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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AI54

Federal Employees' Group Life Insurance Program: New Premiums

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to incorporate new provisions resulting from the Federal Employees Life Insurance Improvement Act, enacted October 30, 1998. The regulation changes the premium rates for Basic and Optional coverages, changes the effective date of the birthday rule for moving from one premium-rated age band to another under Optional coverage, and establishes new age bands for Option C.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Neuner (202) 606–0004.

SUPPLEMENTARY INFORMATION: On April 27, 1999, OPM issued an interim regulation in the **Federal Register** (64 FR 22543) that amends 5 CFR part 870, the Federal Employees' Group Life Insurance (FEGLI) Program. The interim regulation published new rates for Basic and Optional coverages (Option A—Standard, Option B—Additional, and Option C—Family), removed the maximum cap on Basic and Option B, increased the number of multiples of coverage under Option C, expanded post-65 coverage options for Options B and C for annuitants and compensationers, and changed the birthday rule which determines the effective date an employee, annuitant, or compensationer begins to pay a new age-based premium under Optional coverages. Previously, an individual was considered to have reached age 35, 40, 45, 50, 55, or 60 on the first day of the first pay period beginning on or after the January 1 following his or her corresponding birthday. Effective April 24, 1999, the date for age-based premium changes is the first day of the pay period following your birthday.

OPM received comments from one Federal employee who expressed concern regarding present and future FEGLI premium rate increases for Optional coverage in the face of improved mortality for the population as a whole and the dissemination of information to employees and retirees on the new expanded coverage options. The premium rates for all coverage categories within the FEGLI Program are specific to the experience of the group and are not based on mortality rates within the general population. The rates represent actuarial estimates of premium income necessary to pay future expected benefits costs.

The Federal Employees Life Insurance Improvement Act provides expanded choices for employees, retirees, and compensationers under Options B and C coverage. The final age band of 60 and over was expanded to 60–64, 65–69, and 70 and over for Option C to reflect the change made in the law allowing eligible employees upon retirement or entitlement to receipt of compensation to elect unreduced Option C coverage at retirement by paying the full premium for unreduced coverage after age 65. The new age bands for this coverage become effective on the first day of the pay period on or after April 24, 2000. The rates are higher for these two new age bands because: (1) former rates for Option C were based on coverage declining by 2 percent per month for 50 months after an annuitant's 65th birthday, and; (2) the higher probability of mortality for individuals who elect full coverage after age 65. We were able to reduce the rates for most age bands up to age 60 in Options B and C because employees, annuitants, and compensationers will begin paying higher premiums sooner because of the birthday rule change.

Improved mortality was responsible for the reduction in the Basic insurance premiums for those under 65. Increases in Basic premiums for annuitants 65 and older who elect to retain unreduced or partially reduced Basic coverage are based on actuarial estimates of the premium income needed to cover the eventual benefits costs. Basic coverage is not age-based.

Under the new provisions of the law, employees who retire or become entitled to receipt of compensation may now elect Option B that is unreduced upon attaining age 65 by continuing to pay the full cost of the premiums after age 65. Prior to Public Law 105–311, Option B coverage reduced by 2 percent per month beginning on the 2nd month following the annuitant's 65th birthday for 50 months until coverage stopped. Because of the expanded option to continue coverage following attainment of age 65, OPM will be studying the need to add new age bands and associated rates to accommodate this new provision. The earliest that any increases would be effective is April 24, 2001, and any increases resulting from these changes would be phased in over a three-year period starting on that date.

New program information was provided to employees during the open enrollment period and annuitants received a special mailing. Although not covered in this regulation, new implementing regulations will be published in the near future describing the eligibility requirements for continuing existing and new Option B and C coverages upon retirement or becoming entitled to receipt of compensation. Open enrollment elections will not be effective until on or after the first pay period beginning on April 23, 2000. Employees retiring or becoming entitled to receipt of compensation prior to that effective date will be eligible to continue existing coverage as retirees or compensationers if they meet the five years of coverage or first opportunity rule of 5 U.S.C 8714b(c)(2) and 8714c(c)(2). Employees electing new coverage will be subject to the five year or first opportunity rule.

