
Boston	$	38,948,000
Chicago/N.W. Indiana	$	78,169,000
Cleveland	$	9,509,500
New Orleans	$	1,730,588
New York	$	176,034,461
N. E. New Jersey	$	50,604,653
Philadelphia/So. New Jersey	$	58,924,764
Pittsburgh	$	13,662,463
San Francisco	$	33,989,571
SW Connecticut	$	27,755,000

Tier 2 Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1 and Tier (2(B): 50 percent to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than than 7 years old in the year of the apportionment will be deleted from the database.

Tier 6 Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 7 Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

TABLE 14

FEDERAL TRANSIT ADMINISTRATION

FISCAL YEAR 2000 FORMULA GRANT APPORTIONMENTS - UNIT VALUES OF DATA

		APPORTIONMENT UNIT VALUE
Section 5307 Urbanized Area Formula Program - Bus Tier		
Urbanized Areas Over 1,000,000:		
Population		$2.92438989
Population x Density		$0.00075006
Bus Revenue Vehicle Mile		$0.38917578
Urbanized Areas Under 1,000,000:		
Population		$2.64283878
Population x Density		$0.00116390
Bus Revenue Vehicle Mile		$0.46633761
Bus Incentive (PM denotes Passenger Mile):		
Bus PM x Bus PM = / Operating Cost		$0.00471658
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier		
Fixed Guideway Revenue Vehicle Mile		$0.52828404
Fixed Guideway Route Mile		$29,791
Commuter Rail Floor	$5,982,289	
Fixed Guideway Incentive:		
Fixed Guideway PM x Fixed Guideway PM = / Operating Cost		$0.00044127
Commuter Rail Incentive Floor	$274,681	
Section 5307 Urbanized Area Formula Program - Areas Under 200,000		
Population		$4.77159150
Population x Density		$0.00238435
Section 5311 Nonurbanized Area Formula Program		
Areas Under 50,000		
Population		$2.09186651

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:			*All Areas*			
Revenue Vehicle Mile	$0.03043443	-------	$1.13683131	$0.03879580	$0.02557965	$0.03966849
Route Mile	$2,122.43	-------	$7,832.52	$2,824.90	$1,862.57	$2,888.45
Other Ubanized Areas:						
Revenue Vehicle Mile	$0.16377360	$0.00579309		$0.13663353	$0.11153758	$0.25945592
Route Mile	$4,772.78	$168.83		$4,509.48	$3,681.21	$8,563.13

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BILLING CODE 4910–57–C

Thursday
October 28, 1999

Part IV

Department of Transportation

Federal Transit Administration

Fiscal Year 2000 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2000 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the Federal Fiscal Year 2000 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2000, in accordance with 49 U.S.C. 5323(n).

EFFECTIVE DATE: October 28, 1999.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web Site at http://www.fta.dot.gov or contact the Office of Public Affairs, Federal Transit Administration (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts
Telephone # 617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands
Telephone # 212–668–2170

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia
Telephone # 215–656–7100

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico
Telephone # 404–562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio
Telephone # 312–353–2789

Region 6: Dallas/Ft.Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
Telephone # 817–978–0550

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska
Telephone # 816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota,
Telephone # 303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands
Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska
Telephone # 206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must provide to FTA all certifications and assurances pertaining to itself or its project as required by Federal laws and regulations. The requisite certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2000 covers all projects for which the Applicant seeks funding during that fiscal year. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for the life of the grant or cooperative agreement to closeout, or the life of the project or project property when a useful life or standard industry life is in effect. If in a later year, however, the Applicant provides certifications and assurances that differ from the certifications and assurances previously made, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, except as FTA otherwise permits.

Background

Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into one document. FTA intends to continue publishing this document annually in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2000 Changes

(1) Recipients of funds apportioned under Section 5336 that serve a population of 200,000 or more are required by 49 U.S.C. 5307(k) to make one (1) percent of their funds available for transit enhancement activities. Those recipients are also required to submit an annual report listing the projects carried out during the preceding fiscal year with those funds. Because recipients provide that annual report as part of their quarterly report for the fourth quarter of Federal Fiscal Year 1999, we no longer request the Applicant to indicate specifically whether that annual report has been submitted. The preface to Category XII includes clarification of the reporting requirement for those recipients receiving Transit Enhancement funds. (2) Additional changes include updated reference sources, such as the reference to FTA's disadvantaged business enterprise regulations at 49 CFR part 26, and other clarifications.

Text of Federal Fiscal Year 2000 Certifications and Assurances

A detailed compilation of the provisions of the Certifications and Assurances and the Signature Page is set forth in Appendix A of this Notice, and also appears in the Certification & Assurances Tab Page of the TEAM system. It is important that each Applicant be familiar with all fifteen certification and assurance categories contained in this Notice as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2000; do not rely on the statements within certifications and assurances appearing in circulars.

Significance of Certifications and Assurances

Selecting and submitting certifications and assurances to FTA, either through the TEAM system or submission of the Signature Page of Appendix A, signifies the Applicant's intent to comply with the requirements of those certifications and assurances to the extent they apply to a program for which the Applicant submits an application for assistance in Federal Fiscal Year 2000.

Requirement for Attorney's Signature

FTA requires a current (Federal Fiscal Year 2000) attorney's affirmation of the Applicant's legal authority to certify compliance with the funding obligations in this document. Irrespective of whether the Applicant chooses to make a single selection for all fifteen

categories or select individual options from the fifteen categories, the attorney signature from a previous year on is not acceptable.

Deadline for Submission

All Applicants for FTA capital investment program or formula program assistance, and current grantees with an active project financed with FTA capital investment program or formula program assistance, will be required to provide Federal Fiscal Year 2000 Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 2000, whichever is first. Other Applicants are encouraged to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission

FTA has expanded the use of the electronic programs for Applicants, first introduced in 1995. Applicants should submit their applications as well as certifications and assurances electronically through FTA's Transportation Electronic Award and Management (TEAM) system. If an Applicant is unable to submit its certifications and assurances through the TEAM system, the Applicant should use the Signature Page form in Appendix A of this Notice.

Procedures for Electronic Submission

The Certification & Assurances Tab Page of the TEAM system contains fields for selecting the certifications and assurances to be submitted. Within that tab page are fields for the Applicant's authorized representative and its attorney to enter their personal identification numbers (PINs), and thus ''sign'' the certifications and assurances for electronic transmission to FTA. In certain circumstances, the Applicant may enter its PIN number in lieu of an electronic signature provided by its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice or the TEAM Helpdesk for more information.

Procedures for Paper Submission

The following procedures apply to an Applicant that is unable to submit its certifications electronically. The Applicant must mark the certifications and assurances it is making on the Signature Page form in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space at the top of the Signature Selection Page in Appendix A. In certain circumstances, the Applicant may certify in lieu of the signature of its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice for more information.

References

The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Issued on October 21, 1999.

Gordon J. Linton,

Administrator.

Appendix A: Federal Fiscal Year 2000 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for the various Federal Transit Administration (FTA) programs. FTA requests each Applicant to provide as many of the following certifications and assurances as necessary to cover all programs for which the Applicant intends to seek FTA assistance in Federal Fiscal Year 2000. A state providing certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. The fifteen categories of certifications and assurances are listed by Roman numerals I through XV on the other side of the Signature Page of this document and on the certifications and assurances tab page of FTA's Transportation Electronic Award and Management (TEAM) system. Categories II through XV will apply to some, but not all, applicants. The designation of the categories corresponds to the circumstances mandating submission of specific certifications, assurances, or agreements. As previously stated, FTA encourages the Applicant to submit its certifications and assurances through the TEAM system.

I. Certifications and Assurances Required of Each Applicant

Each Applicant for Federal assistance awarded by FTA *must* provide all certifications and assurances in this category I. Consequently, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting category ''I'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant,

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant or cooperative agreement. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) of this certification, it shall indicate so in its applications, or in the transmittal letter or message or accompanying its annual certifications and assurances, and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, ''Drug-Free Workplace Requirements (Grants),'' 49 CFR part 29, Subpart F, as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace,

(b) Its policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;

(4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement, and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit

the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Disadvantaged Business Enterprise Assurance

In accordance with 49 CFR 26.13(a), the Recipient assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR part 26. The Recipient assures that it shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 CFR part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the grant agreement or cooperative agreement. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by the Government to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*

H. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

J. Certifications Prescribed by the Office of Management and Budget (SF–424B and SF–424D)

The Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application.

(2) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(3) Will establish safeguard to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval.

(5) Will comply with all statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) The requirements of any other nondiscrimination statute(s) that may apply to the project.

(6) Will comply, or has complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*,

which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24 including, but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

(7) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply.

(8) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements.

(9) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(10) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(i) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national, state, or local significance used in a transit project as required by 49 U.S.C. 303.

(11) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems.

(12) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a-1 *et seq.*

(13) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

(14) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency.

(15) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

(16) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

(17) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the State.

(18) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance.

(19) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance.

(20) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, April, 1999.''

(21) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

II. Lobbying Certification for an Application Exceeding $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. Consequently, FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting category ''II'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. Certification Pertaining to the Effects of the Project on Private Mass Transportation Companies

An Applicant that is a state or local government that seeks Federal assistance authorized by 49 U.S.C. chapter 53 to acquire property of a private mass transportation company or an interest in property of a private mass transportation company or operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. Consequently, FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting category ''III'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible;

C. Paid just compensation under State or local law to a private mass transportation company for its franchises or property acquired and;

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

IV. Public Hearing Certification for a Capital Project That Will Substantially Affect a Community or Its Transit Service

An Applicant seeking Federal assistance under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or the community's transit service must provide the following certification. Consequently, FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting category ''IV'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

V. Certification of Pre-Award and Post-Delivery Reviews Required for Acquisition of Rolling Stock

An Applicant seeking FTA assistance to acquire rolling stock must provide the following certification. Consequently, FTA may not provide assistance to acquire rolling stock until the Applicant provides this certification by selecting category ''V'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

VI. Bus Testing Certification Required for New Bus Acquisitions

An Applicant seeking FTA assistance to acquire new buses must provide the following certification. Consequently, FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting category ''VI'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

VII. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. (except 49 U.S.C. 5310) must enter into the following charter service agreement. Consequently, FTA may not provide assistance for those projects until the Applicant enters into this agreement by selecting category ''VII'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and

(2) Comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. must agree as follows. Consequently, FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting category ''VIII'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, ''School Bus Operations,'' at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and implementing regulations, and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

IX. Certification Required for the Direct Award of FTA Assistance to an Applicant for Its Demand Responsive Service

An Applicant seeking direct Federal assistance to support demand responsive service must provide the following certification. Consequently, FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting category ''IX'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

X. Substance Abuse Certifications

If the Applicant is required by Federal regulations to provide the following substance abuse certifications, FTA may not provide Federal assistance to that Applicant until it provides these certifications by selecting category ''X'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

A. Alcohol Testing Certification

As required by FTA regulations, ''Prevention of Alcohol Misuse in Transit Operations,'' at 49 CFR 654.83, the Applicant certifies that it has established and implemented an alcohol

misuse prevention program in compliance with 49 CFR part 654; and if the Applicant has employees regulated by the U.S. Federal Railroad Administration (U.S. FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program in compliance with U.S. FRA regulations, ''Control of Alcohol and Drug Use,'' 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations ''Prevention of Prohibited Drug Use in Transit Operations,'' at 49 CFR 653.83, the Applicant certifies that it has established and implemented an anti-drug program and conducted employee training in compliance with 49 CFR part 653; and if the Applicant has employees regulated by the U.S. Federal Railroad Administration (U.S. FRA), the Applicant also certifies that it has for those employees an anti-drug program in compliance with U.S. FRA regulations, ''Control of Alcohol and Drug Use,'' 49 CFR part 219.

XI. Certification Required for Interest or Other Financing Costs

The Applicant must provide the following certification in connection with requests for reimbursements of interest or other financing costs of capital projects. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting category ''XI'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

As required by 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA might require.

XII. Certifications and Assurances for the Urbanized Area Formula Program and the Job Access and Reverse Commute Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 and each Applicant for Job Access and Reverse Commute Program assistance authorized for section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, must provide the following certifications in connection with its application. Consequently, FTA may not award Urbanized Area Formula Program assistance or Job Access and Reverse Commute Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting category ''XII'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

In addition, each Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1) must include within its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects carried out during the preceding Federal fiscal year with those Transit Enhancement funds. That list constitutes the report of transit projects carried out during the preceding fiscal year to be submitted as part of the Applicant's annual certifications and assurances, as required by 49 U.S.C. 5307(k)(3), and is thus incorporated by reference and made part of that Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and that report contains the requisite list.

A. Certifications Required by Statute

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It has or will have satisfactory continuing control over the use of the equipment and facilities;

(c) It will adequately maintain the equipment and facilities;

(d) It will ensure that elderly or handicapped persons, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 or for section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(e) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(f) It has complied or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it has made available or before submitting its application it will make available: (1) To the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake with those funds; (2) in consultation with interested parties including private transportation providers, develop a proposed program of projects for activities to be financed; (3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (5) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (7) make the final program of projects available to the public;

(g) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(h) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5310 (a) through (d) (programs for the elderly and persons with disabilities);

(i) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(j) As required by required by 49 U.S.C. 5307(d)(1)(J), unless it has

determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects implemented in the preceding Federal fiscal year using Transit Enhancement funds, and made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' at 49 CFR 639.15(b)(1) and 639.21, to the extent the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

XIII. Certifications and Assurances for the Elderly and Persons With Disabilities Program

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications and assurances. Consequently, FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting category ''XIII'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has provided the Nondiscrimination Assurance. (Category I.F, ''Certifications and Assurances Required of Each Applicant'').

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs and has provided the Disadvantaged Business Enterprise Assurance (Category I.G, ''Certifications and Assurances Required of Each Applicant'').

J. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, (Category I.H, ''Certifications and Assurances Required of Each Applicant''). If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 CFR 37.77(c).

K. The subrecipient has certified to the state that it will comply with the applicable provisions of 49 CFR 605 pertaining to school transportation operations (Category VIII, ''School Transportation Agreement'').

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a

categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I through XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

XIV. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must provide the following certifications and assurances. Consequently, FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting category ''XIV'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.

D. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

G. The subrecipient is in compliance with all applicable civil rights requirements, and has provided the Nondiscrimination Assurance. (Category I.F, ''Certifications and Assurances Required of Each Applicant'').

H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs and has provided the Disadvantaged Business Enterprise Assurance (Category I.G, ''Certifications and Assurances Required of Each Applicant'').

I. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, (Category I.H, ''Certifications and Assurances Required of Each Applicant''). If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 CFR 37.77(c).

J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) Signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.

K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations (Category VII, ''Charter Service Agreement,'' and Category VIII, ''School Transportation Agreement'').

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in

accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I through XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen (15) percent of the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

XV. Certifications and Assurances for the State Infrastructure Bank Program

A state Applicant for a grant of Federal assistance for deposit in the State Infrastructure Bank (SIB) must provide the following certifications and assurances. Consequently, FTA may not award Federal assistance to capitalize a SIB until the state Applicant provides these certifications and assurances by selecting category ''XV'' on the TEAM system certifications and assurances tab page or on the Signature Page at the end of this document.

Based on its own knowledge and, as necessary, on information submitted by the participating parties, the state serving as the Applicant for Federal assistance for the Transit Account of its state SIB program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with the:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto,

(2) Provisions of FTA's NHS Guidelines, and any amendments thereto,

(3) Terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations,

(4) Provisions of FHWA and FTA cooperative agreement with the state to establish the state's SIB program, and

(5) Provisions of the FTA grant agreement with the state that obligating Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, and FTA SIB Guidelines, the provisions of the cooperative agreement establishing the SIB program within the state, or the text within the FTA grant agreement.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of all applicable requirements for the SIB program, as those requirements may be amended from time to time. Pursuant to subsection 1511(h)(2) of TEA–21, applicants for assistance authorized by the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, agree that previous cooperative agreements entered into with States under section 350 of the National Highway System Designation Act of 1995, as amended, will be revised to comply with new requirements.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 1511 of TEA–21, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a grant agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the Transit Account of its SIB to amounts that do not exceed the limitations specified in the underlying grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the Transit Account of the SIB, including the ability to comply with Year 2000 (Y2K) management of funds and investments, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that the SIB will provide Federal assistance derived from the Transit Account only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project.

G. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

H. The state assures that the SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

I. The state assures that before the SIB enters into an agreement with a subrecipient under which Federal assistance within the Transit Account of the SIB will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from each subrecipient of capital assistance that is also a public body a certification that an opportunity for a public hearing has been provided.

J. The state assures that the SIB has, to the maximum extent feasible, coordinated with other transportation providers and users, and other interested parties within the area.

K. The state assures that the SIB is in compliance with all applicable civil rights requirements (Category I.F, ''Certifications and Assurances Required of Each Applicant'').

L. The state assures that the SIB will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs and has provided the Disadvantaged Business Enterprise Assurance (Category I.G, ''Certifications and Assurances Required of Each Applicant'').

M. To the extent applicable, the state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The state assures that the SIB will provide to the state an Assurance of Nondiscrimination on the Basis of Disability from each subrecipient (Category I.H, ''Certifications and Assurances Required of Each Applicant''). If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities (Category IX, ''Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service,''). This ''Certification of Equivalent Service'' must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

N. The state assures that before the SIB provides Federal assistance from the Transit Account, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project.

O. The state assures that each subrecipient has certified or will certify to the state that it will comply with applicable provisions of 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations (Category VII, ''Charter Service Agreement,'' and Category VIII, ''School Transportation Agreement'').

P. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in paragraph Q of this Category XV. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that the SIB will not provide financial assistance from the Transit Account for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that the SIB will provide no financial assistance from its Transit Account for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

Q. The state assures that the subrecipient has submitted (or will submit), when applicable, all certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000; assurances FTA requires for projects involving real property; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances of Categories I through XI of this document, but modified as necessary to accommodate the SIB and the subrecipient's circumstances.

R. The state agrees and assures that the SIB and each subrecipient will agree to permit FTA, U.S. DOT, and the Comptroller General to conduct audits to verify compliance with the foregoing requirements and stipulations.

Selection and Signature Pages Follow

BILLING CODE 4910–57–P

Appendix A

FEDERAL FY 2000 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories I - XV. ____
(The Applicant may make this selection in lieu of individual selections below.)
OR
The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

I. Certifications and Assurances Required of Each Applicant. ____

II. Lobbying Certification ____

III. Certification Pertaining to Effects on Private Mass Transportation Companies ____

IV. Public Hearing Certification for a Project with Substantial Impacts ____

V. Certification for the Purchase of Rolling Stock ____

VI. Bus Testing Certification. ____

VII. Charter Service Agreement. ____

VIII. School Transportation Agreement. ____

IX. Certification for Demand Responsive Service ____

X. Substance Abuse Certifications ____

XI. Certification Required for Interest and Other Financing Costs ____

XII. Certifications and Assurances for the Urbanized Area Formula Program, and the Job Access and Reverse Commute Program ____

XIII. Certifications and Assurances for the Elderly and Persons with Disabilities Program ____

XIV. Certifications and Assurances for the Nonurbanized Area Formula Program ____

XV. Certifications and Assurances for the State Infrastructure Bank (SIB) Program ____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

Appendix A

FEDERAL FISCAL YEAR 2000 FTA CERTIFICATIONS AND ASSURANCES

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2000.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2000.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____
Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant promptly, which may so inform FTA.