Annuitants and compensationers who have Basic and Optional coverage have been notified of the changes. Annuitants and compensationers with Option B coverage who retired or became entitled to the receipt of compensation prior to April 24, 1999 and who are 65 or older will be given up to 5 months in which to elect to freeze their coverage to the amount in effect as of April 24, 1999. Current retirees and compensationers under age 65 with Option B coverage will get a notice prior to their 65th birthday notifying them of their right to

elect coverage that will remain unreduced after age 65.

Due to an inadvertent error, the supplementary information for the interim regulation contained an incorrect effective date for open enrollment changes of April 24, 2000. The correct date is the first day of the pay period on or after April 23, 2000.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and annuitants only.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Accordingly, under the authority of 5 U.S.C. 8716, OPM is adopting its interim regulations under 5 CFR part 870 as published on April 27, 1999 [64 FR 22543], as a final rule without change.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–33366 Filed 12–22–99; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4284

RIN 0570–AA05

Rural Business Opportunity Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is issuing new regulations for the Rural Business Opportunity Grant (RBOG) Program. This action is needed to implement a new program authorized by section 741 of the Federal Agriculture Improvement and Reform Act of 1996 to assist economic development in rural areas. The intended effect of this action is to implement the RBOG program.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW, Washington, DC 20250, Telephone (202) 720–6819. The TTD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.773, Rural Business Opportunity Grants.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0024 in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule does not revise or impose any new information collection or recordkeeping requirements.

Intergovernmental Review

Rural Business Opportunity Grants are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities,'' and in 7 CFR 3015, subpart V.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. chapters 17A and 25, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Background

RBS is implementing a grant program to fund technical assistance and planning activities in rural areas for the purpose of improving economic conditions in the areas. This action is necessary to comply with section 741 of the Federal Agriculture Improvement and Reform Act of 1996. Grants will be available to public bodies, nonprofit corporations, Indian tribes, and cooperatives. Grants may be used for technical assistance for business development and economic development planning; identifying and analyzing business opportunities that will use local rural materials or human resources, including opportunities in export markets as well as feasibility and business plan studies; identifying, training, and providing technical assistance to existing or prospective rural entrepreneurs and managers; establishing business support centers and otherwise assisting in the creation of new rural businesses; conducting local community or multi-county economic development planning;

establishing centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets; and conducting leadership development training of existing or prospective rural entrepreneurs and managers.

Discussion of Comments

This rule was published in the **Federal Register** as a proposed rule on February 3, 1998 (60 FR 5474). Six comment letters were received, most of which contained comments on several issues. A summary of the comments follows.

Two respondents commented on the definition of rural and rural area. Both thought the 10,000 population limit proposed was too low. This limit is statutory and cannot be changed.

A respondent was concerned that a provision stating that grant funds may not be used to duplicate, replace, or substitute for current services might exclude organizations seeking to expand. We have added language to clarify that this restriction is not intended to prevent assistance for expanding the level of effort or services when the current level is insufficient.

Respondents suggested that the terms sustainability and sustainable development should be defined. We agree, and have provided a definition consistent with Secretary's Memorandum 9500–6, ''Sustainable Development,'' dated September 13, 1996.

A respondent objected to limiting grants to one or two years funding. The respondent believes two years is too short for capacity building projects. We are also concerned that there may be needed projects that cannot be completed in two years. However, we expect the appropriations for this program to be small and we do not want to commit limited funds to projects that cannot be expected to be completed within two years. Longer term projects may be funded, but funds will only be committed for one year at a time. Such projects will have to compete again for additional funds from future years appropriations. This provision of the rule is unchanged.

We received three comments about the priority scoring criteria. One respondent stated that the RBOG should not be used as a disaster relief program and objected to giving priority points based on natural disasters. One of the goals of the Rural Development mission area is to target assistance to communities of greatest need, including communities that are experiencing trauma due to a major natural disaster. This criterion is not changed.

The respondent also questioned the awarding of priority points to communities that have remained consistently poor for 60 years or more. The respondent felt data may not be reliable and the 60-year standard would penalize communities in the West, where communities are younger. Communities that have been persistently poor over a long term have also been identified as target communities for Rural Development and 60 years has been used before as a rule-of-thumb. However, we agree that 60 years is an excessive standard. For two other factors, population decline and job deterioration, the proposed rule only required the condition be ''long-term.'' In the final rule, we have also adopted the term ''long-term'' instead of ''60 years'' for the condition of consistently poor. We have defined ''long-term,'' to be the period of time covered by the three most recent decennial censuses to the present.

Another respondent requested priority points for communities that have been adversely affected by changes in transportation. Although this is a concern in some rural areas, we do not believe it warrants special priority. The suggestion was not adopted.

A respondent asked for ''business incubator'' to be added to the definition of Business Support Centers. Although some business incubators perform many of the services of a business support center, we believe including the term as suggested would imply that grant funds could be used to provide building space. That is not the intent of the RBOG program. The suggestion is not adopted.

A respondent suggested ''National nonprofit organizations'' be included as eligible. We see no need to change the language that was used in the proposed rule. Nonprofit corporations were already listed as eligible, without regard to whether they are National, regional, or local.

A respondent was concerned because the proposed rule did not require a detailed budget as part of the application. The application form required is Standard Form 424, ''Application for Federal Assistance (For Non-Construction).'' The form contains a budget format which we believe is adequate. No change is made in this regard from the proposed rule.

A respondent was concerned because there is no reference to a grant agreement document. We believe a grant agreement document is unnecessary and have made no change as a result of the comment. Grant projects will be defined by the Scope of Work and Letter of Conditions. Grantees will be required to sign a Request for Obligation of Funds form containing a certification that the grantee will comply with all applicable regulations, including 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052. Most of the material that might be put in a grant agreement document is contained in those regulations.

A respondent suggested clarifying whether grants can support indirect costs. Allowable costs are set out in 7 CFR parts 3015, 3016, and 3019 and in applicable OMB circulars referenced in 7 CFR parts 3015, 3016, and 3019. We have purposely avoided restating material from those regulations to avoid repetition, the possibility of misstating requirements, and the need to amend this regulation if 7 CFR parts 3015, 3016, or 3019 is amended. Therefore, we have not adopted the suggestion. Generally, indirect costs are allowable.

A respondent correctly pointed out that the proposed rule made references to 7 CFR part 3051, ''Audits of Institutions of Higher Education and other Nonprofit Institutions,'' which has been replaced by 7 CFR part 3052, ''Audits of States, Local Governments, and Non-profit Organizations.'' We have made the appropriate corrections.

In addition to responding to public comments, we have removed a provision that would have prevented material developed with grant funds from being copyrighted because it conflicted with 7 CFR 3016 and 3019.

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall comply with 5 U.S.C. 553, notwithstanding the exemption of that section with respect to such rules. Accordingly, this rule has previously been published as a proposed rule, on February 3, 1998 (63 FR 5474), for public comment, and will be effective 30 days after publication of this final rule in the **Federal Register**.

List of Subjects in 7 CFR Part 4284

Business and industry, Economic development, Grant programs—Housing and community development, Rural areas.

Therefore, chapter XLII, title 7, Code of Federal Regulations, is amended as follows:

PART 4284—GRANTS

1. The authority citation for part 4284 is amended to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Subpart G of part 4284, consisting of §§ 4284.601 through 4284.700, is added to read as follows:

PART 4284—GRANTS

Subpart G—Rural Business Opportunity Grants

Sec.