Signature_____ Date: _____
Name_____
Applicant's Attorney

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Attorney's affirmation of the Applicant's legal capacity. The Applicant may enter its PIN number in lieu of the electronic signature of its Attorney, provided the Applicant has on file this Affirmation of its Attorney in writing dated this Federal fiscal year.

[FR Doc. 99–27925 Filed 10–27–99; 8:45 am]
BILLING CODE 4910–57–C

Thursday
October 28, 1999

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 28 and 52

Federal Acquisition Regulation; Increased Payment Protection; Withdrawal of Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28 and 52

[FAR Case 98–014]

RIN 9000–AI21

Federal Acquisition Regulation; Increased Payment Protection

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) agreed to withdraw FAR Case 98–014, Increased Payment Protection, in light of the recent enactment of the Construction Industry Payment Protection Act of 1999, Public Law 106–49. The proposed rule was published in the **Federal Register** at 63 FR 71711, December 29, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501–3856. Please cite FAR case 98–014, withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The rule which was published in the **Federal Register** at 63 FR 71711, December 29, 1998, proposed to increase the required penal amount of payment bonds on construction contracts over $6,250,000 and to allow the contracting officer to increase the amount of any payment bond or alternative payment protection to an amount not to exceed the contract price, if the contracting officer decides that a greater amount is appropriate.

Due to the recent enactment of the Construction Industry Payment Protection Act of 1999, Public Law 106–49, this rule is being withdrawn and proposed changes will be overtaken by the revisions and regulatory changes that will result from the legislation.

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: October 21, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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Part VI

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34 CFR Part 668 et al.

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 674, 675, 676, and 690

RIN 1845–AA01

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: These final regulations amend the regulations governing the Student Assistance General Provisions, the Campus-Based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), and the Federal Pell Grant Program. These regulations incorporate changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments).

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Act, that institutions may, at their discretion, choose to implement the provisions of §§ 673.5(c), 675.26(a), and 675.26(d)(2)(iii) on or after October 28, 1999. For further information see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Gause, U.S. Department of Education, 400 Maryland Avenue, SW, Regional Office Building 3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

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SUPPLEMENTARY INFORMATION: These regulations implement certain provisions of the 1998 Amendments (Pub. L. 105–244), enacted October 7, 1998. On August 3, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 42206). In the NPRM, we proposed to amend the Student Assistance General Provisions regulations (part 668) which apply to all of the Title IV, HEA programs, the General Provisions regulations for the Campus-Based programs (part 673), and the regulations for the Federal Perkins Loan (part 674), FWS (part 675), FSEOG (part 676), and the Federal Pell Grant (part 690) programs.

The NPRM included a discussion of the proposed changes that will not be repeated here. The following list summarizes those changes and identifies the pages of the preamble to the NPRM on which the discussion can be found:

Student Assistance General Provisions

Section 668.8 Eligible Program and Section 668.32 Student Eligibility—General

The conforming changes to the Student Assistance General Provisions regulations resulting from allowing certain students enrolled in a postbaccalaureate teacher certificate or licensing program to receive a Federal Pell Grant, as proposed in §§ 668.8(h) and 668.32(c) (page 42207 of the NPRM).

Section 668.161 Scope and Purpose

The conforming changes to the Student Assistance General Provisions regulations resulting from changing the procedures that institutions must follow for paying students under the FWS Program, as proposed under § 668.161(a) (page 42207 of the NPRM).

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

Section 673.5 Overaward

The revision of the definition of the term ''resources'' for awarding campus-based aid resulting from the change in the definition of ''estimated financial assistance'' in determining a student's eligibility for subsidized loans, as proposed in § 673.5(c) (page 42207 of the NPRM).

Sections 674.10, 675.10, and 676.10 Selection of Students

The requirement that an institution offer less-than-full-time or independent students a reasonable portion of the FWS allocation, FSEOG allocation, or dollar amount of Federal Perkins Loans made, instead of offering five percent of those amounts, as proposed in §§ 674.10(b), 675.10(c), and 676.10(b) (pages 42207–42208 of the NPRM).

Federal Work-Study Programs

Section 675.2 Definitions

The revision of the definition of ''community services,'' as proposed in § 675.2(b) (page 42208 of the NPRM).

Section 675.8 Program Participation Agreement

The elimination of the requirement that an institution employing FWS students make equivalent non-FWS jobs reasonably available to all students at the institution who want to work, as proposed in § 675.8 (page 42208 of the NPRM).

Section 675.16 Payments Directly to the Student's Account

The procedures under which an institution would be allowed, upon request of a student, to make payments of FWS funds directly to the student's account at a financial institution or to credit the student's account at the educational institution, as proposed in § 675.16 (pages 42208–42209 of the NPRM).

Section 675.18 Use of Funds

The requirement that increases the minimum percentage of an institution's FWS allocation that must be spent on community service jobs from five to seven percent, as proposed in § 675.18(g) (page 42209 of the NPRM).

The requirement that an institution, in meeting the community service requirement, must ensure that one or more of its FWS students is employed (1) in a community service reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a community service family literacy project, as proposed in § 675.18(g) (page 42209 of the NPRM).

The provision of a waiver of the above requirement, as provided in § 675.18(g) (pages 42209–42210 of the NPRM).

The requirement that if an institution employs FWS students as reading tutors in elementary schools, the institution, to the extent practicable, must give priority to employing students in schools that are participating in a reading reform project, as proposed in § 675.18(g) (page 42210 of the NPRM).

The clarification that an institution may pay FWS students for a reasonable amount of time spent for training for any FWS employment, as proposed in § 675.18(h) (page 42210 of the NPRM).

The provision that an institution may pay FWS students for a reasonable amount of time spent for travel that is

directly related to employment in community service activities (including tutoring in reading and family literacy activities), as proposed in § 675.18(h) (page 42210 of the NPRM).

Section 675.20 Eligible Employers and General Conditions and Limitation on Employment

The clarification that FWS employment may include internships, practicums, or assistantships (*e.g.*, research or teaching assistantships), as proposed in § 675.20(d) (pages 42210–42211 of the NPRM).

Section 675.23 Employment Provided by a Private For-Profit Organization

The provision that if a student is employed by a private for-profit organization the work that the student performs must be academically relevant to the student's educational program only to the maximum extent possible, as proposed in § 675.23(b) (page 42211 of the NPRM).

Section 675.26 FWS Federal Share Limitations

The provision that the Federal share of an FWS student's compensation may exceed 75 percent, but may not exceed 90 percent, if the student is employed at a nonprofit or a public organization that cannot afford to pay the regular non-Federal share, as proposed in § 675.26(a) (page 42211 of the NPRM).

The authorization of a Federal share of 100 percent of the FWS funds awarded to students by an institution for an award year, if the student is performing literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school, as proposed in § 675.26(d) (page 42211 of the NPRM).

Work-Colleges Program (Subpart C)

Section 675.45 Allowable Costs, Federal Share, and Institutional Share

The provision of more flexibility to Work-Colleges by allowing them to use available funds to coordinate and carry out joint projects to promote work service learning, and to conduct a comprehensive longitudinal study of academic progress and academic and career outcomes, as proposed in § 675.45(a) (page 42211 of the NPRM).

Federal Supplemental Educational Opportunity Grant Program

Section 676.18 Use of funds.

The inclusion of a new authority for an institution to carry up to ten percent of its current award year FSEOG allocation forward to spend in the next award year and to carry back up to ten percent of its current award year allocation to spend in the prior award year, as proposed in § 676.18 (pages 42211–42212 of the NPRM).

The inclusion of a new authority for an institution to carry back any portion of its current award year FSEOG funds to make awards to students for payment periods that begin on or after May 1 of the prior award year but end prior to the start of the current award year, as proposed in § 676.18(f) (page 42212 of the NPRM).

Federal Pell Grant Program

Section 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program

The provision that extends Federal Pell Grant eligibility to certain students enrolled in a postbaccalaureate teacher certificate or licensing program even if they have earned a bachelor's degree, as proposed in § 690.6 (pages 42212–42213 of the NPRM).

Section 690.7 Institutional Participation

The provision that an institution is ineligible to participate in the Federal Pell Grant Program upon losing its eligibility to participate in the FFEL or Direct Loan programs because of its default rate, as proposed in § 690.7(c) (page 42213 of the NPRM).

Substantive Changes to the NPRM

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Implementation Date of These Regulations

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under Title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

§ 673.5(c)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that when packaging campus-based programs, institutions may exclude as a resource any portion of a subsidized Stafford Loan under the FFEL Program or Direct Subsidized Loan under the Direct Loan Program that is equal to or less than the amount of the student's Montgomery GI Bill—active duty veterans education benefits and AmeriCorps education awards or post-service benefits paid for the cost of attendance.

§ 675.26(a)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that institutions may pay a Federal share of up to 90 percent for an FWS student employed at a nonprofit or a public organization that can not afford to pay the regular non-Federal share under the requirements specified by the Secretary.

§ 675.26(d)(2)(iii)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that institutions may pay a Federal share of up to 100 percent for an FWS student performing family literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school. The waiver of the institutional share requirement will no longer be limited to tutoring in a family literacy program.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 3, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of Committee III dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, and several comments were received. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not

address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

General

Comments: A number of commenters representing institutions of higher education and organizations submitted joint and individual comments that were supportive of our efforts to provide consistency among the Title IV, HEA programs and to allow institutions more flexibility to assist students. Several commenters stated that there are many positive aspects to these proposed regulations.

Changes: None.

Student Assistance General Provisions and the Federal Pell Grant Program

Sections 668.8 Eligible Program, 668.32 Student Eligibility—General, and 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program

Comments: One commenter requested clarification on whether a student enrolled in the type of program offered at the commenter's school would qualify for a Federal Pell Grant. The commenter's institution does not award a baccalaureate degree in education. Students must choose another field of study, but may have a concentration in education. The baccalaureate degree the institution awards is for that other field of study, not for education.

The commenter stated that it is also possible for students to enter a teacher certification program after they receive their baccalaureate degrees and before they begin any graduate study.

Discussion: As described by the commenter, the student enrolled in the institution's baccalaureate degree program would be ineligible to receive a Federal Pell Grant under the provisions in § 690.6, but may be eligible to receive a Federal Pell Grant as an undergraduate student. However, a student enrolled in the institution's teacher certification program would be ineligible for a Federal Pell Grant award for the reasons discussed below.

The 1998 Amendments created a very limited exception to the requirement that a Federal Pell Grant recipient be an undergraduate student. Thus, to qualify for a Federal Pell Grant, a student who has a bachelor's degree must first be enrolled in an institution of higher education that does not offer a baccalaureate degree in education. Second, the student must be enrolled in a postbaccalaureate program that (a) consists of the courses required by a State to receive a professional certification or licensing credential necessary for employment as a teacher in an elementary or secondary school in that State, and (b) does not lead to a graduate degree. Third, the student must be pursuing an initial teacher certification or licensing credential within a State. Fourth, the student must be enrolled as at least a half-time student.

Therefore, the student enrolled in the commenter's baccalaureate program does not come within the requirements contained in § 690.6 because the program in which he or she is enrolled is not a postbaccalaureate program. The student enrolled in the commenter's teacher certificate program does not meet the requirements of § 690.6, even if the courses included in the certificate program are required by the State, because the certificate program does not appear to be a postbaccalaureate program. An undergraduate program does not become a postbaccalaureate program merely because it admits students who have baccalaureate degrees.

Changes: None.

Section 668.161 Scope and Purpose

Comments: One organization stated that the proposed amendments to § 668.161 to indicate that an institution must follow § 675.16 for paying a student under the FWS Program instead of §§ 668.164 and 668.165 make the disbursement procedures under § 668.164 inapplicable to the FWS Program. The commenter requested clarification on whether the definition of disbursement under § 668.164(a)(1) still applies to the FWS Program.

Discussion: We agree with the commenter that the proposed language in § 668.161 does not make clear that the definition of disbursement in § 668.164 is still applicable to the FWS Program. This definition continues to apply to all Title IV, student financial aid programs.

Changes: We have revised the regulations to clarify that the definition of disbursement in § 668.164(a) will continue to apply to the FWS Program. Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs.

Section 673.5 Overaward

Comments: Several commenters, including two organizations, objected to the proposal that would change the definition of ''resources'' for the campus-based programs.

Discussion: The proposed regulations would modify the overaward provisions in § 673.5 of the regulations for the campus-based programs. They would apply in cases where students receive both a subsidized loan and veterans education benefits under Title 38, Chapter 30 (Montgomery GI Bill—active duty) and/or national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (AmeriCorps).

The statute requires that these benefits must be excluded as estimated financial assistance in determining a student's eligibility for a subsidized Stafford Loan or Direct Subsidized Loan. However, the statute requires that these same benefits must be considered as a resource for the campus-based programs, as well as estimated financial assistance for unsubsidized loans. The proposed regulations would allow an institution, in packaging campus-based aid, to exclude as a resource any portion of a subsidized Stafford Loan or Direct Subsidized Loan that is equal to or less than the amount of the student's Montgomery GI Bill—active duty veterans education benefits and/or AmeriCorps education awards or post-service benefits paid for the cost of attendance.

Changes: None.

Comments: Some commenters stated that the treatment of the aforementioned benefits in two different ways in determining a student's eligibility is confusing and an administrative burden for institutions. They stated that it is extremely difficult for institutions to package a student when the student has both subsidized loans and campus-based aid. One commenter stated that it would be difficult to explain to students why in some cases their benefits are treated as a resource, but not in other cases.

Most of the commenters stated that the proposal would require schools that use computerized packaging systems to reprogram their financial aid software to determine when to include or exclude all or a part of these benefits. Commenters also believed that this requirement would result in institutions being forced to implement a verification system to determine the type of benefits the student is receiving while also determining, on a case-by-case basis, the type and amount of benefits that are to be considered as estimated financial assistance. They also stated that the issue is further complicated by the fact that a student's financial aid package does not always remain the same after making initial awards. Changes in resources require recalculating the student's eligibility for Federal assistance. Commenters also stated that any combination of Montgomery GI Bill benefits, AmeriCorps benefits,

subsidized Stafford loans and campus-based aid will involve manual intervention to correct an overaward situation.

One of the organizations that objected to the proposal expressed concern about errors institutions may make in interpreting this provision and calculating student awards, and therefore requests that institutions be held harmless and not assessed any liabilities until the Department can provide guidance on correct implementation.

Some commenters recommended that we work with Congress to treat Montgomery GI Bill benefits and AmeriCorps education awards or post-service benefits identically for all student aid programs.

Discussion: We understand the concerns that the commenters have regarding handling students that have these benefits along with other types of Title IV aid. However, this provision that treats veterans and AmeriCorps benefits different for the Title IV programs is the result of the change in section 428(a)(2)(C) of the HEA that requires that these benefits must be excluded as ''estimated financial assistance'' for purposes of subsidized loans.

Changes: None.

Comments: One commenter expressed his belief that the order in which the student received the financial aid awards determines if the student is overawarded and would mean that students with similar need and aid may not be treated the same.

Discussion: Under current campus-based regulations, if a student has both a subsidized loan and campus-based aid, the most stringent requirement regarding resources becomes operative because the student's eligibility for campus-based funds is reduced by the amount of subsidized loans as well as any Montgomery GI Bill—active duty benefits and AmeriCorps funds, or both, paid for the cost of attendance. Thus, students receiving subsidized loans because of the new exclusion of these benefits may have their eligibility for campus-based aid reduced. The negotiated rulemaking committee concluded that the proposed change in the definition of ''resources'' for the campus-based programs is the best solution to allow students to have the full advantage of this statutory exclusion of benefits for subsidized loans without losing campus-based eligibility.

We remind the commenters that the use of the proposed regulations that would change the definition of ''resources'' for the campus-based programs in cases where a student receives both a subsidized loan and Montgomery GI Bill—active duty veterans education benefits and/or an AmeriCorps education award is an option provided to an institution and not a requirement. Unlike the requirements mandated by section 428(a)(2)(C) of the HEA for subsidized loans, where the definition of ''estimated financial assistance'' requires the exclusion of these benefits, this proposal provides the institution with the flexibility to address different packaging issues if the financial aid administrator determines that it is necessary to rectify a particular situation on a case-by-case basis.

Changes: None.

Comment: One commenter also noted that it is frequently difficult to identify the specific type of veterans benefits that individual veterans may be receiving. This commenter encourages us to work closely with the Veterans Administration to develop computer database interfaces that will permit this information to be reported on the Institutional Student Information Records, or to set up a web site similar to the National Student Loan Data System that will permit access to this information. Until this can be accomplished, the commenter encourages us to seek other means of enabling participating institutions to easily identify those veterans receiving Montgomery GI Bill education benefits.

Discussion: Regardless of our campus-based regulations, an institution, under the statute, must be able to identify the Montgomery GI Bill—active duty benefits and the Americorps funds for students applying for subsidized loans. We thank the commenter for the suggestion on solutions for identifying veterans benefits. We will explore possible systems solutions to address this comment.

Changes: None.

Comments: One organization in expressing its support for this proposed regulation, noted the confusion caused by the proliferation of names by which Direct and FFEL loans are known. The commenter suggested that we use the name ''Direct Subsidized Loan'' when referring to the Federal Direct Stafford/Ford Loan.

Discussion: We agree with the commenter that the names for the Direct and FFEL loans can be confusing, and that ''Direct Subsidized Loan'' is the simplest name to understand when referring to a Federal Direct Stafford/Ford Loan.

Changes: For clarity, we have added the words ''Direct Subsidized Loan'' in parenthesis in § 673.5(c)(4) after ''Federal Direct Stafford/Ford Loan.''

Comments: Another commenter also expressed concern with the lack of clarification on a required implementation date, which the commenter believes could possibly cause institutional liability. One organization also sought clarification on when institutions could begin using the proposed new definition of ''resources'' for the campus-based programs. The organization further recommended that we authorize optional early implementation by institutions under the Master Calendar.

Discussion: In response, the Secretary authorizes optional early implementation by institutions of this provision under the Master Calendar. Institutions may begin using this new definition for ''resources'' effective with the publication date of these regulations. This authority is discussed in the **DATES** and **SUPPLEMENTARY INFORMATION** sections of this preamble.

Changes: None.

Federal Work-Study Programs

Section 675.2 Definitions

Comments: One commenter stated that on-campus facilities should count as community service employers even if the service is provided only for students, faculty, staff, and their families, because these individuals pay taxes and also are part of the ''local community.''

Discussion: The statute states that the definition of ''community services'' now includes child care services provided on campus that are ''open and accessible to the community.'' A university or college in and of itself is not considered the community for this purpose. Therefore, if the service is provided only to students, faculty, staff, and their families, an FWS job does not meet the definition of ''community service.'' As stated in the NPRM (page 42208), these regulations are not proposing to set a numerical count or percentage requirement for institutions to demonstrate public use of on-campus services.

Changes: None.

Section 675.16 Payments Directly to the Student's Account

Comments: One organization commented that the proposed regulations governing the application of a student's FWS earnings to his or her institutional account are far too prescriptive. The commenter believes the procedure will discourage institutions from offering students this option, and that implementation will

create a significant cost and administrative burden for institutions. The same commenter believes the current cash management regulations (Subpart K) provides sufficient protection for the student and recommends that these proposed regulations be rescinded and institutions be referred to the existing cash management regulations.

Discussion: Prior to the 1998 Amendments, the FWS regulations prohibited an institution from directly transferring the Federal share of FWS earnings to a student's account at the institution. The 1998 Amendments broadened the institution's authority concerning students who want their FWS earnings credited to their accounts at the institution to cover institutional charges. The commenter is correct that the *Subpart K—Cash Management* regulations already regulated disbursement procedures for all other Title IV, HEA program funds. We do not agree with the commenter that the proposed regulations in § 675.16 will discourage institutions from offering students this option, and that implementation will create a significant cost and administrative burden for institutions. We believe that it was important to make a distinction between FWS Program funds and other Title IV program funds. In the FWS Program students hold jobs and their compensation is earned and governed by the same applicable Federal, State, or local laws as any other type of earnings from employment. We also believe that it will be less confusing to have the FWS disbursement procedures in the FWS Program regulations.

Changes: None.

Comments: Another commenter noted that in most cases students receiving FWS funds are notified of the amount of the award on the financial aid award letter sent to them by the institution. This commenter asks us to clarify that an award letter sent to the student by the institution meets the requirement for notifying the student of the amount of FWS compensation he or she is authorized to earn.

Discussion: We are aware that providing a student with a notice of the amount of funds he or she is eligible to earn, and how and when the FWS funds will be paid is standard institutional practice and required by regulations. The award letter, as used by many institutions, meets the requirement for notification to a student of the amount of FWS compensation he or she is authorized to earn. It was not our intent to confuse the public in § 675.16 by implying that an additional notice is required. Because FWS funds are earned compensation, we concluded that the requirement for the notice should be reiterated in the new provisions in § 675.16.

Changes: None.

Comments: Another organization stated that the proposed regulations in § 675.16 are not clear about what would be required if the student rescinds an authorization to hold excess FWS earnings. The commenter observed that § 675.16(a)(4) allows a student to authorize an institution to credit FWS funds to the student's institutional account and also allows a student to authorize an institution to hold excess FWS funds (credit balances). The commenter noted that § 675.16(a)(7) generally requires that a credit balance consisting of FWS funds be paid out to the student within 14 days, presumably if the student authorizes crediting the account but does not authorize holding excess funds. Section 675.16(a)(6)(i) states that if any authorization allowed under § 675.16(a)(4) is modified, the modification takes effect on the date received. The commenter asked whether the institution has up to 14 days to process the FWS credit balance after a student rescinds his or her authorization that allowed an institution to hold excess FWS funds.

Discussion: We agree with the commenter that the proposed language in the regulations in § 675.16 is not clear about what would be required if the student rescinds an authorization to hold excess FWS earnings. Our intent is that the excess FWS funds must be paid by the institution to the student as soon as possible, but not later than 14 days after the student rescinds an authorization to hold excess funds.

Changes: We have revised the regulations and added a new § 675.16(a)(9) to reflect that if a student cancels the written authorization to hold excess FWS funds, the institution must pay those funds to the student as soon as possible but no later than 14 days after the institution receives that cancellation notice.

Sections 675.18 Use of Funds and 675.26 FWS Federal Share Limitations

New reading tutoring and family literacy project requirement (§ 675.18(g)(1) and waiver of FWS institutional-share requirement for literacy activities (§ 675.26(d)(2).

Comments: A commenter representing an organization requested clarification on the wording in § 675.18(g)(1)(ii) that refers to a family literacy project that employs students ''in family literacy activities.'' The commenter stated that the statute simply requires students to be employed in a family literacy project and is silent on whether students must be engaged in family literacy activities. The commenter stated that the statute authorizes a 100 percent Federal share for FWS students employed in a family literacy project, and the proposed language in § 675.26(d)(2)(iii) reflects the statute in that it only requires the student to be employed in a family literacy project, as long as the project provides certain services.

Discussion: For purposes of employment in a family literacy project, both of the following new statutory provisions require that the student be performing family literacy activities.

Amended section 443(b)(2) of the HEA requires, that beginning with the 2000–2001 award year, an institution must ensure that in meeting the FWS community service requirement at least one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

Amended section 443(d)(3) of the HEA provides that, beginning with the 2000–2001 award year, an institution may pay a Federal share of compensation that exceeds 75 percent to students employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

We agree that the different proposed language used in § 675.18(g)(2)(ii) and § 675.26(d)(2)(iii) is confusing. The HEA is specific on the reference to family literacy activities. The new FWS community service requirement in section 443(b) of the HEA does require that the family literacy project employ one or more FWS students in family literacy activities. Further, the new authority in section 443(d) of the HEA to pay a Federal share of up to 100 percent of the compensation earned by a student employed in a family literacy project also requires the student to be performing family literacy activities.

In accordance with the amended statute, these regulations amend § 675.18(g)(1)(ii) to require that, beginning July 1, 2000, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

We have changed § 675.26(d)(2)(iii) of these regulations to clarify that the waiver of the institutional-share

requirement is for an FWS student performing family literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school.

Changes: We have revised the language in § 675.26(d)(2)(iii) to make this language consistent with the family literacy activities language used in § 675.18(g)(1)(ii). This change also follows the language provided in the statute that the FWS student must perform family literacy activities when employed in a family literacy project.

Comments: The same commenter also requested clarification of the effective date on which institutions may pay a 100 percent Federal share for family literacy employment in addition to tutoring.

Discussion: The Secretary is authorizing optional early implementation of the new institutional-share waiver for an FWS student performing family literacy activities when employed in a family literacy project. Effective with the publication date of these regulations institutions may begin to pay a Federal share of compensation that exceeds 75 percent to a student performing family literacy activities that are not limited just to tutoring. This authority is discussed in the **DATES** and the **SUPPLEMENTARY INFORMATION** sections of the preamble.

Changes: None.

Comments: The commenter further requested clarification on whether indirect services in a family literacy project would qualify the employment: (1) as community service; (2) as satisfying the separate family literacy project requirement; and/or (3) as eligible for the 100 percent Federal share?

Discussion: We are not defining ''family literacy activities'' for purposes of the new community service requirement in § 675.18(g)(1)(ii) or the new waiver of the institutional-share requirement in § 675.26(d)(2)(iii). We are providing reasonable flexibility to institutions to determine the job description and duties for an FWS student performing family literacy activities. Under the revised statute and regulations, the jobs in family literacy projects are not limited to just students employed as tutors. For example, the family literacy activities may include an FWS student training tutors, performing administrative tasks such as coordinating the tutors, or working as an instructional aide who prepares the materials for the project. However, it would not be reasonable to include janitorial or building repair jobs for the project as family literacy activities.

Under § 675.26(d)(2)(iii), to qualify for the new FWS waiver of the institutional-share, the family literacy activities job does not have to be community service. For example, the family literacy activities could be open to only institutional staff and their families. However, under § 675.18(g)(1)(ii), an FWS student's job as a reading tutor in a required reading tutoring project or job performing family literacy activities in a required family literacy project must be considered community service.

The definition of ''community services'' in § 675.2 does not require that the service provided by the FWS student be ''direct'' to be considered community service. The services must be open and accessible to the community. A service is considered open to the community if the service is publicized to the community and the general public uses the service. A university or college in and of itself is not considered the community for this purpose.

In determining whether the FWS student's employment provides community service, the institution must always consider whether the service provided by the student primarily benefits the community as opposed to the agency or institution. For example, if an FWS student was hired to take care of the grounds for the administrative offices of the private nonprofit agency that provides the family literacy project, that job would not be community service. It is important to note that this job would also not be considered to be performing family literacy activities.

Changes: None.

Waiver—Employment of Students as Reading Tutors or in a Family Literacy Project (§ 675.18(g)(2))

Comments: As stated in the discussion for the previous comments, beginning July 1, 2000, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project. Section 443(b)(2) of the HEA grants the Secretary waiver authority with respect to both of these requirements if the Secretary determines that enforcing them would cause hardship for students at an institution.

Several institutions commented that their academic programs are solely focused on health professions programs with a majority of either graduate or first-professional degree students attending their institutions. They stated that they are ''single-purpose institutions'' providing degrees in health professions (*e.g.*, nursing, occupational therapy, medical technicians, biological sciences, dentistry, medicine, pharmacy, dental hygiene, physical therapy, clinical nutrition, medical technology). The institutions have no problem meeting and exceeding the community service percentage requirement for FWS. However, students in these programs actively seek community service activities that involve health care (*e.g.*, the homeless medical clinic). The graduate and professional programs are rigorous and time-consuming, and the nature and demands of their academic programs do not support their employment in area elementary and secondary schools as reading tutors. Students are typically in classes from 8 a.m. to 5 p.m. One of these commenters stated that it is common for students to be available to work FWS jobs only on evenings or weekends, and if literacy tutor positions are not available in the time frames that students can work because of academic requirements, penalties should not be assessed.

Another of these commenters stated that the proposed reading tutoring/family literacy placement would strain their resources to create, monitor and staff the necessary support mechanisms to implement a component that students, faculty and staff are currently not geared to provide (as a health professions institution). Several of the institutions that focus primarily on health professions requested that the final regulations provide clear guidance to institutions on what would be viewed as a hardship and steps the institution must take to qualify for a waiver. One of these commenters requested that we consider granting an automatic waiver of the reading tutoring/family literacy placement requirement for ''single-purpose institutions.''

Discussion: We do not foresee many instances in which a waiver of the reading tutoring and family literacy activities requirement would be granted. However, we are sensitive to the commenters' concerns and will evaluate situations involving institutions that specialize in health professions or other single areas of study, along with other waiver requests, if they are submitted during the waiver process. To allow flexibility to consider all factors that are valid reasons for a waiver, we are not specifying the circumstances that would receive a waiver in these final regulations.

In the Spring of 2000, the Department plans to issue a Dear Partner Letter

regarding the waiver process that will provide procedures and time frames for institutions to request waivers of the community service and/or the reading tutor/family literacy activities requirements for the 2000–2001 award year. We intend to notify institutions of our decision on their waiver requests prior to the start of the 2000–2001 award year so as not to cause any disruptions to institutions' award processes. Institutions should keep in mind that a waiver will be granted if they provide evidence that enforcing the requirement would cause a hardship for students at the institution. The fact that it may be difficult for the institution to comply with this provision is not in and of itself a basis for granting a waiver.

Changes: None.

Comments: One commenter expressed opposition to the new reading tutoring and family literacy project requirement by stating that it seems that schools are being forced more and more to implement ''social policy'' as a consequence of accessing Title IV funds. The commenter stated that the commenter trains career oriented and vocationally focused students who are not interested in these types of projects. Therefore, the commenter suggested that the entire reading tutoring and family literacy project requirement be waived and that we focus more on simplifying the HEA rather than complicating the regulations with social initiatives.

Discussion: Reading is a fundamental skill for learning and many American school children have trouble learning how to read. The FWS students not only help children read better by giving them extra learning time, they also build confidence and boost motivation. Research shows that children whose parents work with them on literacy skills during early childhood have a better chance of reading well and independently.

Student achievement in reading and mathematics in the United States is below the international average. There is a growing interest among many professionals in technical, mathematical and scientific fields to share their enthusiasm and knowledge about mathematics with school children. College students, particularly those with an affinity for mathematics and science, seek opportunities to mesh their interests with their commitment to community service. Students who need help in mastering the fundamentals of reading and mathematics in elementary and middle school can benefit from extra help, personal attention, and additional learning time.

We believe that participation in these community service activities can help to serve the needs of the community and give FWS students a rewarding and enriching experience. College students participating as tutors of reading and math may decide to pursue teaching as a career, based on successful tutoring experiences. This investment in our youth is an investment in this country's future. We believe that the efforts associated with regulations for FWS students to tutor children in reading and math, and work in family literacy activities, are justified by the benefits of preparing children to compete in the global economy and ensuring our Nation's economic growth.

Changes: None.

Payment for Time Spent in Training and Travel (§ 675.18(h))

Comments: One commenter expressed concern about the ability of time cards to demonstrate travel time when the student is employed in community service. This commenter suggested that we leave this regulation as flexible as possible by allowing a simple statement from the student attached to an already existing time card that only lists hours worked. Another commenter also questioned the requirement that travel time be designated separately on timesheet records, and suggested that the supervisor's signature certifying the accuracy of the timesheet record should be adequate documentation.

Discussion: The Department's policy does require that the time spent for travel that is directly related to employment in community service activities be reported on the student's FWS time record as the hours worked are also reported. We recommend that institutions use a time record that shows a separation for the time spent in travel from hours worked. This enables those hours to be monitored by a supervisor to ensure that the hours are reasonable and maintains the integrity of the FWS Program.

Changes: None.

Comments: A commenter objected to the differential treatment of FWS earnings for training and travel. The commenter believes that the differential treatment of earnings for training and travel time for standard off-campus FWS positions and those designated as community service are inequitable and administratively cumbersome. That commenter recommends that the treatment of earnings for travel and training be consistent across all off-campus FWS employment positions.

Discussion: The proposed regulations do not represent a change in our policy to allow FWS students to be paid wages during a training period conducted for a reasonable length of time for any FWS employment. The examples of math or reading tutors as positions that may require longer training periods were not used in the preamble to the NPRM (page 42210) to imply that an FWS student could not be paid for a training period in other types of FWS jobs. This policy applies whether the student is employed in community service activities or not.

With regard to payment for travel time, the HEA at section 443(b)(2)(A) clearly provides that beginning with the 1999–2000 award year, institutions will be allowed to pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities. We do not have authority to allow institutions to pay for travel time for any other types of FWS jobs.

Changes: None.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goals that (1) all children will start school ready to learn and that student achievement will be enhanced; (2) call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning; (3) every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and (4) the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century. The regulations in § 675.18(g) further the objectives of these Goals by requiring FWS student participation in reading tutoring and in family literacy projects where the family is recognized as an institution for education and learning and the parent is recognized as their children's first teachers. The objectives of the Goals are also addressed by extending eligibility for Federal Pell Grants to those students who are pursuing a teacher certification or licensing credential through a State

approved non-degree postbaccalaureate program.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM on page 42213.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

The Federal Perkins Loan, Federal Work-Study, and Federal Pell Grant programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Numbers: 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; and 84.063 Federal Pell Grant Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 673, 674, 675, and 676

Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: October 20, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending Parts 668, 673, 674, 675, 676, and 690 as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.8 is amended by revising paragraph (h) to read as follows:

§ 668.8 Eligible program.

* * * * *

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section—

(1) An educational program qualifies as an eligible program for purposes of the Federal Pell Grant Program only if the educational program is an undergraduate program or a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(2) An educational program qualifies as an eligible program for purposes of the FSEOG Program only if the educational program is an undergraduate program.

* * * * *

3. Section 668.32 is amended by revising paragraph (c) to read as follows:

§ 668.32 Student eligibility—general.

* * * * *

(c)(1) For purposes of the FSEOG Program, does not have a baccalaureate or first professional degree;

(2) For purposes of the Federal Pell Grant Program—

(i)(A) Does not have a baccalaureate or first professional degree; or

(B) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(ii) Is not incarcerated in a Federal or State penal institution; and

(3) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated;

* * * * *

4. Section 668.161 is amended by revising paragraph (a)(4) to read as follows:

§ 668.161 Scope and purpose.

(a) * * *

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in §§ 668.164(b) through (g) and 668.165.

* * * * *

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

5. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C 421–429, 1070b-1070b-3, and 1087aa-1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

6. Section 673.5 is amended by revising paragraph (c)(1) introductory text and paragraph (c)(1)(ix); by redesignating paragraphs (c)(1)(x) and (c)(1)(xi) as paragraphs (c)(1)(xi) and (c)(1)(xii), respectively; by adding new paragraphs (c)(1)(x) and (c)(4); and by revising the OMB control number following the section to read as follows:

§ 673.5 Overaward.

* * * * *

(c) *Resources.* (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, the Secretary considers that ''resources'' include, but are not limited to, any—

* * * * *

(ix) Veterans educational benefits paid under Chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(x) National service education awards or post-service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps);

* * * * *

(4) The institution may exclude as a resource any portion of a Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and subsidized Federal Stafford Loan that is equal to or less than the amount of a student's veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill) and national service education awards or post service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps).

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

PART 674—FEDERAL PERKINS LOAN PROGRAM

7. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

8. Section 674.10 is amended by revising paragraph (b) to read as follows:

§ 674.10 Selection of students for loans.

* * * * *

(b) If an institution's allocation of Federal Capital Contribution is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the dollar amount of loans made under this part must be offered to those students.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

9. The authority citation for part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

10. In § 675.2 paragraph (b) is amended by revising paragraphs (1) and (3) of the definition of ''community services'' to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Community services * * *

(1) Such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

* * * * *

(3) Support services to students with disabilities, including students with disabilities who are enrolled at the institution; and

* * * * *

§ 675.8 [Amended]

11. Section 675.8 is amended by removing paragraph (d), and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

12. Section 675.10 is amended by revising paragraph (c), and by revising the OMB control number following the section to read as follows:

§ 675.10 Selection of students for FWS employment.

* * * * *

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

(Approved by the Office of Management and Budget under control number 1845–0019)

13. Section 675.16 is amended to read as follows by:

(a.) Redesignating paragraphs (a)(2), (a)(3), and (a)(4), as paragraphs (a)(10), (a)(11), and (a)(12), respectively;

(b.) Revising paragraph (a)(1) and adding new paragraphs (a)(2) through (a)(9);

(c.) In newly redesignated paragraph (a)(11), removing ''wages are'' and adding, in its place, ''compensation is'';

(d.) In newly redesignated paragraph (a)(12), removing ''wages'' and adding, in its place, ''compensation'';

(e.) Revising paragraph (b)(1);

(f.) In paragraphs (b)(2), (b)(3), and (c), removing ''shall'' and adding, in its place, ''must''; and

(g.) Revising the OMB control number following the section.

§ 675.16 Payments to students.

(a)(1) An institution must pay a student FWS compensation at least once a month.

(2) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(3) An institution must pay FWS compensation to a student by—

(i) Check or similar instrument that the student can cash on his or her own endorsement;

(ii) Initiating an electronic funds transfer (EFT) to a bank account designated by the student after obtaining the authorization described in paragraph (a)(4)(i) of this section;

(iii) Crediting the student's account at the institution after obtaining the authorization described in paragraph (a)(4)(i) of this section. The institution may only credit the student's account at the institution to satisfy current award year charges for—

(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board;

(C) Room, if the student contracts with the institution for room; and

(D) Other institutionally provided educationally related goods and services; or

(iv) Crediting the student's account at the institution to satisfy minor prior award year authorized charges if these charges are less than $100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs after obtaining the authorization described in paragraph (a)(4)(i) of this section.