4284.601 Purpose.
4284.602 Policy.
4284.603 Definitions.
4284.604–4284.619 [Reserved]
4284.620 Applicant eligibility.
4284.621 Eligible grant purposes.
4284.622–4284.628 [Reserved]
4284.629 Ineligible grant purposes.
4284.630 Other considerations.
4284.631–4284.637 [Reserved]
4284.638 Application processing.
4284.639 Grant selection criteria.
4284.640 Appeals.
4284.641–4284.646 [Reserved]
4284.647 Grant approval and obligation of funds.
4284.648 Fund disbursement.
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4284.656 Reporting.
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4284.658–4284.666 [Reserved]
4284.667 Grant servicing.
4284.668 Programmatic changes.
4284.669–4284.683 [Reserved]
4284.684 Exception authority.
4284.685–4284.698 [Reserved]
4284.699 Member delegate clause.
4284.700 OMB control number.

Subpart G—Rural Business Opportunity Grants

§ 4284.601 Purpose.

This subpart outlines Agency policies and authorizations and sets forth procedures for making grants to provide technical assistance for business development and conduct economic development planning in rural areas. The purpose of this program is to promote sustainable economic development in rural communities with exceptional needs by:

(a) Promoting economic development that is sustainable over the long term through local effort without subsidies or external support and that leads to improvements in quality as well as the quantity of economic activity in the community;

(b) Catalyzing economic development projects by providing critical investments that enable effective development projects to be undertaken by rural communities that, with the Rural Business Opportunity Grants (RBOG) assistance, will be able to identify their needs and take full advantage of available resources and opportunities;

(c) Focusing assistance on priority communities (defined in § 4284.603); and

(d) Sponsoring economic development activities with significant potential to serve as examples of ''best practices'' that merit implementation in rural communities in similar circumstances.

§ 4284.602 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity, along with other rural residents, to participate in the benefits of these programs.

§ 4284.603 Definitions.

Agency. The Federal agency within the United States Department of Agriculture (USDA) with responsibility assigned by the Secretary of Agriculture to administer the RBOG Program. At the time of publication, that agency is the Rural Business-Cooperative Service.

Best practice project. An action that has potential applicability in other rural communities and which potentially has instructional value when shared with those communities.

Business support centers. Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a rural area, but must provide assistance to businesses located in rural areas.

Economic development. The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels, or gains in other measurements of economic activity, such as land values.

Long-term. The period of time covered by the three most recent decennial censuses of the United States to the present.

Planning. A process to coordinate economic development activities, develop guides for action, or otherwise assist local community leaders in the economic development of rural areas.

Priority communities. Communities targeted for Agency assistance as determined by the USDA Under Secretary for Rural Development. Priority communities are those that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor, or have experienced long-term population decline or job deterioration.

Project. The result of the use of grant funds provided under this subpart through technical assistance or planning relating to the economic development of a rural area.

Rural and rural area. Any area of a State that is not within the boundaries of a city with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Sustainable development. Development planned and designed to consider and balance environmental quality, economic needs, and social concerns.

Technical assistance. A nonconstruction, problem solving activity performed for the benefit of a business or community to assist in the economic development of a rural area. The Agency will determine whether a specific activity qualifies as technical assistance.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

§§ 4287.604–4287.619 [Reserved]

§ 4284.620 Applicant eligibility.

(a) Grants may be made to public bodies, nonprofit corporations, Indian tribes on Federal or State reservations and other Federally recognized tribal groups, and cooperatives with members that are primarily rural residents and that conduct activities for the mutual benefit of the members.

(b) Applicants must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(1) Financial strength will be analyzed by the Agency based on financial data provided in the application. The

analysis will consider the applicant's tangible net worth, which must be positive, and whether the applicant has dependable sources of revenue or a successful history of raising revenue sufficient to meet cash requirements.

(2) Expertise will be analyzed by the Agency based on the applicant staff's training and experience in activities similar to those proposed in the application and, if consultants will be used, on the staff's experience in choosing and supervising consultants.

(c) Any delinquent debt to the Federal Government shall cause the applicant to be ineligible to receive any RBOG funds until the debt has been paid.

§ 4284.621 Eligible grant purposes.

(a) Grant funds may be used to assist in the economic development of rural areas by providing technical assistance for business development and economic development planning. Grant funds may be used for, but are not limited to, the following purposes:

(1) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies.