(4)(i) Except for the noncash contributions allowed under paragraphs (b)(2) and (b)(3) of this section, an institution must obtain a separate written authorization from the student if the student is paid FWS compensation by—

(A) Crediting the student's account at the institution; or (B) Initiating an EFT to a bank account designated by the student.

(ii) If an institution obtains a written authorization from the student, the institution may hold excess FWS funds under paragraph (a)(8) of this section.

(iii) The institution must obtain and use the written authorization in accordance with the requirements of paragraphs (a)(5) and (a)(6) of this section.

(5) In obtaining the student's written authorization described in paragraph (a)(4) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain to the student how it will carry out that activity.

(6)(i) If a student modifies the written authorization described in paragraph (a)(4) of this section, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels the written authorization described in paragraph (a)(4)(i)(A) of this section, the institution may use the FWS compensation to pay only those authorized charges incurred by the student before the institution received the notice.

(7) If an institution pays a student FWS compensation by crediting the student's account, and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible but no later than 14 days after the balance occurred on the account.

(8) Except if prohibited by the Secretary under the reimbursement payment method, an institution may hold, on behalf of the student, FWS funds that would otherwise be paid directly to the student under paragraph (a)(7) of this section, if the institution obtains the authorization described in paragraph (a)(4)(ii) of this section. If an institution holds excess FWS funds, the institution must—

(i) Identify the amount of FWS funds the institution holds for each student in a subsidiary ledger account designated for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of FWS funds the institution holds for the student; and

(iii) Pay any remaining balance by the end of the institution's final FWS payroll period for an award period.

(9) If a student cancels the written authorization as described in paragraph (a)(4)(ii) of this section to hold excess FWS funds, the institution must pay those funds directly to the student as soon as possible but no later than 14 days after the institution receives that cancellation notice.

* * * * *

(b)(1) Except for the noncash contributions allowed under paragraph (b)(2) or (b)(3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

14. Section 675.18 is amended as follows by:

(A) Revising paragraph (a)(2);

(B) In paragraph (f), removing, ''May 15'' and adding, in its place, ''May 1'';

(C) Revising paragraphs (g)(1) and (g)(2); and adding new paragraphs (g)(3) and (h).

§ 675.18 Use of funds.

(a) * * *

(2) Paying administrative expenses as provided for in 34 CFR 673.7;

* * * * *

(g) *Community service.* (1) For the 2000–2001 award year and subsequent award years, an institution must use at least seven percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities. In meeting this community service requirement, an institution must include at least one—

(i) Reading tutoring project that employs one or more FWS students as reading tutors for children who are preschool age or are in elementary school; or

(ii) Family literacy project that employs one or more FWS students in family literacy activities.

(2) The Secretary may waive the requirements in paragraph (g)(1) of this section if the Secretary determines that an institution has demonstrated that enforcing the requirements in paragraph (g)(1) of this section would cause a hardship for students at the institution.

(3) To the extent practicable, in providing reading tutors for children under paragraph (g)(1)(i), an institution must—

(i) Give priority to the employment of students to tutor in reading in schools that are participating in a reading reform project that—

(A) Is designed to train teachers how to teach reading on the basis of scientifically-based research on reading; and

(B) Is funded under the Elementary and Secondary Education Act of 1965; and

(ii) Ensure that any student who is employed in a school participating in a reading reform project described in paragraph (g)(3)(i) of this section receives training from the employing school in the instructional practices used by the school.

(h) *Payment for time spent in training and travel.* (1) For any award year, an institution may pay students for a reasonable amount of time spent for training that is directly related to FWS employment.

(2) Beginning with the 1999–2000 award year, an institution may pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

15. Section 675.20 is amended by adding a new paragraph (d), and by revising the OMB control number following the section to read as follows:

§ 675.20 Eligible employers and general conditions and limitation on employment.

* * * * *

(d) *Academic credit and work-study.* (1) A student may be employed under the FWS program and also receive academic credit for the work performed. Those jobs include, but are not limited to, work performed when the student is—

(i) Enrolled in an internship;

(ii) Enrolled in a practicum; or

(iii) Employed in a research, teaching, or other assistantship.

(2) A student employed in an FWS job and receiving academic credit for that job may not be—

(i) Paid less than he or she would be if no academic credit were received;

(ii) Paid for receiving instruction in a classroom, laboratory, or other academic setting; and

(iii) Paid unless the employer would normally pay the person for the same position.

(Approved by the Office of Management and Budget under control number 1845–0019)

16. Section 675.23 is amended by revising paragraph (b)(1) to read as follows:

§ 675.23 Employment provided by a private for-profit organization.

* * * * *

(b) * * *

(1) The work that the student performs must be academically relevant to the student's educational program, to the maximum extent practicable; and

* * * * *

17. Section 675.26 is amended by revising paragraph (a)(1), by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), by adding a new paragraph (a)(2), and by revising paragraph (d)(2)(iii) to read as follows:

§ 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent unless the Secretary approves a higher share under paragraph (a)(2) or (d) of this section.

(2) The Federal share of the compensation paid to a student may exceed 75 percent, but may not exceed 90 percent, if—

(i) The student is employed at a private nonprofit organization or a Federal, State, or local public agency that—

(A) Is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution;

(B) Is selected by the institution on an individual case-by-case basis;

(C) Would otherwise be unable to afford the costs of this employment; and

(ii) The number of students compensated under paragraph (a)(2)(i) of this section is not more than 10 percent of the total number of students paid under the FWS Program at the institution.

* * * * *

(d) * * *

(2) * * *

(iii) The student is performing family literacy activities in a family literacy project that provides services to families with preschool age children or children who are in elementary school; or

* * * * *

Subpart C—Work-Colleges Program

18. Section 675.45 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 675.45 Allowable costs, Federal share, and institutional share.

(a) * * *

(5) Coordinate and carry out joint projects and activities to promote work service learning.

(6) Carry out a comprehensive, longitudinal study of student academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed, and career choice and community service selected after graduation.

* * * * *

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

20. Section 676.10 is amended by revising paragraph (b) to read as follows:

§ 676.10 Selection of students for FSEOG awards.

* * * * *

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

21. Section 676.18 is amended by revising paragraph (a)(2), and adding new paragraphs (c), (d), (e) and (f) to read as follows:

§ 676.18 Use of funds.

(a) * * *

(2) Paying administrative expenses as provided for in 34 CFR 673.7.

* * * * *

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year.

(2) Before an institution may spend its current year FSEOG allocation, it must spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) *Use of funds carried forward and carried back.* An institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Carry back funds for summer FSEOG awards.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FSEOG allocations for the current award year to make awards to eligible students for payment periods that begin on or after May 1 of the previous award year but end prior to the beginning of the current award year.

PART 690—FEDERAL PELL GRANT PROGRAM

22. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

23. Section 690.6 is amended by revising the heading and paragraph (a), and adding new paragraphs (c) and (d) to read as follows:

§ 690.6 Duration of student eligibility—undergraduate course of study and eligible postbaccalaureate program.

(a) Except as provided in paragraphs (c) and (d) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

* * * * *

(c) An otherwise eligible student who has a baccalaureate degree and is enrolled in a postbaccalaureate program is eligible to receive a Federal Pell Grant for the period of time necessary to complete the program if—

(1) The postbaccalaureate program consists of courses that are required by a State for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary or secondary school in that State;

(2) The postbaccalaureate program does not lead to a graduate degree;

(3) The institution offering the postbaccalaureate program does not also offer a baccalaureate degree in education;

(4) The student is enrolled as at least a half-time student; and

(5) The student is pursuing an initial teacher certification or licensing credential within a State.

(d) An institution must treat a student who receives a Federal Pell Grant under paragraph (c) of this section as an undergraduate student enrolled in an undergraduate program for title IV purposes.

24. In § 690.7 paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 690.7 Institutional participation.

* * * * *

(c)(1) If an institution loses its eligibility to participate in the FFEL or Direct Loan program under the provisions of 34 CFR 668.17, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.17(b).

* * * * *

[FR Doc. 99–28167 Filed 10–27–99; 8:45 am]

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Thursday
October 28, 1999

Part VII

Department of Education

34 CFR Part 674
Federal Perkins Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 674

RIN 1845–AA05

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan Program regulations. The regulations implement changes to the Higher Education Act of 1965, as amended (HEA), resulting from the Higher Education Amendments of 1998 (1998 Amendments). These final regulations reflect the provisions of the 1998 Amendments that affect the institutions that participate in, and borrowers who have loans made under, the Federal Perkins Loan Program. These final regulations expand borrower benefits under the Federal Perkins Loan program by increasing loan limits, expanding borrower eligibility for deferments and cancellations, establishing a loan rehabilitation program for borrowers in default on their Federal Perkins Loans, establishing an incentive repayment program, and providing a closed school discharge.

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions that participate in the Federal Perkins Loan Program may, at their discretion, choose to implement the provisions of §§ 674.2, 674.5(c), 674.9, 674.16, 674.33(f), 674.41, 674.42, and 674.45 in these final regulations, on or after October 28, 1999. For further information see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION:** Section of this preamble.

FOR FURTHER INFORMATION CONTACT: Gail McLarnon, Program Specialist, Program Development Division, Office of Student Financial Assistance, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, D.C. 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These regulations implement the Higher Education Amendments of 1998 (Pub. L. 105–244), enacted October 7, 1998.

On July 29, 1999, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Perkins Loan Program regulations in the **Federal Register** (64 FR 41231). In the preamble to the NPRM, the Secretary discussed the following major proposed changes:

Amending § 674.2 to add a definition of the term ''satisfactory repayment arrangements'' (page 41233).

Amending § 674.5 to establish, effective with award year 2000–2001, a default penalty of zero Federal Capital Contribution for institutions with a cohort default rate of 25 percent or higher and a new default penalty that terminates the eligibility of an institution to participate in the Federal Perkins Loan Program if the institution has a cohort default rate of 50 percent or higher for the three most recent years for which data are available. The Secretary also discussed amending § 674.5 to allow an institution to exclude certain loans from its cohort default rate calculation (pages 41233–41234).

Removing and reserving § 674.7 in accordance with the elimination of the Expanded Lending Option.

Amending § 674.9 to authorize the use of the same criteria that remove a borrower from an institution's cohort default rate to re-establish a borrower's eligibility for additional Federal Perkins Loans (pages 41234–41235).

Amending § 674.12 to increase annual maximum loan amounts and increase the aggregate maximum loan amounts allowable for an eligible student to levels formerly authorized under the Expanded Lending Option (page 41235).

Amending §§ 674.16, 674.31, and 674.45 to update and clarify credit bureau reporting requirements with which an institution must comply (page 41235 and page 41238).

Amending § 674.31 to exclude from a borrower's initial grace period any period, not to exceed three years, during which a borrower who is a member of an Armed Forces reserve component is called or ordered to active duty (page 41235).

Amending § 674.33 to authorize institutions to establish an incentive repayment program to reduce defaults and replenish their Federal Perkins Loan revolving fund. Also amending § 674.33 to establish a closed school discharge for Federal Perkins Loan borrowers who are unable to complete their programs of study due to an institution's closure (pages 41235–41236).

Amending § 674.34 to extend the deferment benefits in this section to all borrowers regardless of the terms of the borrower's promissory note or when the loan was made (page 41236).

Amending § 674.39 to require institutions to establish a loan rehabilitation program for all defaulted Federal Perkins Loan borrowers (pages 41236–41237).

Amending §§ 674.41, 674.42 and 674.45 to require that institutions participating in the Federal Perkins Loan Program provide borrowers with information on the availability of the Student Loan Ombudsman's office (pages 41237–41238).

Amending § 674.42 to facilitate the use of electronic means in providing personalized exit counseling and make exit counseling requirements in the Federal Perkins Loan Program consistent with those in the Federal Direct Loan and the Federal Family Education Loan Programs (pages 41237–41238).

Amending § 674.47 to authorize an institution, until July 1, 2002, to charge its revolving fund for any collection costs assessed on a rehabilitated loan that are in excess of the 24 percent maximum limit that may be passed along to the borrower (page 41238).

Amending § 674.49 to reflect changes made to section 523(a)(8) of the Bankruptcy Code that eliminate a borrower's ability to have a student loan discharged on the ground that the loan has been in repayment for seven years or more (page 41238).

Amending §§ 674.53, 674.56, 674.57, 674.58, and 674.60 to extend the cancellation benefits authorized by these sections, for eligible service performed on or after October 7, 1998, to all borrowers with a loan made under the Federal Perkins Loan program regardless of the date the loan was made or the terms of the borrower's promissory note (pages 41238–41239).

Implementation Date of These Regulations

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has

designated the following regulations for early implementation:

Section 674.2—Upon publication, institutions may implement the ''satisfactory repayment arrangements'' as defined in this provision.

Section 674.5(c)(3)—Upon publication, institutions may exclude certain loans from its cohort default rate calculation.

Section 674.9—Upon publication, institutions may use the criterion that removes a borrower from its cohort default rate to re-establish a borrower's eligibility for Perkins Loans.

Sections 674.16, 674.31 and 674.45—Upon publication, institutions may implement the credit bureau reporting requirements contained in these sections.

Section 674.33(f)—Upon publication, institutions may implement incentive repayment programs.

Sections 674.41, 674.42 and 674.45—Upon publication, institutions may provide borrowers with information on the availability of the Student Loan Ombudsman's office.

These final regulations contain changes from the NPRM that are explained in the Analysis of Comments and Changes that follow.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 29, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, 1999, and several comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

General Comment

Comment: We received 28 comments on the Federal Perkins Loan Program NPRM published July 29, 1999. The comments were generally supportive. However, one commenter stated that any changes made by the Secretary in the Federal Perkins Loan program final regulations that represent a substantive departure from the proposed regulations published on July 29, 1999, would be viewed as a failure to honor the consensus reached by Committee II, a violation of the good faith with which members of Committee II engaged in negotiated rulemaking and would be detrimental to future negotiations.

Discussion: The 1998 Amendments amended section 492 of the HEA to require that all Title IV proposed regulations be subject to the negotiated rulemaking process. While this change requires the Secretary to publish proposed regulations that conform to agreements resulting from a negotiated rulemaking process, the 1998 Amendments did not change the process by which final regulations are promulgated. All proposed regulations continue to be subject to a public comment period, as required by the Administrative Procedure Act, and may be changed as a result of our full and careful consideration of the comments we receive from the public on an NPRM, regardless of agreements reached on proposed regulations during the negotiated rulemaking process.

Section 674.2 Definitions

Comment: One commenter expressed the view that the proposed definition of ''satisfactory repayment arrangements,'' which requires the borrower to make six on-time, consecutive, monthly payments on a defaulted loan to re-establish Title IV HEA eligibility, should specify how an institution determines the amount of the six monthly payments the borrower must make.

Discussion: The concept of satisfactory repayment arrangements is not new to the Federal Perkins Loan Program. The Federal Perkins Loan program regulations have contained a definition of satisfactory repayment arrangements since July 1, 1995. The regulatory definition required that a defaulted borrower either repay the loan in full, or execute a new written repayment agreement and make one payment each month for six consecutive months to re-establish title IV eligibility. We disagree that the regulations should specify how an institution determines the amount of the six monthly payments the borrower must make to re-establish Title IV eligibility. However, it has been our long-standing interpretation that the institution would calculate the amount due for each of the six payments consistent with an overall payment schedule that would allow the borrower to satisfy the outstanding balance on the loan in the time remaining in the original 10-year repayment period. The new written repayment agreement facilitated this calculation.

A similar definition of satisfactory repayment arrangements was codified in law by the 1998 Amendments but does not contain the requirement that the borrower execute a new written repayment agreement when making satisfactory repayment arrangements. Regardless of that fact, it remains our interpretation that in determining the amount of the six payments a borrower must make to re-establish Title IV eligibility, an institution must calculate a payment amount consistent with a payment schedule that satisfies the total amount due on the loan within the time remaining in the original ten-year repayment period, especially absent statutory language in the 1998 Amendments that specifies that the monthly payment amount as determined by the institution be reasonable and affordable based on the borrower's total financial circumstances, as is the case in the Federal Family Education Loan (FFEL) and the William D. Ford Federal Direct Loan (Direct Loan) programs. We believe the definition of satisfactory repayment arrangements, as proposed, is the best reflection of both the statute and our long-standing interpretation of the payment amount required by a borrower.

Changes: None.

Section 674.5 Federal Perkins Loan Program cohort default rate and penalties

Comment: One commenter objected to the elimination of the graduated default penalties imposed on institutions with cohort default rates that equal or exceed 20, 25, or 30 percent or more in favor of one default penalty of zero if an institution's cohort default rate equals or exceeds 25 percent. The commenter felt that this change creates a disincentive for institutions to collect on defaulted loans.

Discussion: We appreciate the commenter's concern. However, the elimination of the graduated default penalties is required by the 1998

Amendments. The final regulations reflect this statutory change.

Changes: None.

Comment: We received several comments regarding § 674.5(a)(2), which reflects a new default penalty that terminates an institution's eligibility to participate in the Federal Perkins Loan Program if it has a cohort default rate of 50 percent or higher for the three most recent years for which data are available. One commenter recommended that we specify in regulation that an institution's cohort default rate must equal or exceed 50 percent for each of the three most recent ''consecutive'' years for which cohort default data is available. One commenter suggested that the regulation clearly state that an institution does not lose eligibility to participate in the Federal Perkins Loan program if, upon appealing a determination of ineligibility, any one of the three rates used to make that determination is found to be below 50 percent. Lastly, one commenter suggested that we clarify in the regulations that an institution loses its eligibility to participate only in the Federal Perkins Loan program if its Perkins Loan cohort default rates meet the criteria set forth in this section.

Discussion: We do not agree that the word ''consecutive'' should be added to the regulatory language. Although the regulations do not contain the word ''consecutive'' in describing the three years of cohort default data that will be used by the Secretary to make a determination of ineligibility, it is our intent to use consecutive year cohort default rate data as long as it is available. However, we believe that a requirement that we use consecutive year data could prevent the Department from making a determination of ineligibility, thus thwarting legislative intent, if either the Department or an institution is unable to calculate an institution's cohort default rate in any given year because of unforeseen circumstances. We believe that language requiring the use of an institution's cohort default rate data for each of the three most recent years for which data are available better reflects statutory intent.

As to the request for clarification regarding the appeals process and the loss of Federal Perkins Loan program eligibility, the language in § 674.5(a)(2)(i)(A) clearly states that an institution will not lose eligibility if, as a result of an appeal, any one of the three cohort rates used to make a determination of ineligibility is below 50 percent. We also note that the language in § 674.5(a)(2) also clearly states that an institution loses eligibility to participate only in the Federal Perkins Loan program.

Changes: None.

Comment: Two commenters objected to the elimination of the provision allowing an institution to exclude improperly serviced loans from its cohort default rate.

Discussion: The elimination of this provision reflects a 1998 Amendments change. This provision had the perverse effect of rewarding an institution for its, or its servicer's, lack of due diligence in servicing and collecting its Perkins Loans by allowing the institution to remove defaulted borrowers from its cohort default rate.

Changes: None.

Comment: We received several comments regarding the exclusion of borrowers from an institution's cohort default rate in § 674.5(c)(3)(i). One commenter suggested that borrowers who are considered paid-in-full as a result of a small balance write-off of their loan under § 674.47(h) be referenced in § 674.5(c)(3)(i)(C). One commenter urged us to add language allowing a school to exclude from its cohort default rate calculation all borrowers who have filed for bankruptcy and are in a stay of collection. Lastly, one commenter suggested that § 674.5(c)(3)(i)(D) be clarified to state that the borrower's status must be less than 240- or 270-days past due as a result of receiving a deferment or forbearance.

Discussion: We agree that adding a reference to borrowers whose loans have been written off under § 674.47(h) would add clarity to the regulations. However, we believe this addition is more appropriately added in § 674.5(c)(3)(ii)(D).

We disagree with the commenter who believes that all borrowers who have filed for bankruptcy and are in a stay of collections should be excluded from an institution's cohort default rate calculation. During the required stay of collection, a loan is considered to be in a suspended status. It does not continue to age, although interest continues to accrue for which the borrower is responsible. If a borrower files a bankruptcy petition that includes a defaulted Perkins loan that has not reached a 240- or 270-day past due status, the loan will retain its pre-240- or 270-day status and will be excluded from the calculation of a school's cohort rate until the bankruptcy proceeding has concluded. If the borrower includes a defaulted loan that is more than 240 or 270 days past due, the loan will retain its more than 240- or 270-day past due status and be included in the calculation of the school's cohort default rate. While we realize that an institution is unable to contact the borrower during a stay of collections, we believe that the time to work those accounts and perform the due diligence necessary to return the borrower to repayment is before the borrower becomes 240 or 270 days past due.

We do not agree that additional language specifying that a deferment or forbearance must bring the borrower to a pre-240- or 270-day status is necessary. As currently drafted, the regulations allow the institution to exclude a borrower from its cohort calculation if the borrower has ''received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status.'' The addition of language specifying that the deferment or forbearance has brought the borrower to a pre-240- or 270-day status is unnecessary.

Changes: A reference to loans repaid in full in accordance with § 674.47(h) has been added to § 674.5(c)(3)(ii)(D).

Comment: Several commenters objected to the proposal that payments obtained through income tax offset, wage garnishment, income or asset execution, or pursuant to a judgment should not be considered voluntary payments for the purpose of removing borrowers from an institution's cohort default rate calculation if the borrower voluntarily makes six consecutive payments or voluntarily makes all payments currently due. One commenter stated that our definition of voluntary payments is unnecessarily harsh and that all payments, regardless of how they are made, should be considered voluntary. One commenter noted that a borrower's payments are not guaranteed by a judgment—a school must still work the account to ensure that payments are made. The commenter also noted that many borrowers consider payments obtained through income tax offset to take the place of regularly scheduled payments that the borrower is already making on their own.

Discussion: We disagree that payments obtained through income tax offset, garnishment, income or asset execution, or pursuant to a judgment should be considered voluntary payments made by the borrower in order to remove a borrower whose loans are brought current or who has made six consecutive monthly payments from an institution's cohort default rate calculation. Generally, payments obtained by these methods are automatically deducted from the borrower's Federal or state tax refund,

wages, or assets and the borrower has no control or choice in the payment process. We continue to believe that the initiation of court action to obtain payment on a defaulted loan represents last resort due diligence efforts on the part of the school. Payments obtained through this process would not have been obtained otherwise and cannot be considered voluntary. While we recognize that a school may have to work to collect the payments due on some judgment accounts, the required payments are nonetheless made as a result of a court order. Further, borrowers have no control over a payment applied to their defaulted loan as a result of income tax offset regardless of the fact that the borrower may already be making payments.

Changes: None.

Section 674.9 Student Eligibility

Comment: One commenter felt strongly that restoring eligibility for a Federal Perkins Loan to a borrower who meets any of the criteria that would remove him or her from an institution's cohort default rate calculation is bad public policy.

Discussion: Although the return of Federal Perkins Loan eligibility to a borrower who meets any of the criteria that remove him or her from an institution's cohort default rate calculation represents a significant departure from past policy, this is a statutory requirement enacted as part of the 1998 Amendments.

Changes: None.

Comment: One commenter strongly supported our definition of ''voluntary'' payments for the purpose of a borrower re-establishing eligibility for a Perkins Loan under this section.

Discussion: We appreciate the support of the commenter and believe it is an important condition to re-establishing eligibility.

Changes: None.

Comment: One commenter suggested that we quantify in § 674.9(i)(1) what amount a payment made ''over and above'' a payment made pursuant to a judgment must be to qualify as a voluntary payment when a school enters into a repayment agreement with the borrower on a judgment. For example, if a school has entered into an agreement with a borrower that requires $50 monthly payments to satisfy a judgment, what payment amount ''over and above'' the $50 payment would a borrower be required to make in order for his or her payment to be considered voluntary? The commenter believed that specific language would clarify the conditions a borrower must satisfy to re-establish eligibility.

Discussion: We do not believe that further clarification of the definition of voluntary payment for the purpose of re-establishing a defaulted borrower's eligibility for Federal Perkins Loans is necessary. However, a payment that is generally equal to the payment the borrower is required to make pursuant the judgment will satisfy the definition of voluntary in this section. We believe an approach that treats borrowers consistently and precludes situations in which one borrower might be required to make small payments while another borrower might be required to make large payments over and above payments made pursuant to a judgment is an important consideration when re-establishing eligibility.

In almost all cases, the terms of a judgment make the whole obligation due in full immediately, and any monthly payment arrangement that arises is solely by agreement between the borrower and the school. In some cases, the borrower and the school negotiate a repayment arrangement that is subsequently incorporated in a consent judgment. A school is free to agree to any monthly payment that it considers reasonable in such an agreed judgment or in a repayment agreement to satisfy a judgment. Therefore, we would consider payments over and above the amount owed under the judgment itself or the repayment agreement already reached to satisfy that judgment to be voluntary payments for purposes of reestablishing eligibility for new student aid. This level of payment not only represents a good faith effort on the part of the borrower to repay the debt in a manner that is neither required nor automatic, but also represents a good faith effort on the part of the school to replenish its revolving fund and responsibly administer the Federal Perkins Loan Program.

Using the above example, if a school has entered into an agreement with a borrower that requires $50 monthly payments on a judgment, we would consider a borrower that makes payments of at least $50 to be making voluntary payments.

Changes: None.

Comment: One commenter objected to having one definition of ''voluntary'' payments for re-establishing a borrower's eligibility for Federal Perkins Loans and another definition of ''voluntary'' payments in order to determine which borrowers can be excluded from an institution's cohort default rate. The commenter felt that the definition of voluntary payments should be consistent within the program regulations.

Discussion: We disagree that the definition of ''voluntary'' payments must be consistent within the program regulations. Denying a borrower access to additional student financial assistance has far more serious consequences than excluding that borrower from an institution's cohort default rate. The negotiators agreed that cutting off a borrower's access to Federal Perkins Loans had the potential to prohibit the borrower from furthering his or her education, securing employment and honoring his or her student loan obligations. The negotiators also agreed that a borrower who made payments over and above the payments made on a judgment was making a good faith effort to repay the debt and that those efforts should be recognized.

Changes: None.

Comment: One commenter felt that language restricting the definition of ''voluntary'' payments to those payments made directly by the borrower was too restrictive and that payments made on behalf of the borrower should be included as well.

Discussion: We disagree with the commenter that payments made on behalf of the borrower should be included in the definition of voluntary payments for the purpose of re-establishing a defaulted borrower's eligibility for Federal Perkins Loans. Payments made on behalf of the borrower are not payments made directly by the borrower and are payments over which the borrower has no control or choice. Payments made in this manner cannot be considered voluntary in this context.

Changes: None.

Section 674.12 Loan Maximums

Comment: All of the comments we received on the new increased loan maximums and the use of the aggregate unpaid balance in determining a borrower's eligibility for additional loans under the Federal Perkins Loan Program were supportive.

Changes: None.

Section 674.16 Making and disbursing loans

Comment: Several commenters supported language in this section that requires an institution to report to at least one national credit bureau information concerning the repayment and collection of the loan until the loan is paid in full. One commenter believed that it would be a violation of the Fair Credit Reporting Act (FCRA), however, for an institution to report on the loan until it is paid in full. Several commenters urged the Secretary to work

with the Federal Trade Commission to amend the FCRA to require consumer reporting agencies to make reports containing credit information regarding the status of a borrower's Federal Perkins Loan until the loan is paid in full rather than for seven years as currently required under the FCRA.

Discussion: The general requirement that an institution report on the status of the loan to a consumer reporting agency until it is paid in full is not a new requirement under section 463 of the HEA. The 1998 Amendments did change this section of the HEA and codified many of the credit bureau reporting requirements that institutions have been required to perform for some time. We should also note that it is not now, and has not been, a violation of the FCRA for a consumer reporting agency to accept and disseminate information on a loan until the loan is paid in full; it was, prior to the 1998 Amendments to section 463, a violation of the FCRA for a consumer reporting agency to make reports for certain purposes that contain adverse information on accounts for more than seven years from the date of the adverse event reported. (The 1998 Amendments to section 463 the HEA give credit reporting agencies the option to make reports containing adverse credit information until the loan is paid in full; they do not require it.)

We will pursue opportunities to work with the Federal Trade Commission as they arise to amend the FCRA in ways that support and strengthen the repayment of Title IV student loans.

Changes: None.

Section 674.31 Promissory Note

Comment: One commenter noted that the promissory note used in the Federal Perkins Loan Program does not reflect the new provision in this section that excludes any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days from the borrower's initial grace period. The commenter requests that we clarify our intentions with regard to the development of a new Federal Perkins Loan promissory note.

Discussion: We appreciate the commenter's concern regarding the development of a promissory note that contains terms and conditions that reflect the changes made to the HEA by the 1998 Amendments. We plan to develop, as soon as possible after the publication of final regulations, an addendum to the Federal Perkins Loan program promissory note now in use that reflects the new provisions of the 1998 Amendments. The development of a new promissory note will follow. Until an addendum or a new note is developed, however, we would note that institutions must comply with the changes made to the HEA by the 1998 Amendments and that the promissory notes contained in CB–96–8 and CB–93–9 are legally valid documents.

Changes: None.

Section 674.33 Repayment

(**Note:** In this and other sections of the regulations in Part 674, the holder of a loan may be the Secretary or a non-Federal party. In these cases, requirements are written in the present indicative, rather than using the word ''must.'' However, we intend these provisions to be mandatory, regardless of who holds the loan.)

Comment: Several commenters objected to the requirement that the institution reimburse its revolving fund for any money lost to its fund that otherwise would have been paid by the borrower if the borrower had not received one of the repayment incentive discounts described in this section. The commenters felt that the Secretary should pay for incentive repayment discounts or that the revolving fund should absorb the cost of any incentive repayment that an institution may extend to its borrowers.

Discussion: The 1998 Amendments prohibit an institution from using Federal funds, including Federal funds from an institution's revolving fund, or institutional funds from the revolving fund to pay for any repayment incentive.

Changes: None.

Comment: One commenter, while supporting repayment incentives in general, believed that the regulations should allow an institution to factor in administrative savings in reimbursing its revolving fund for any money lost due to incentive repayment discounts that otherwise would have been paid by the borrower. The commenter felt that the purpose of repayment incentives is to encourage prompt repayments without increasing, and perhaps even lowering, the administrative costs to the revolving fund.

Discussion: We appreciate the commenter's desire to reflect the administrative savings generated by borrowers who pay the loan in full prior to the end of the repayment period or who make regular consecutive payments for 48 months, thereby offsetting an institution's required reimbursement of money lost to its revolving fund. However, we believe it would take a statutory change to reflect those savings in the regulations.

Changes: None.

Comment: One commenter felt that offering repayment incentives to borrowers who repay their loans in a timely fashion does nothing to help needy borrowers, the intended beneficiaries of the Federal Perkins Loan program, who may be struggling to repay their loans.

Discussion: While we appreciate the concerns expressed by the commenter regarding borrowers who may be struggling to repay their Federal Perkins Loan, the provision allowing institutions to offer incentive repayment discounts to borrowers who repay their loans timely is statutory and voluntary on the institution's part. Additionally, we believe that incentives encourage borrowers to repay in full, or to begin or maintain repayment on a regular basis, thereby replenishing an institution's revolving fund and making more money available to the needy individuals for whom Federal Perkins Loans are intended.

Changes: None.

Section 674.34 Deferment of repayment—Federal Perkins loans, National Direct Student loans and Defense loans

Comment: One commenter suggested that the final regulations be revised to extend the Federal Perkins Loan program deferments contained in statute prior to July 1, 1993 to borrowers who are currently eligible only for the deferments contained in section 464(c)(2)(A) of the HEA. The commenter believed that making this change would simplify the deferment process for borrowers and institutions and reduce the amount of paperwork that the deferment process requires.

Discussion: We are sympathetic to the commenter's suggestion. However, we are unable to revise the regulations to expand the deferments available to Federal Perkins Loan borrowers because it is beyond the scope of the 1998 Amendments change to the HEA and would require additional statutory change.

Changes: None.

Section 674.39 Loan Rehabilitation

Comment: We received many comments on the new loan rehabilitation provisions in this section. Many commenters questioned aspects of loan rehabilitation that are required by statute. Other commenters asked only for clarification regarding the rehabilitation process without objecting to or requesting revisions to the regulations.

Discussion: We cannot address requests for revisions to the proposed regulations that are inconsistent with

the statute. We believe it is helpful to review the aspects of loan rehabilitation in the Perkins Loan Program that relate to borrower benefits and institutional responsibilities that are required by law, and therefore cannot be changed.

Under the 1998 Amendments, a defaulted loan is considered rehabilitated if ''the borrower of a loan made under this part who has defaulted on the loan'' makes the required 12 payments. Accordingly, loan rehabilitation is available to all defaulted borrowers with a loan made under the Federal Perkins Loan Program. If a borrower requests loan rehabilitation, the institution or its servicer must allow the borrower to rehabilitate his or her loan. This also applies to defaulted loans that an institution has placed with a collection agency. However, the borrower may only rehabilitate a defaulted loan once. Because the statute specifically refers to a stream of 12 payments as determined by the institution, the institution must work with the borrower to determine a payment amount that is appropriate. The statute does not require a signed rehabilitation agreement.

In accordance with the 1998 Amendments, once the loan is rehabilitated (after the 12th payment has been made), the institution or its servicer must request that any credit bureau to which the defaulted loan was reported remove the default from the borrower's credit history. The borrower is brought current and is no longer considered to be delinquent or in default. Removing the default is consistent with the requirements of the Fair Credit Reporting Act (FCRA), which requires that an institution correct and update the information it furnishes to a credit reporting agency. In this case, the institution would be updating the borrower's credit history to reflect the rehabilitation of the loan. The FCRA also requires credit reporting agencies to have reasonable procedures in place to accept updated or corrected information.

Once the loan is rehabilitated, the borrower is subject to the terms, conditions, benefits and privileges of the borrower's original promissory note. This includes eligibility for deferments, forbearance, cancellations, and flexible repayment options. The borrower is also subject to the same responsibilities under the note, which include, but are not limited to, making regular payments and informing the school or servicer of an address change or the need for flexible repayment arrangements. We sum up this status by saying the borrower is returned to regular repayment status in § 674.39(b)(1) of the regulations.

Finally, in accordance with the 1998 Amendments, a borrower who has rehabilitated his or her loan re-establishes eligibility for Title IV student financial assistance, as long as the borrower is otherwise eligible.

Changes: None.

Comment: One commenter requested clarification regarding when an institution must notify a defaulted borrower of the option and consequences of rehabilitating the loan. The commenter also asked us to specifically state what the consequences of loan rehabilitation are in the Federal Perkins Loan Program.

Discussion: An institution has several opportunities under the requirements in Subpart C-Due Diligence of the Federal Perkins Loan Program to notify a defaulted borrower of his or her option to rehabilitate. We will not regulate prescriptively in this area and will leave the timing of that notification to the institution. Clearly, however, once a borrower has begun to miss payments, the billing procedures in § 674.43 require an institution to contact the borrower to demand payment. A notification of the option and the consequences of loan rehabilitation can be included as part of any or all of these payment demands. We believe that this notification should be made no later than the final demand for payment required by § 674.43(d). Further, notification regarding the option and consequences of loan rehabilitation should also be provided during the more intensive efforts an institution, or its servicer, makes to recover amounts owed on a defaulted loan under § 674.45. Regardless of the timing of the notification and regardless of whether the institution is servicing the loan or a billing or collection agency is servicing the loan, the borrower may request rehabilitation of his or her defaulted loan at any time. Additionally, although the proposed regulations require that an institution notify only a defaulted borrower, institutions are encouraged to include information regarding loan rehabilitation as part of the disclosures regarding the definition and consequences of default required when making and disbursing a loan under § 674.16(a)(1)(x) and when conducting exit counseling under § 674.42(b)(2)(v).

The consequences of rehabilitating a defaulted loan of which the borrower should be advised include returning the borrower to regular repayment status, treating the first payment made under the twelve consecutive payments as the first payment in a new repayment period of up to 10 years, instructing any credit bureau to which the default was reported to remove the default from the borrower's credit history, and the re-establishment of the borrower's eligibility for Title IV student financial assistance, provided that the borrower is otherwise eligible.

Changes: None.

Comment: Several commenters requested clarification regarding whether or not a borrower must request loan rehabilitation. One commenter suggested that we revise the regulations to require that the borrower contact the institution prior to the first of the twelve payments so that the institution can work with the borrower to assure their successful rehabilitation.

Discussion: We agree that a borrower must notify the institution of his or her desire to rehabilitate a defaulted loan and believe this is implicitly stated in the regulations in describing rehabilitation as the making of 12 consecutive on-time, consecutive, monthly payments ''as determined by the institution.'' However, in order to avoid confusion and add clarity to this section, we have amended the regulations to require a request from the borrower. We note, however, that we are not specifying that the borrower's request be written nor that the borrower's request precede the 12 consecutive on-time, monthly payments.

Changes: We are adding the phrase ''and the borrower requests rehabilitation,'' to § 674.39(a)(2).

Comment: One commenter requested clarification regarding whether a revised repayment schedule is required for a rehabilitated loan.

Discussion: We will not specify in regulations that an institution must prepare a revised repayment agreement for a rehabilitated borrower. However, institutions are required under § 674.39(b)(2) to treat the first payment made under the 12 consecutive payments as the first payment under a new repayment period of up to 10 years. Servicing a rehabilitated loan in a manner consistent with program regulations would appear to necessitate a revised repayment agreement to ensure a borrower's successful repayment. We believe that a new revised repayment agreement is probably in the best interests of both the school and the borrower.

Changes: None.

Comment: One commenter requested clarification regarding when an institution may begin counting payments made by a borrower toward the rehabilitation of the borrower's defaulted loan. The commenter asked if only payments made on or after the

effective date of the final regulations (July 1, 2000) may be counted toward the 12 payments the borrower is required to make in order to rehabilitate a defaulted loan or if payments made before the effective date of the final regulations may be counted toward the rehabilitation.