(2) Identify, train, and provide technical assistance to existing or prospective rural entrepreneurs and managers;

(3) Establish business support centers and otherwise assist in the creation of new rural businesses;

(4) Conduct local community or multi-county economic development planning;

(5) Establish centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets;

(6) Conduct leadership development training of existing or prospective rural entrepreneurs and managers; or

(7) Pay reasonable fees and charges for professional services necessary to conduct the technical assistance, training, or planning functions.

(b) Grants may be made only when there is a reasonable prospect that the project will result in the economic development of a rural area.

(c) Grants may be made only when the proposal includes a basis for determining the success or failure of the project and individual major elements of the project and outlines procedures that will be taken to assess the project's impact at its conclusion.

(d) Grants may be made only when the proposed project is consistent with local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area and consistent with any USDA Rural Development State Strategic Plan.

(e) A grant may be considered for the amount needed to assist with the completion of a proposed project, provided that the project can reasonably be expected to be completed within 2 full years after it is begun. If grant funds are requested to establish or assist with an activity of more than 2 years duration, the amount of a grant approved in any fiscal year will be limited to the amount needed to assist with no more than 1 full year of operation. Subsequent grant requests may be considered in subsequent years, if needed to continue the operation, but funding for 1 year provides no assurance of additional funding in subsequent years.

§§ 4284.622–4287.628 [Reserved]

§ 4284.629 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the effective date of the grant made under this subpart;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States; or

(g) Pay costs of real estate acquisition or development or building construction.

§ 4284.630 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 and part 1901, subpart E of this title.

(b) *Environmental review.* All grants made under this subpart are subject to the requirements of subpart G of part 1940 of this title. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333 of this title provided the assistance is not related to the development of a specific site. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable;

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments, and Non-profit Organizations.

§§ 4284.631–4284.637 [Reserved]

§ 4284.638 Application processing.

(a) *Applications.*

(1) Applicants will file an original and one copy of ''Application For Federal Assistance (For Nonconstruction),'' with the Agency State Office (available in any Agency office).

(2) All applications shall be accompanied by:

(i) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(ii) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation;

(iii) A written narrative which includes, at a minimum, the following items:

(A) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant selection criteria;

(B) Area to be served, identifying each governmental unit, i.e., town, county, etc., to be affected by the project;

(C) Description of how the project will coordinate economic development activities with other economic development activities within the project area;

(D) Business to be assisted, if appropriate; economic development to be accomplished;

(E) An explanation of how the proposed project will result in increased or saved jobs in the area and the number of projected new and saved jobs;

(F) Description of the applicant's demonstrated capability and experience in providing the proposed project assistance or similar economic development activities, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(G) Method and rationale used to select the areas and businesses that will receive the service;

(H) Brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(I) Other information the Agency may request to assist it in making a grant award determination.

(iv) The latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include the most recent balance sheet and an income statement. A current audited report is required if available;

(v) An evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished; and

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372.

(b) *Letter of conditions.* The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return a ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

§ 4284.639 Grant selection criteria.

Agency officials will select projects to receive assistance under this program according to the following criteria:

(a) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which economic development resulting from the proposed project will be sustainable over the long term by local efforts, without the need for continued subsidies by governments or other organizations outside the community.

(b) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which the project should lead to improvements in the quality of economic activity within the community, such as higher wages, improved benefits, greater career potential, and the use of higher levels of skills than currently are typical within the economy.

(c) If the grant will fund a critical element of a larger program of economic development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows based on the percentage of the cost of the overall program that will be funded by the grant.

(1) Less than 20 percent—30 points;

(2) 20 but less than 50 percent—20 points;

(3) 50 but less than 75 percent—10 points; or

(4) More than 75 percent—0 points.

(d) Points will be awarded for each of the following criteria met by the community or communities that will receive the primary benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (d)(1) through (d)(5) of this section, total points awarded under paragraph (d) must not exceed 40.

(1) Experiencing trauma due to a major natural disaster that occurred not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(2) Undergoing fundamental structural change in the local economy, such as that caused by the closing or major downsizing of a military facility or other major employer not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(3) Has experienced long-term poverty—10 points;

(4) Has experienced long-term population decline—10 points; and

(5) Has experienced long-term job deterioration—10 points.