Discussion: An institution may count payments made before July 1, 2000, toward the 12 on-time, monthly payments the borrower must make to rehabilitate a defaulted Federal Perkins Loan as long as at least one of the 12 payments is made on or after the July 1, 2000, effective date of the final regulations.

Changes: None.

Comment: One commenter recommended that we revise the regulations to prohibit a borrower from rehabilitating a defaulted Federal Perkins Loan on which a judgment has been rendered because the judgment has taken the place of the original promissory note as the debt instrument.

Discussion: We disagree that the regulations should be revised to prohibit borrowers from rehabilitating a defaulted loan on which a judgment has been rendered. We interpret section 464(h) of the HEA to require that a rehabilitation program must be available to all defaulted borrowers even if the institution has secured a judgment against the borrower. This is consistent with the statutory interpretation of loan rehabilitation in both the FFEL and Federal Direct Loan Programs. However, we share the commenter's concern that the promissory note already signed by the borrower in these cases no longer embodies that borrower's obligations with respect to the debt. Therefore, the borrower of a defaulted loan on which a judgment has been entered must sign a new promissory note that incorporates outstanding principal after making the 12 on-time, consecutive, monthly payments required by rehabilitation. In addition to the amount of the new promissory note, the borrower is responsible for interest and late charges that accrued while the borrower was in default. The borrower is also subject to the same 24 percent limit on collection costs once the loan has been rehabilitated.

Changes: We have amended § 674.39 by adding a new paragraph (a)(3) to require a defaulted borrower to sign a new promissory note if the institution has a judgment against the borrower.

Comment: Several commenters objected to extending a new ten-year repayment period to rehabilitated borrowers because it would delay the replenishment of the institution's revolving fund and is inequitable to other Federal Perkins Loan borrowers. One commenter recommended that a borrower be required to repay the outstanding balance on a rehabilitated loan in the remaining time left in the borrower's original ten-year repayment period. Further, this commenter felt that if the borrower's original ten-year repayment period had elapsed, the borrower should be required to repay the defaulted loan in full in the twelve payments that constitute rehabilitation.

Discussion: The point of rehabilitation is to return the borrower to regular repayment on a defaulted loan to ensure successful payment in full. We do not believe that rehabilitating a borrower's loan only to encourage redefault by establishing an unreasonable repayment schedule is within the intent of the rehabilitation program. Further, a successful post-rehabilitation payment returns money to an institution's revolving fund and reduces costs associated with default collections. The extension of a new repayment period of up to 10 years, which assumes minimum monthly payments in some cases, is also consistent with the rehabilitation provisions in the Federal Family Education Loan and the Federal Direct Loan Programs.

Changes: None.

Comment: One commenter asked whether an institution may shorten a rehabilitated borrower's repayment period by requiring a minimum monthly payment.

Discussion: An institution may require a borrower to pay a minimum monthly payment on a rehabilitated loan only if the institution required a minimum monthly payment under the borrower's original promissory note and the payment amount due on the rehabilitated loan is less than the minimum monthly payment. This does not preclude the borrower and the institution from agreeing to a monthly repayment amount on a rehabilitated loan that repays the loan in less than 10 years if the institution did not exercise the minimum monthly payment option in the original note. As stated earlier, a new repayment period of up to 10 years, assuming a minimum monthly payment in some cases, is extended to a rehabilitated borrower to ensure that the borrower successfully rehabilitates the loan.

Changes: None.

Comment: One commenter supported the provision returning the benefits and privileges of the original promissory note to the rehabilitated borrower, but believed that the regulations should reflect the borrower's eligibility only for the remaining balance of those privileges under the statutory maximums contained in the HEA. For example, if a borrower had received one year of forbearance before rehabilitating the loan, the borrower would be eligible for only two years of forbearance after rehabilitation.

Discussion: We agree that the borrower is eligible only for the statutory maximums on benefits available under the original promissory note and that language reflecting this change would improve the clarity of the regulations.

Changes: Section 674.39(d) has been changed to specify that the borrower regains eligibility for the balance of benefits and privileges available under the original promissory note.

Comment: Several commenters requested clarification regarding whether an institution must require the return of a rehabilitated loan from a collection agency after receipt of the required 12 consecutive monthly payment amounts.

One commenter, noting the borrower's return to regular repayment status, the return of all of the benefits and privileges of the original promissory note, and the borrower's ability to request flexible repayment options, stated that collection agencies typically focus only on collecting the total amount of any debt placed with it and not on servicing loans in regular repayment status. The commenter stated that the return of these benefits would suggest the return of the account to the institution.

Discussion: The issue of whether a loan may remain with a collection agency after rehabilitation was discussed during negotiated rulemaking. Committee II reached consensus on the rehabilitation provisions in this section with the understanding that an institution may allow a rehabilitated loan to remain with a collection agency.

The institution is responsible for insuring that any third party servicer with which it contracts is in compliance with required statutory and regulatory program requirements, which would include the requirements of rehabilitation in the Federal Perkins Loan program. If the institution chooses to leave the rehabilitated account with a collection agency, the collection agency must provide the rehabilitated borrower with all of the benefits associated with loan rehabilitation and required by this section. An institution may leave a rehabilitated loan with a collection agency only if that agency is capable of providing the following services in a manner consistent with program regulations:

- billing the borrower (§ 674.43);

• processing deferment and cancellation requests (§§ 674.34, 674.35, 674.36, 674.37, 674.38 and Subpart D-Loan Cancellation);
• providing flexible repayment arrangements in accordance with the terms of the promissory note (§ 674.33);
• providing any notice or disclosure required under the program regulations (Subpart C-Due Diligence); and
• providing any other statutory or regulatory benefit to which the borrower is entitled.

If the collection agency is unable to provide a rehabilitated borrower with the benefits of rehabilitation, the institution must remove the account from the agency.

Changes: None.

Comment: Many commenters objected to the provision limiting collection costs that can be charged to the borrower on a rehabilitated loan to 24 percent of the unpaid principal and accrued interest.

Several commenters believed that it will be problematic to renegotiate contracts with collection agencies and that the terms of collection agency contracts should be flexible and subject only to negotiation between the school and the collection agency. They believed that the 24 percent cap on collection costs that can be passed on to a rehabilitated borrower will limit the number of collection agencies an institution is able to contract with to those collection agencies that charge lower rates as opposed to those that are best at recovering debts, thereby limiting the ability of an institution to maximize the return of funds to its revolving fund.

Several commenters stated that accounting for collection costs that are different depending on the type of loan on which they are assessed is burdensome, confusing and time-consuming. The commenters questioned why rehabilitated loans should be treated differently than other Federal Perkins Loans since, under the terms of their promissory notes, all borrowers are responsible for reasonable collection costs incurred by an institution in collecting the loan.

Discussion: We disagree that the renegotiation of collection agency contracts will be problematic and that schools will be limited in their choice of collection agencies to those that charge lower fees as opposed of those that are best at collecting debts. We believe that the marketplace will generate competition among collection agencies and that collection agencies will adapt their rates and their servicing practices to those rates and practices required to service rehabilitated loans. We also believe that a borrower is more likely to continue paying on his or her loan once the loan is rehabilitated and that these payments will replenish an institution's revolving fund, not deplete it.

We further believe that collection costs on a rehabilitated loan should be reduced once the borrower has successfully rehabilitated a defaulted loan. A rehabilitated borrower has re-established eligibility for Title IV student financial assistance, is once again entitled to all of the benefits and privileges available under the promissory note and, most importantly, is no longer considered to be in default on the loan. We believe that to assess collection costs on a loan in good standing at a rate higher than the 24 percent maximum is excessive.

Lastly, a reduction in the collection costs that can be charged to a rehabilitated borrower was intensely debated during the negotiated rulemaking process. Committee II reached consensus on a collection cost cap of 24 percent. This rate is consistent with the reduction of collection costs that may be charged to a rehabilitated borrower in the FFEL and Federal Direct Loan Programs, adjusted to allow for the fact that collection costs cannot be capitalized in the Federal Perkins Loan program as they are in the FFEL and Direct Loan programs.

Changes: None.

Comment: Two commenters, while not objecting to the proposed regulations agreed to by the negotiators that cap the collection costs that can be charged to a rehabilitated borrower at 24 percent, expressed concern that the preamble language in the NPRM does not accurately reflect current Federal policy contained in 34 CFR 30.60 on assessing collection costs to defaulted borrowers. The commenters stated that institutions and their servicers would be forced to incur significant expenses in reprogramming and redesigning current systems and procedures to comply with a process that required them to calculate a 24 percent cap on collection costs on the unpaid principal and accrued interest remaining on the loan at the time it is rehabilitated.

The commenters also expressed concern that the NPRM preamble language states that payments on a rehabilitated loan cannot be treated on a ''fee-on-fee,'' basis which is a widely accepted method for determining collection costs on delinquent debtors. The commenters expressed confidence, however, that institutions and servicers could utilize current systems and procedures, along with the fee-on-fee method of determining collection costs, in such a way as to not exceed the 24 percent cap on rehabilitated loans.

Conversely, three commenters suggested that the text of the preamble discussion be included in the final regulations. They believed that this would provide clarity to the regulations and guard against the possibility that a rehabilitated borrower would be charged in excess of the 24 percent cap on collection costs after the loan has been successfully rehabilitated.

Discussion: The preamble language contained in the NPRM accurately describes the basis on which consensus was reached on the 24 percent cap on collection costs that may be charged on a rehabilitated Federal Perkins Loan. Default-related collection costs of up to 18.5 percent are passed along to the borrower of a rehabilitated FFEL or Federal Direct Loan, are capitalized, and become part of the rehabilitated principal on which interest accrues after rehabilitation. As a result, an FFEL or Federal Direct Loan borrower ultimately pays post-rehabilitation collection costs of approximately 24 percent over the remaining life of the loan. In order to treat rehabilitated borrowers consistently across the Title IV loan programs, the negotiators agreed to a generally comparable 24 percent cap on collection costs on a rehabilitated Federal Perkins Loan, acknowledging that because collection costs in the Federal Perkins Loan Program cannot be capitalized they must be treated as a separate cost. The use of current Federal policy contained in 34 CFR 30.60 when assessing collection costs on a rehabilitated Federal Perkins loan was not specifically discussed. However, several negotiators were very concerned that the 24 percent cap on collection costs on a rehabilitated Federal Perkins loan would be exceeded depending on how the payments from the borrower were applied.

An institution, or its servicer, charges a commission on each payment the borrower makes on a defaulted loan using the formula in 34 CFR 30.60(a)(1). The formula does not take into account interest that continues to accrue on the outstanding balance of a defaulted loan as it is paid down. However, because a rehabilitated loan is no longer considered to be in default, interest must be a factor when applying payments to a rehabilitated loan. Therefore, if an institution or its servicer uses the formula contained in 34 CFR 30.60, it must ensure that when the commissions retained on payments received from the borrower on a rehabilitated loan reach an amount equal to 24 percent of the original principal and accrued interest that

remained on the loan after the borrower made the 12 payments, no more costs may be calculated or assessed against the borrower.

We agree that clarifying the regulations to guard against the possibility that a rehabilitated borrower will be charged collection costs in excess of the 24 percent cap is appropriate. An institution, or its servicer, must consider the interest that accrues on the outstanding balance of the rehabilitated loan over the length of the post-rehabilitation repayment period to ensure that collection costs of no more than 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment are paid by the borrower.

Changes: Section 674.39(c)(1) has been changed to specify that collection costs, if charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment.

Comment: One commenter believed that the regulations should be revised to allow an institution to charge collection costs not paid by the borrower on a rehabilitated loan to its revolving fund if the borrower subsequently redefaults.

Discussion: We disagree that the regulations should be revised to allow an institution to charge its revolving fund for collection costs not paid by the borrower if the borrower subsequently redefaults. If the borrower redefaults on a rehabilitated loan, the borrower would be responsible for paying any reasonable collection costs incurred by the institution in attempting to collect the debt. We would note that if a rehabilitated loan is being serviced by a collection agency, § 674.48(e) of the Federal Perkins Loan Program regulations requires an institution to recall the loan and place it with a different collection agency if the loan redefaults. Section 674.48(b) prohibits an institution from using a billing service (which are the duties assumed by the collection agency upon the successful rehabilitation of a loan) and a collection agency that is owned or controlled by the same entity.

Changes: None.

Section 674.41 Due Diligence—General requirements

Comment: Several commenters objected to the requirement that, as part of an institution's general due diligence activities, it provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute. The commenters felt there was no need for a Student Loan Ombudsman's office, that it would be an unnecessary expense and that it would be a bureaucratic intrusion between the institution and the borrower. We received similar objections to the addition of language in §§ 674.42 and 674.45 that requires an institution to inform borrower's of the availability of the Student Loan Ombudsman's office.

Discussion: The 1998 Amendments require the Department of Education to appoint a Student Loan Ombudsman who must receive, review and attempt to resolve informally complaints from borrowers regarding the terms of their loans. Although there is no specific statutory requirement that institutions or other loan participants disseminate information regarding the availability of the Student Loan Ombudsman to borrowers, the negotiators for Committees I and II agreed that as our partners in student loan administration, it made sense for loan participants, as well as the Department, to provide borrowers with information on the Student Loan Ombudsman's office. The negotiators agreed that adding a provision on the availability of this service to § 674.41, as well as to §§ 674.42 and 674.45, will increase borrower awareness and greatly enhance successful repayment of student loans and reduce defaults.

Changes: None

Comment: Several commenters expressed concern that the proposed regulations did not address what kind of information an institution must provide to borrowers when complying with the requirement to inform them about the availability of the Student Loan Ombudsman's office. One commenter felt that the proposed regulations should be revised to require institutions to provide the borrower with information on the availability of the Student Loan Ombudsman's office only as that information is provided to institutions by the Secretary.

Discussion: The proposed regulations require that an institution provide the borrower with information about the availability of the Student Loan Ombudsman's office. This information is meant to convey to the borrower that, if the borrower is unable to resolve a dispute with the loan holder, another avenue of redress is available. An institution may comply with this requirement by providing the borrower with the Ombudsman's website address or mailing address at the Department of Education. The Student Loan Ombudsman's website address is http://www.sfahelp.ed.gov.

Changes: None.

Section 674.42 Contact with the borrower

Comment: One commenter applauded our initiative to allow for loan counseling through interactive electronic means but objected to the requirement that the institution obtain through return receipt or some other mechanism documentation that the student received and completed the materials when electronic exit counseling is used. The commenter believed that obtaining return receipt that the student received and completed electronic exit counseling was too high a standard of compliance for institutions to meet and suggested that we adopt the receipt standards of the U.S. Postal Service, which are that if mail is not returned to the sender, it can be considered delivered.

Discussion: We disagree that obtaining documentation that the borrower has received and completed exit counseling, either through return receipt or some other mechanism, is too high a standard to require when an institution provides exit counseling electronically. Institutions were previously required to provide exit counseling to their borrowers either in person or in a group to ensure that borrowers received and completed exit counseling. We believe that providing exit counseling electronically should be viewed as comparable to providing in person counseling and should provide the same assurances.

The standards of the U.S. Postal service provide that if mail is not returned to the sender, it can be considered delivered. Because there is currently no similar standard for electronic mail, we believe that it is in the best interest of borrowers to require an institution to take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes interactive electronic exit counseling given the current available technology.

Changes: None.

Comment: One commenter supported the requirement that an institution provide a borrower with an explanation of any options the borrower might have to consolidate or refinance his or her loan during exit counseling. However, the commenter suggested that we require institutions to inform Federal Perkins Loan borrowers that the interest rate on a consolidation loan may be higher than the 5 percent interest rate on their Federal Perkins loan.

Discussion: Because Federal Perkins loan borrowers lose eligibility for cancellation benefits and are charged a different rate of interest upon

consolidating their Perkins loans, we agree that disclosing the consequences of consolidating a Federal Perkins loan will help borrowers make an informed decision.

Change: Section 674.42(b)(2)(ii) has been amended to require an institution to inform borrowers about the consequences of consolidating a Federal Perkins Loan.

Comment: One commenter stated that the provision requiring schools to provide borrowers with ''additional matters that the Secretary recommends that a school include in the exit counseling or materials set forth in Appendix D to 34 CFR 668'' be deleted. The commenter believes that such a requirement is unnecessary especially given the elimination of default reduction plans in the Federal Perkins Loan Program.

Discussion: We disagree that this provision should be deleted. Including additional information recommended by the Secretary or materials in Appendix D in exit counseling is an option, not a requirement. We believe that Appendix D is a useful resource to institutions when counseling borrowers on default avoidance.

Changes: None.

Section 674.47 Costs chargeable to the fund

Comment: One commenter expressed concern that institutions may be unable to renegotiate collection agency contracts by July 1, 2002 that comply with the requirement that no more than 24 percent of the unpaid principal and accrued interest remaining on the loan at the time the loan is rehabilitated can be assessed a borrower in collection costs. The commenter requested that we include an explicit commitment in the preamble of the final regulations to revisit this issue if the majority of institutions are unable to renegotiate contracts to account for the 24 percent collection costs cap.

Discussion: We believe that because this will be a general program requirement, the market will expand to meet institutional needs. Further, we believe it is inappropriate for us to commit to a regulatory change outside of the negotiated rulemaking process required by the 1998 Amendments. However, we will carefully consider this provision in the future as part of our ongoing regulatory review.

Changes: None.

Section 674.49 Bankruptcy of borrower

Comment: One commenter submitted a detailed analysis of § 674.49 and suggested substantive changes to this section of the regulations. These suggested changes included eliminating paragraph (b), which requires an institution to file a proof of claim in a bankruptcy; eliminating paragraph (e), which outlines an institution's responsibilities when a borrower files a Chapter 13 bankruptcy; and, clarifying paragraph (g)(1)(i), which deals with termination of collection and write-off of the loan under certain circumstances.

Discussion: We appreciate the analysis of § 674.49 submitted by the commenter. However, we did not propose to amend this section other than to:

- Reflect the change to the bankruptcy code that eliminates a borrower's ability to discharge a loan in bankruptcy on the basis of the loan being in repayment for more than seven years, and require all borrowers who seek discharge of a Perkins loan to prove undue hardship;
- Clarify that the seven year repayment period on bankruptcies filed before October 8, 1998, excludes applicable suspensions of the repayment period; and
- Insert language stating that the institution must use diligence and may assert any defense consistent with its status under applicable law to avoid the discharge of the loan.

While this section may undoubtedly deserve closer scrutiny, we do not believe it is appropriate to make the changes suggested by the commenter outside of the negotiating rulemaking process.

Changes: None.

Comment: One commenter suggested that we delete § 674.49(4)(i), which requires an institution to monitor the borrower's compliance with the requirements of a Chapter 13 repayment plan, and to take certain steps if the borrower has not made payments or has requested a hardship discharge on the debt. The commenter asserted that the institution has no legal grounds to monitor the borrower unless the institution appoints a trustee.

Discussion: The code expressly directs that a trustee be appointed for every Chapter 13 proceeding and authorizes any ''party in interest'' or ''creditors'' to move for any of a number of reasons to have a Chapter 13 proceeding dismissed or converted to a Chapter 7, 11 U.S.C. 1302, 1307(c). Because the comment has no basis in the law, we disagree with the commenter's suggestion that we delete this paragraph from the regulations. The proposed changes to this paragraph reflect only the deletion of language that referred to loans held by an institution that had been in repayment for more than seven years. We believe that any further changes in this section of the regulation should be undertaken only as part of negotiated rulemaking process.

Changes: None.

Comment: One commenter noted an inconsistency between the preamble discussion on § 674.49(c)(1) and the proposed regulatory language. Specifically, the preamble states that ''the proposed regulations would amend this section to 'require' institutions to use due diligence and assert any defense consistent with its status.'' The actual regulatory language states that ''the institution must use diligence and 'may' assert any defense consistent with its status.'' The commenter requested that we correct the preamble in the NPRM.

Discussion: Any inconsistency between the preamble and the proposed regulatory language was not intended. Recently, some State institutions have responded to undue hardship complaints by asserting that sovereign immunity barred relief on these claims in bankruptcy proceedings. We intend the proposed amendment to make clear that every institution must use due diligence to oppose discharge, but that State institutions may do so—if they wish—by asserting sovereign immunity as a defense to an undue hardship complaint. Unfortunately, some courts misconstrue Department regulations to bar State institutions from asserting sovereign immunity in these circumstances. We intend this amendment as an authoritative explanation of the meaning of the Federal Perkins Loan regulations and Program Participation Agreement on this due diligence obligation.

Changes: None.

Section 674.54 Teacher cancellation—Federal Perkins loans and Direct loans made before July 23, 1992

Comment: One commenter suggested that we consider removing and reserving § 674.54 of the Federal Perkins Loan Program regulations because it is redundant with § 674.53. (Section 674.54 authorizes teaching cancellation benefits for Federal Perkins Loans and Direct Loans made before July 23, 1992. All borrowers with loans made before July 23, 1992 are eligible for all of the cancellation provisions contained in § 674.53.)

Discussion: We agree that § 674.54 is redundant and should be removed and reserved. We note that borrowers who teach handicapped students and receive cancellation benefits under § 674.54(b) remain eligible for cancellation under § 674.53(b)—Full time teaching in special education.

Changes: Section 674.54 is removed and reserved.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of the 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: October 20, 1999.

Richard W. Riley,

Secretary of Education.

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by adding, in alphabetical order, a definition of ''satisfactory repayment arrangement,'' to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement: For purposes of regaining eligibility for grant, loan, or work assistance under Title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six (6) on-time, consecutive, monthly payments on a defaulted loan. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once on a defaulted loan.

* * * * *

3. Section 674.5 is amended as follows:

A. By revising paragraphs (a)(1) and (a)(2).

B. By removing paragraphs (a)(3) and (a)(4).

C. By removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

D. By removing paragraph (c)(4); and redesignating paragraph (c)(3)(ii) as paragraph (c)(4) and by removing ''; and'' at the end of the sentence in the new paragraph (c)(4) and adding, in its place, a period; and by revising paragraph (c)(3).

E. By removing paragraphs (e) and (f).

§ 674.5 Federal Perkins Loan Program cohort default rate and penalties.

(a) * * *

(1) *FCC reduction.* If the institution's cohort default rate equals or exceeds 25 percent, the institution's FCC is reduced to zero.

(2) *Ineligibility.* For award year 2000–2001 and succeeding award years, an institution with a cohort default rate that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year, or the remainder of the award year, in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

(i) *Appeal procedures.*

(A) *Inaccurate calculation.* An institution may appeal a notice of ineligibility based upon the submission of erroneous data by the institution, the correction of which would result in a recalculation that reduces the institution's cohort default rate to below 50 percent for any of the three award years used to make a determination of ineligibility. The Secretary considers the edit process, by which an institution adjusts the cohort default rate data that it submits to the Secretary on its Fiscal Operations Report, to constitute the procedure to appeal a determination of ineligibility based on a claim of erroneous data.

(B) *Small number of borrowers entering repayment.* An institution may appeal a notice of ineligibility if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used by the Secretary to make a determination of ineligibility.

(C) *Decision of the Secretary.* The Secretary issues a decision on an appeal within 45 days of the institution's submission of a complete, accurate, and timely appeal. An institution may continue to participate in the program

until the Secretary issues a decision on the institution's appeal.

(ii) *Liquidation of an institution's Perkins Loan portfolio.* Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary's decision to deny the appeal, the institution must—

(A) Liquidate its revolving student loan fund by making a capital distribution of the liquid assets of the Fund according to section 466(c) of the HEA; and

(B) Assign any outstanding loans in the institution's portfolio to the Secretary in accordance with § 674.50.

(iii) *Effective date.* The provisions of paragraph (a)(2) of this section are effective with the cohort default rate calculated as of June 30, 2001.

* * * * *

(c) * * *

(3)(i) In determining the number of borrowers who default before the end of the following award year, a loan is excluded if the borrower has—

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

(C) Repaid the full amount due, including any interest, late fees, and collection costs that have accrued on the loan;

(D) Received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status; or

(E) Rehabilitated the loan after becoming 240- or 270-days past due.

(ii) A loan is considered canceled and also excluded from an institution's cohort default rate calculation if the loan is—

(A) Discharged due to death or permanent and total disability;

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school; or

(D) Repaid in full in accordance with § 674.33(e) or § 674(h).

(iii) For the purpose of this section, funds obtained by income tax offset, garnishment, income or asset execution, or pursuant to a judgment are not considered voluntary.

* * * * *

§ 674.9 [Removed and Reserved]

4. Section 674.6 is removed and reserved.

§ 674.7 [Removed and Reserved]

5. Section 674.7 is removed and reserved.

6. Section 674.9 is amended by redesignating paragraph (i) as paragraph (j) and adding a new paragraph (i) to read as follows:

§ 674.9 Student eligibility.

* * * * *

(i) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For the purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are those payments made directly by the borrower, including payments made over and above payments made pursuant to a judgment; and

(2) Voluntary payments do not include payments obtained by income tax refund offset, garnishment, income or asset execution, or pursuant to a judgment.

* * * * *

7. Section 674.12 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student may borrow is—

(1) $4,000 for a student who is enrolled in a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(b) The aggregate unpaid principal amount of all Federal Perkins Loans and Direct Loans received by an eligible student may not exceed—

(1) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree;

(2) $40,000 for a graduate or professional student; and

(3) $8,000 for any other student.

* * * * *

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section, and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution.

* * * * *

8. Section 674.16 is amended by revising paragraph (i) and the Office of Management and Budget control number to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(i)(1) An institution must report to at least one national credit bureau—

(i) The amount and the date of each disbursement;

(ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and

(iii) The date the loan was repaid, canceled, or discharged for any reason.

(2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

(Approved by the Office of Management and Budget under control number 1845–0019)

* * * * *

9. Section 674.31 is amended by redesignating paragraphs (b)(2)(i) (C) and (D) as (D) and (E), respectively; by adding new paragraph (b)(2)(i)(C); by revising paragraph (b)(10)(i); and by revising the Office of Management and Budget control number to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) For purposes of establishing the beginning of the repayment period for Direct or Perkins loans, the 6- and 9-month grace periods referenced in paragraph (b)(2)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Direct or Perkins loan borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a new 6- or 9-month grace period upon completion of the excluded period.

* * * * *

(10) * * *

(i) The institution must disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

10. Section 674.33 is amended by adding new paragraphs (f) and (g); and by revising the Office of Management and Budget Control number to read as follows:

§ 674.33 Repayment.

* * * * *

(f)(1) *Incentive repayment program.* An institution may establish the following repayment incentives:

(i) A reduction of no more than one percent of the interest rate on a loan on

which the borrower has made 48 consecutive, monthly repayments.

(ii) A discount of no more than five percent on the balance owed on a loan which the borrower pays in full prior to the end of the repayment period.

(iii) With the Secretary's approval, any other incentive the institution determines will reduce defaults and replenish its Fund.

(2) *Limitation on the use of funds.* (i) The institution must reimburse its Fund, on at least a quarterly basis, for money lost to its Fund that otherwise would have been paid by the borrower as a result of establishing a repayment incentive under paragraphs (f)(1)(i), (ii) and (iii) of this section.

(ii) An institution may not use Federal funds, including Federal funds from the student loan fund, or institutional funds from the student loan fund to pay for any repayment incentive authorized by this section.

(g) *Closed school discharge.* (1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) ''School'' means a school's main campus or any location or branch of the main campus; and

(C) The ''holder'' means the Secretary or the school that holds the loan.

(2) *Relief pursuant to discharge.* (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

(ii) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to have been in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) *Determination of borrower qualification for discharge by the Secretary.* The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that—

(i) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.213 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan; or

(ii) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement the borrower must—

(i) State that the borrower—

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 602.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means;

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction, is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.*

(i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who—

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

(B) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish

procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

(8) *Discharge procedures.* (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(ii) If the borrower's current address is known, the holder of the loan mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan. The holder of the loan may continue to receive borrower payments.

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(8)(ii) of this section.

(iv) In the case of a loan held by a school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under § 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

(vi) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination.

(vii) In the case of a loan held by the Secretary, if the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower, in writing, of that determination and the reasons for the determination.

(viii) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(ix) In the case of a loan held by a school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or collection costs the borrower paid on a loan discharged under this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

11. Section 674.34 is amended by revising the section heading; revising paragraphs (a) and (c); and adding the Office of Management and Budget control number to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, Direct loans and Defense loans.

(a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, a Direct loan, or a Defense loan, regardless of contrary provisions of the borrower's promissory note and regardless of the date the loan was made, during periods described in this section.

* * * * *

(c) The borrower of a Federal Perkins loan, a Direct loan, or a Defense loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

12. Section 674.39 is revised to read as follows:

§ 674.39 Loan rehabilitation.

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months and the borrower requests rehabilitation; and

(3) A borrower who wishes to rehabilitate a loan on which a judgment has been entered must sign a new promissory note after rehabilitating the loan.

(b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must—

(1) Return the borrower to regular repayment status;

(2) Treat the first payment made under the 12 consecutive payments as the first payment under the 10-year repayment maximum; and

(3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(c) Collection costs on a rehabilitated loan—

(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment; and

(2) That exceed the amounts specified in paragraph (c)(1) of this section may be charged to an institution's Fund until July 1, 2002 in accordance with § 674.47(e)(5).

(d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains the balance of the benefits and privileges of the promissory note as applied prior to the borrower's default on the loan. Nothing in this paragraph prohibits an institution from offering the borrower flexible repayment options following the borrower's return to regular repayment status on a rehabilitated loan.

(e) The borrower may rehabilitate a defaulted loan only one time.

(Approved by the Office of Management and Budget under control number 1845–0019)

13. Section 674.41 is amended by adding a new paragraph (a)(3); and by

adding the Office of Management and Budget control number to read as follows:

§ 674.41 Due diligence—general requirements.

(a) * * *

* * * * *

(3) Provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023).

14. Section 674.42 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a), adding a new paragraph (b), and revising the Office of Management and Budget control number to read as follows:

§ 674.42 Contact with the borrower.

(a) *Disclosure of repayment information.* The institution must disclose the following information in a written statement provided to the borrower either shortly before the borrower ceases at least half-time study at the institution or during the exit interview. If the borrower enters the repayment period without the institution's knowledge, the institution must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period. The institution must disclose the following information:

(1) The name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(2) The name and address of the party to which payments should be sent.

(3) The estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin.

(4) The stated interest rate on the loan.

(5) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(6) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(7) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(8) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(9) The total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(10) A copy of the borrower's signed promissory note.

(b) *Exit interview.* (1) An institution must conduct exit counseling with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must conduct this counseling shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (*e.g.* loan consolidation and refinancing, including the consequences of consolidating a Federal Perkins Loan);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(v) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation;

(vi) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school;

(vii) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan;

(viii) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer; and

(ix) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are in appendix D to 34 CFR part 668.

(4) An institution that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials and participates in and completes the exit counseling.

(5) The institution must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

15. Section 674.45 is amended by revising paragraph (b), by adding a new paragraph (h), and by revising the Office of Management and Budget control number to read as follows:

§ 674.45 Collection procedures.

* * * * *

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

* * * * *

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

16. Section 674.47 is amended by redesignating paragraphs (e)(5) and (e)(6) as (e)(6) and (e)(7), respectively, by adding new paragraph (e)(5), and by revising the Office of Management and Budget control number to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(e) * * *

(5) Until July 1, 2002 on loans rehabilitated pursuant to § 674.39, amounts that exceed the amounts specified in § 674.39(c)(1) but are less than—

(i) 30 percent if the loan was rehabilitated while in a first collection effort; or

(ii) 40 percent if the loan was rehabilitated while in a second collection effort.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

17. Section 674.49 is amended as follows:

A. By redesignating paragraphs (f)(2)(ii)(A) and (f)(2)(ii)(B) as paragraphs (f)(2)(ii)(B) and (f)(2)(ii)(C), respectively; and adding a new paragraph (f)(2)(ii)(A).

B. By redesignating paragraphs (f)(3)(ii)(A) and (f)(3)(ii)(B) as paragraphs (f)(3)(ii)(B) and (f)(3)(ii)(C), respectively; and adding a new paragraph (f)(3)(ii)(A). By revising paragraphs (c)(1), (c)(2) and (c)(3);

C. Revising paragraph (e)(4)(i) introductory text; newly redesignated paragraphs (f)(2)(ii)(B) and (f)(3)(ii)(B); and paragraph (g).

D. By revising the Office of Management and Budget control number.

§ 674.49 Bankruptcy of borrower.

* * * * *

(c) * * *

(1) The institution must use due diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. The institution must follow the procedures in this paragraph to respond to a complaint for a determination of dischargeability under 11 U.S.C. 523(a)(8) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents, unless discharge would be more effectively opposed by avoiding that action.

(2) If the petition for relief in bankruptcy was filed before October 8, 1998 and more than seven years of the repayment period on the loan (excluding any applicable suspension of the repayment period defined in 34 CFR 682.402(m)) have passed before the borrower filed the petition, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) In any other case, the institution must determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

* * * * *

(e) * * *

* * * * *

(4)(i) The institution must monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a ''hardship discharge'' under 11 U.S.C. 1328(b), the institution must determine from its own records and information derived from documents filed with the court—

* * * * *

(f) * * *

(2) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period as defined by 34 CFR 682.402(m), and

* * * * *

(3) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any application suspension of the repayment period as defined by 34 CFR 682.402(m) before the filing of the petition; and

* * * * *

(g) *Termination of collection and write-off.* (1) An institution must terminate all collection action and write off a loan if it receives a general order of discharge—

(i) In a bankruptcy in which the borrower filed for relief before October 8, 1998, if the loan entered the repayment period more than seven years (exclusive of any applicable suspension of the repayment period defined by 34 CFR 682.402(m)) from the date on which a petition for relief was filed; or

(ii) In any other case, a judgment that repayment of the debt would constitute an undue hardship and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0023)

18. Section 674.52 is amended by revising paragraphs (c)(1) and (d); and by revising the Office of Management and Budget control number to read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(c) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

* * * * *

(d) *Concurrent deferment period.* The Secretary considers a Perkins Loan, Direct Loan or Defense Loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

19. Section 674.53 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively; by revising the heading of the section; by adding a new paragraph (a)(2); by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 674.53 Teacher cancellation—Federal Perkins, Direct and Defense loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.*

(1)(i) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school.

(ii) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(2) The borrower must be teaching full-time in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

* * * * *

(b) *Cancellation for full-time teaching in special education.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for full-time teaching in fields of expertise.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

§ 674.54 [Removed and Reserved]

20. Section 674.54 is removed and reserved.

21. Section 674.56 is amended by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 674.56 Employment cancellation—Federal Perkins, Direct and Defense loans.

(a) *Cancellation for full-time employment as a nurse or medical technician.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for full-time service as a nurse or medical technician performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of these children.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individual with Disabilities Act.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992 for early intervention service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

22. Section 674.57 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), respectively; by revising the section heading and paragraph (a)(1); and adding a new paragraph (a)(2) to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, Direct and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct Loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

23. Section 674.58 is amended by revising paragraph (a) to read as follows:

§ 674.58 Cancellation for service in a Head Start Program.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Direct or Federal Perkins loan, for service as a full-time staff member in a Head Start program.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Defense loan for service as a full-time staff member in a Head Start program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) The Head Start program in which the borrower serves must operate for a complete academic year, or its equivalent.

(4) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

* * * * *

24. Section 674.60 is amended by revising the section heading and paragraph (a) to read as follows:

§ 674.60 Cancellation for volunteer service—Perkins loans, Direct loans and Defense loans.

(a)(1) An institution must cancel up to 70 percent of the outstanding balance on a Perkins loan, and 70 percent of the outstanding balance of an NDSL made on or after October 7, 1998, for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) An institution must cancel up to 70 percent of the outstanding balance on a Direct or Defense loan for service as

a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs) performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

§ 674.8, 674.10, 674.19, 674.20, 674.35, 674.36, 674.38,674.50, 674.61 [Amended]

25. Sections 674.8, 674.10, 674.19, 674.20, 674.35, 674.36, 674.38, 674.50, and 674.61 are amended by revising the Office of Management and Budget control number to read ''1845–0019''.

26. Sections 674.13 is amended by adding the Office of Management and Budget control number before the authority citation.

§ 674.13 Reimbursement to the Fund.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

27. Section 674.37 is amended by adding the Office of Management and Budget control number before the authority citation.

§ 674.37 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0019)

§ 674.43, 674.48 [Amended]

28. Sections 674.43 and 674.48 are amended by revising the Office of Management and Budget control number to read ''1845–0023''.

[FR Doc. 99–28168 Filed 10–27–99; 8:45 am]

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Federal Register

Thursday
October 28, 1999

Part VIII

Department of Health and Human Services

42 CFR Parts 36 and 36a
Currently Effective Indian Health Service Eligibility Regulations; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 36 and 36a

RIN 0917–AAO3

Currently Effective Indian Health Service Eligibility Regulations

AGENCY: Indian Health Service, HHS.

ACTION: Republication of currently effective Indian Health Service eligibility regulations.

SUMMARY: The HHS is publishing in the **Federal Register**, final regulations governing eligibility for services from the Indian Health Service. The eligibility regulations currently codified at 42 CFR part 36 are under a congressional moratorium. Republishing the regulations that are currently in effect while the codified regulations are under moratorium is being done for the convenience of the public and in conformance with the requirement of the Administrative Procedure Act, 5 U.S.C. 552(a)(1), that the Code of Federal Regulations (CFR) must contain currently effective regulations.

DATES: Effective October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie M. Morris, Director, Division of Regulatory and Legal Affairs, Suite 450, 12300 Twinbrook Parkway, Rockville, Maryland 20852, telephone: (301) 443–1116. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 16, 1987, HHS published new final regulations governing eligibility for IHS services at 52 FR 35044. These regulations were to supplant eligibility for IHS services at 52 FR 35044. These regulations were to supplant eligibility regulations effective prior to that date but were never implemented.

In the Fiscal Year 1988 Appropriations Act, Section 315, Public Law 100–202, Congress delayed implementation of the new regulations for one year and has imposed a moratorium on the use of appropriated funds for implementation of the new regulations in subsequent fiscal years. In Section 719(a) of the Indian Health Care Amendments of 1988, Public Law 100–713, Congress directed the IHS ''* * * during the period of this moratorium * * * to provide services pursuant to the criteria for eligibility for such services that were in effect on September 15, 1987.''

In Section 719(b), Congress also directed the IHS to conduct a study to determine, among other things, the financial impact of the rules published September 16, 1987. The study has been completed (*Impact of the Final Rule ''Health Care Services of the Indian Health Service'' 42 CFR Part 36—Final Report,* contract No. 282–910065) and sent to the tribes for comment, but it has not yet been submitted to Congress. The IHS has not submitted a budget request reflecting increased costs associated with the new regulations as directed by the various appropriations acts.

The regulations in effect on September 15, 1987, which Congress has made applicable during the moratorium, were last published in the CFR in 1986. The new regulations have been published in each edition of the CFR after 1986 but have not been implemented. This has caused considerable confusion because a reader of the current CFR would assume that the eligibility regulations published therein are currently applicable, which is not the case.

Because the moratorium continues in effect, for the convenience of the public, the HHS is republishing the eligibility regulations in effect on September 1, 1987, so these regulations may appear in the CFR printed in regular type, followed by the suspended regulations in small type.

The suspended regulations are redesignated as part 36a for clarity of citation purposes because two distinct regulations cannot use the same regulation number.

The following eligibility rules that were in effect on September 1, 1987, along with 42 CFR subpart G, 36.61, payor of last resort, (published February 9, 1990, at 55 FR 4609) are currently in effect for the IHS. Subpart G has replaced §§ 36.21(a) and 36.23(f) of the rules in effect on September 15, 1987.

List of Subjects in 42 CFR Parts 36 and 36a

Alaska Natives, Contract health services, Employment, Government contracts, Government procurement, Grant programs—education, Grant programs—health, Grant programs—Indians, Health care, Health facilities, Health service delivery areas, Indians, Penalties, Reporting and recordkeeping requirements, Scholarships and fellowships, Student aid.

Dated: September 2, 1999.

Michael E. Lincoln,

Acting Director, Indian Health Service.

Approved: September 29, 1999.

Donna E. Shalala,

Secretary of Health and Human Services.

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

PART 36—[REDESIGNATED AS PART 36a]

1. Part 36 is redesignated as Part 36a.

2. In newly redesignated § 36a.212, paragraphs (h)(i) through (h)(iv) are redesignated as paragraphs (h)(i) through (h)(4).

3. In newly redesignated Part 36a, in the redesignated section and paragraph listed in the first column below, references to the sections listed in the second column are revised to read as shown in the third column:

Redesignated section	Old section reference	New section reference
36a.12(a)(2), (a)(3), and (b)(1)	36.15	36a.15
36a.15(b)(1)	36.(a)(1) and (3)	36a.(a)(1) and (3)
36a.16(a)	36.12(a)	36a.12(a)
36a.33(a)	36.32(a)	36a.32(a)
36a.33(b)	36.14	36a.14
36a.34(b)	36.14	36a.14
36a.42(a)	36.41	36a.41
36a.43	36.41	36a.41
36a.53	36.51	36a.51
36a.53	36.54	36a.54
36a.56	36.54	36a.54
36a.106(a)(4)	36.105	36a.105
36a.116	36.114	36a.114
36a.120(a)	section 102(g) of this subpart	36a.102(g)
36a.205(b)(18)	36.216	36a.216
36a.208(b)(4)	36.206	36a.206
36a.212(h)(iv)	36.214	36a.214

Redesignated section	Old section reference	New section reference
36a.230(b)	36.208	36a.208
36a.230(b)	36.214	36a.214
36a.232	36.233(a)	36a.233(a)
36a.302(v)(4)	36.350(a)	36a.350(a)
36a.303 (a) and (d)	36.302	36a.302
36a.321(d)	36.320	36a.320
36a.322(a)(2)	36.332	36a.332
36a.350(a) introductory text	36.351	36a.351
36a.351(b)(5), (b)(6), (b)(7), (b)(9)	36.350(a)	36a.350(a)
36a.353	36.350(a) (7) and (8)	36a.350(a) (7) and (8)
36a.371(c), (d)	36.370	36a.370
36a.372(a)(2)	36.332	36a.332

4. Redesignated part 36a is suspended indefinitely.

5. A new part 36 is added to read as follows:

PART 36—INDIAN HEALTH

Authority: 25 U.S.C. 13; sec. 3, 68 Stat. 674 (42 U.S.C., 2001, 2003); Sec. 1, 42 Stat. 208 (25 U.S.C. 13); 42 U.S.C. 2001, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 36.1 Definitions.

When used in this part:

Bureau of Indian Affairs (BIA) means the Bureau of Indian Affairs, Department of the Interior.

Indian includes Indians in the Continental United States, and Indians, Aleuts and Eskimos in Alaska.

Indian health program means the health services program for Indians administered by the Indian Health Service within the Department of Health and Human Services.

Jurisdiction has the same geographical meaning as in Bureau of Indian Affairs usage.

Service means the Indian Health Service.

§ 36.2 Purpose of the regulations.

The regulations in this part establish general principles and program requirements for carrying out the Indian health programs.

§ 36.3 Administrative instructions.

The service periodically issues administrative instructions to its officers and employees, which are primarily found in the *Indian Health Service Manual* and the Area Office and program office supplements. These instructions are operating procedures to assist officers and employees in carrying out their responsibilities, and are not regulations establishing program requirements which are binding upon members of the general public.

Subpart B—What Services Are Available and Who Is Eligible To Receive Care?

§ 36.11 Services available.

(a) *Type of services that may be available.* Services for the Indian community served by the local facilities and program may include hospital and medical care, dental care, public health nursing and preventive care (including immunizations), and health examination of special groups such as school children.

(b) *Where services are available.* Available services will be provided at hospitals and clinics of the Service, and at contract facilities (including tribal facilities under contract with the Service).

(c) *Determination of what services are available.* The Service does not provide the same health services in each area served. The services provided to any particular Indian community will depend upon the facilities and services available from sources other than the Service and the financial and personnel resources made available to the Service.

§ 36.12 Persons to whom services will be provided.

(a) *In general.* Services will be made available, as medically indicated, to persons of Indian descent belonging to the Indian community served by the local facilities and program. Services will also be made available, as medically indicated, to a non-Indian woman pregnant with an eligible Indian's child but only during the period of her pregnancy through postpartum (generally about 6 weeks after delivery). In cases where the woman is not married to the eligible Indian under applicable state or tribal law, paternity must be acknowledged in writing by the Indian or determined by order of a court of competent jurisdiction. The Service will also provide medically indicated services to non-Indian members of an eligible Indian's household if the medical officer in charge determines that this is necessary to control acute infectious disease or a public health hazard.

(2) Generally, an individual may be regarded as within the scope of the Indian health and medical service program if he/she is regarded as an Indian by the community in which he/she lives as evidenced by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with general

Bureau of Indian Affairs practices in the jurisdiction.

(b) *Doubtful cases.* (1) In case of doubt as to whether an individual applying for care is within the scope of the program, the medical officer in charge shall obtain from the appropriate BIA officials in the jurisdiction information that is pertinent to his/her determination of the individual's continuing relationship to the Indian population group served by the local program.

(2) If the applicant's condition is such that immediate care and treatment are necessary, services shall be provided pending identification as an Indian beneficiary.

(c) *Priorities when funds, facilities, or personnel are insufficient to provide the indicated volume of services.* Priorities for care and treatment, as among individuals who are within the scope of the program, will be determined on the basis of relative medical need and access to other arrangements for obtaining the necessary care.

§ 36.13 [Reserved]

§ 36.14 Care and treatment of ineligible individuals.

(a) In case of an emergency, as an act of humanity, individuals not eligible under § 36.12 may be provided temporary care and treatment in Service facilities.

(b) Charging ineligible individuals. Where the Service Unit Director determines that an ineligible individual is able to defray the cost of care and treatment, the individual shall be charged at rates approved by the Assistant Secretary for Health and Surgeon General published in the **Federal Register**. Reimbursement from third-party payors may be arranged by the patient or by the Service on behalf of the patient.

Subpart C—Contract Health Services

§ 36.21 Definitions.

(a) *Alternate resources* is defined in § 36.61(c) of subpart G of this part.

(b) *Appropriate ordering official* means, unless otherwise specified by contract with the health care facility or provider, the ordering official for the contract health service delivery area in which the individual requesting contract health services or on whose behalf the services are requested, resides.

(c) *Area Director* means the Director of an Indian Health Service Area designated for purposes of administration of Indian Health Service programs.

(d) *Contract health service delivery area means* the geographic area within which contract health services will be made available by the IHS to members of an identified Indian community who reside in the area, subject to the provisions of this subpart.

(e) *Contract health services* means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service.

(f) *Emergency* means any medical condition for which immediate medical attention is necessary to prevent the death or serious impairment of the health of an individual.

(g) *Indian tribe* means any Indian tribe, band, nation, group, Pueblo, or community, including any Alaska Native village or Native group, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(h) *Program Director* means the Director of an Indian Health Service ''program area'' designated for the purposes of administration of Indian Health Service programs.

(i) *Reservation* means any federally recognized Indian tribe's reservation. Pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), and Indian allotments.

(j) *Secretary* means the Secretary of Health and Human Services to whom the authority involved has been delegated.

(k) *Service* means the Indian Health Service.

(l) *Service Unit Director* means the Director of an Indian Health Service ''Service unit area'' designated for purposes of administration of Indian Health Service programs.

§ 36.22 Establishment of contract health service delivery areas.

(a) In accordance with the congressional intention that funds appropriated for the general support of the health program of the Indian Health Service be used to provide health services for Indians who live on or near Indian reservations, contract health service delivery areas are established as follows:

(1) The State of Alaska;

(2) The State of Nevada;

(3) the State of Oklahoma;

(4) Chippewa, Mackinac, Luce, Alger, Schoolcraft, Delta, and Marquette Counties in the State of Michigan;

(5) Clark, Eau Claire, Jackson, La Crosse, Monroe, Vernon, Crawford, Shawano, Marathon, Wood, Juneau, Adams, Columbia, and Sauk Counties in the State of Wisconsin and Houston County in the State of Minnesota;

(6) With respect to all other reservations within the funded scope of the Indian health program, the contract health services delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

(b) The Secretary may from time to time, redesignate areas or communities within the United States as appropriate for inclusion or exclusion from a contract health service delivery area after consultation with the tribal governing body or bodies on those reservations included within the contract health service delivery area. The Secretary will take the following criteria into consideration:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of contract health services.

(c) Any redesignation under paragraph (b) of this section shall be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553).

§ 36.23 Persons to whom contract health services will be provided.

(a) *In general.* To the extent that resources permit, and subject to the provisions of this subpart, contract health services will be made available as medically indicated, when necessary health services by an Indian Health Service facility are not reasonably accessible or available, to persons described in and in accordance with § 36.12 of this part if those persons:

(1) Reside within the United States and on a reservation located within a contract health service delivery area; or

(2) Do not reside on a reservation but reside within a contract health service delivery area and:

(i) Are members of the tribe or tribes located on that reservation or of the tribe or tribes for which the reservation was established; or

(ii) Maintain close economic and social ties with that tribe or tribes.

(b) *Students and transients.* Subject to the provisions of this subpart, contract health services will be made available to students and transients who would be

eligible for contract health services at the place of their permanent residence within a contract health service delivery area, but are temporarily absent from their residence as follows:

(1) Student—during their full-time attendance at programs of vocational, technical, or academic education, including normal school breaks (such as vacations, semester or other scheduled breaks occurring during their attendance) and for a period not to exceed 180 days after the completion of the course of study.

(2) Transients (persons who are in travel or are temporarily employed, such as seasonal or migratory workers) during their absence.

(c) *Other persons outside the contract health service delivery area.* Persons who leave the contract health service delivery area in which they are eligible for contract health service and are neither students nor transients will be eligible for contract health service for a period not to exceed 180 days from such departure.

(d) *Foster children.* Indian children who are placed in foster care outside a contract health service delivery area by order of a court of competent jurisdiction and who were eligible for contract health services at the time of the court order shall continue to be eligible for contract health services while in foster care.

(e) *Priorities for contract health services.* When funds are insufficient to provide the volume of contract health services indicated as needed by the population residing in a contract health service delivery area, priorities for service shall be determined on the basis of relative medical need.

(f) *Alternate resources.* The term ''alternate resources'' is defined in § 36.61(c) of Subpart G of this part.

§ 36.24 Authorization for contract health services.

(a) No payment will be made for medical care and services obtained from non-Service providers or in non-Service facilities unless the applicable requirements of paragraphs (b) and (c) of this section have been met and a purchase order for the care and services has been issued by the appropriate ordering official to the medical care provider.

(b) In nonemergency cases, a sick or disabled Indian, an individual or agency acting on behalf of the Indian, or the medical care provider shall, prior to the provision of medical care and services notify the appropriate ordering official of the need for services and supply information that the ordering official deems necessary to determine the relative medical need for the services and the individual's eligibility. The requirement for notice prior to providing medical care and services under this paragraph may be waived by the ordering official if:

(1) Such notice and information are provided within 72 hours after the beginning of treatment or admission to a health care facility; and

(2) The ordering official determines that giving of notice prior to obtaining the medical care and services was impracticable or that other good cause exists for the failure to provide prior notice.

(c) In emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall within 72 hours after the beginning of treatment for the condition or after admission to a health care facility notify the appropriate ordering official of the fact of the admission or treatment, together with information necessary to determine the relative medical need for the services and the eligibility of the Indian for the services. The 72-hour period may be extended if the ordering official determines that notification within the prescribed period was impracticable or that other good cause exists for the failure to comply.

§ 36.25 Reconsideration and appeals.

(a) Any person to whom contract health services are denied shall be notified of the denial in writing together with a statement of the reason for the denial. The notice shall advise the applicant for contract health services that within 30 days from the receipt of the notice the applicant:

(1) May obtain a reconsideration by the appropriate Service Unit Director of the original denial if the applicant submits additional supporting information not previously submitted; or

(2) If no additional information is submitted, may appeal the original denial by the Service Unit Director to the appropriate Area or program director. A request for reconsideration or appeal shall be in writing and shall set forth the grounds supporting the request or appeal.

(b) If the original decision is affirmed on reconsideration, the applicant shall be so notified in writing and advised that an appeal may be taken to the Area or program director within 30 days of receipt of the notice of the reconsidered decision. The appeal shall be in writing and shall set forth the grounds supporting the appeal.

(c) If the original or reconsidered decision is affirmed on appeal by the Area or program director, the applicant shall be so notified in writing and advised that a further appeal may be taken to the Director, Indian Health Service, within 30 days of receipt of the notice. The appeal shall be in writing and shall set the grounds supporting the appeal. The decision of the Director, Indian Health Service, shall constitute final administrative action.

Subpart D—[Reserved]

Subpart E—Preference in Employment

Authority: 25 U.S.C. 44, 45, 46 and 472; Pub. L. 83–568, 68 Stat 674, 42 U.S.C. 2003.

§ 36.41 Definitions.

For purposes of making appointments to vacancies in all positions in the Indian Health Service, a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; or

(e) Until January 4, 1990, or until the Osage Tribe has formally organized, whichever comes first, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

§ 36.42 Appointment actions.

(a) Preference will be afforded a person meeting any one of the definitions of § 36.41 whether the placement in the position involves initial appointment, reappointment, reinstatement, transfer, reassignment, promotion, or any other personnel action intended to fill a vacancy.

(b) Preference eligibles may be given a schedule A excepted appointment under 5 CFR 213.3116(b)(8). If the individuals are within reach on a Civil Service Register, they may be given a competitive appointment.

§ 36.43 Application procedure for preference eligibility.

To be considered a preference eligible, the person must submit with the employment application a Bureau of Indian Affairs certification that the person is an Indian as defined by § 36.41 except that an employee of the Indian Health Service who has a certificate of preference eligibility on file in the Official Personnel Folder is not required to resubmit such proof but

may instead include a statement on the application that proof of eligibility is on file in the Official Personnel Folder.

Subpart F—Abortions and Related Medical Services in Indian Health Service Facilities and Indian Health Service Programs

Authority: Sec. 1, 42 Stat. 208, (25 U.S.C. 13); sec. 1, Stat. 674, (42 U.S.C. 2001); sec. 3, 68 Stat. 674, (42 U.S.C. 2003).

§ 36.51 Applicability.

This subpart is applicable to the use of Federal funds in providing health services to Indians in accordance with the provisions of subparts A, B, and C of this part.

§ 36.52 Definitions.

As used in this subpart:

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery at an Indian Health Service or tribally run facility, or by the state in which he or she practices.

§ 36.53 General rule.

Federal funds may not be used to pay for or otherwise provide for abortions in the programs described in § 36.51, except under the circumstances described in § 36.54.

§ 36.54 Life of the mother would be endangered.

Federal funds are available for an abortion when a physician has found and so certified in writing to the appropriate tribal or other contracting organization, or Service Unit or Area Director, that ''on the basis of my professional judgment the life of the mother would be endangered if the fetus were carried to term.'' The certification must contain the name and address of the patient.

§ 36.55 Drugs and devices and termination of ectopic pregnancies.

Federal funds are available for drugs or devices to prevent implantation of the fertilized ovum, and for medical procedures necessary for the termination of an ectopic pregnancy.

§ 36.56 Recordkeeping requirements.

Documents required by § 36.54 must be maintained for three years pursuant to the retention and custodial requirements for records at 45 CFR part 74, subpart C.

§ 36.57 Confidentiality.

Information which is acquired in connection with the requirements of this subpart may not be disclosed in a form which permits the identification of an individual without the individual's consent, except as may be necessary for the health of the individual or as may be necessary for the Secretary to monitor Indian Health Service program activities. In any event, any disclosure shall be subject to appropriate safeguards which will minimize the likelihood of disclosures of personal information in identifiable form.

Subpart G—Residual Status

§ 36.61 Payor of last resort.

(a) The Indian Health Service is the payor of last resort for persons defined as eligible for contract health services under the regulations in this part, notwithstanding any State or local law or regulation to the contrary.

(b) Accordingly, the Indian Health Service will not be responsible for or authorize payment for contract health services to the extent that:

(1) The Indian is eligible for alternate resources, as defined in paragraph (c) of this section, or

(2) The Indian would be eligible for alternate resources if he or she were to apply for them, or

(3) The Indian would be eligible for alternate resources under State or local law or regulation but for the Indian's eligibility for contract health services, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(c) *Alternate resources* means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions, and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.*, Medicare, Medicaid), State or local health care programs, and private insurance.

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H.R. 2561/P.L. 106–79

Department of Defense Appropriations Act, 2000 (Oct. 25, 1999; 113 Stat. 1212)

S. 322/P.L. 106–80

To amend title 4, United States Code, to add the Martin Luther King Jr. holiday to the list of days on which the flag should especially be displayed. (Oct. 25, 1999; 113 Stat. 1285)

S. 800/P.L. 106–81

Wireless Communications and Public Safety Act of 1999 (Oct. 26, 1999; 113 Stat. 1286)

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