(e) A score of 0 to 10 points will be awarded based on the Agency determination of the extent of the project's usefulness as a new best practice as defined in § 4284.603.

(f) The State Director may assign up to 15 discretionary points to an application. If allocation of funds under National Office control is being considered, the Agency Administrator may assign up to 20 additional discretionary points. Assignment of discretionary points by either the State Director or the Agency Administrator must include a written justification. Permissible justifications are geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, or extraordinary potential for success due to superior project plans or qualifications of the grantee.

§ 4284.640 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11. If the Agency makes a determination that a decision is not appealable, a request for a determination of appealability may be made to the National Appeals Staff.

§§ 4284.641–4287.646 [Reserved]

§ 4284.647 Grant approval and obligation of funds.

(a) The following statement will be entered in the comment section of the Request For Obligation of Funds, which must be signed by the grantee:

> The grantee certifies that it is in compliance with and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those contained in 7 CFR part 4284, subpart G, and 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052 in effect on the date of grant approval; and the approved Letter of Conditions.

§ 4284.648 Fund disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016, and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. A Request for Advance or Reimbursement, (available in any Agency office) must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

§§ 4284.649–4284.655 [Reserved]

§ 4284.656 Reporting.

(a) A Financial Status Report (available in any Agency office) and a project performance activity report will

be required of all grantees on a quarterly basis. The grantee will cause said program to be completed within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency. A final project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and saved as a result of the grant. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to the Agency. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) Within 1 year after the conclusion of the project, the grantee will provide a project evaluation report based on criteria developed in accordance with § § 4284.621(c) and 4284.638(a)(2)(v).

(c) The Agency may also require grantees to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a ''best practice,'' to describe that ''best practice.''

(d) The grantee will provide for Financial Management Systems which will include:

(1) Accurate, current, and complete disclosure of the financial result of each grant.

(2) Records which identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall assure that funds are used solely for authorized purposes.

(e) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

§ 4284.657 Audit requirements.

Grantees must provide an annual audit in accordance with 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished that will be paid for with grant funds.

§§ 4284.658–4284.666 [Reserved]

§ 4284.667 Grant servicing.

Grants will be serviced in accordance with part 1951, subparts E and O, of this title. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

§ 4284.668 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

§§ 4284.669–4284.683 [Reserved]

§ 4284.684 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 4284.685–4284.698 [Reserved]

§ 4284.699 Member delegate clause.

No member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

§ 4284.700 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0024 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Dated: December 13, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–33203 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 99–016F]

Scale Requirements for Accurate Weights, Repairs, Adjustments, and Replacement After Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On October 1, 1999, the Food Safety and Inspection Service (FSIS) published a direct final rule, ''Scale Requirements for Accurate Weights, Repairs, Adjustments, and Replacement After Inspection.'' This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to update references to the National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.'' The 1999 edition of NIST Handbook 44 was published in November 1998 and is the most current edition of the handbook. FSIS is amending the provisions in its regulations that reference NIST Handbook 44 to reflect this most recent edition. Because FSIS did not receive

any adverse comments, or expressions of intent to submit adverse comments, within the scope of the rulemaking, FSIS is affirming the November 30, 1999 effective date for this direct final rule.

EFFECTIVE DATES: November 30, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1999, FSIS published a direct final rule, ''Scale Requirements for Accurate Weights, Repairs, Adjustments, and Replacement After Inspection'' (64 FR 53186). This direct final rule notified the public of FSIS's intention to amend the Federal meat and poultry products inspection regulations to update references to the National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.'' The 1999 edition of NIST Handbook 44 was published in November 1998 and is the most current edition of the handbook. FSIS is amending the provisions in its regulations that reference NIST Handbook 44 to reflect this most recent edition.

After publication of the direct final rule, the American Meat Institute (AMI), a national trade association representing packers and processors of meat and poultry products, contacted FSIS to express a minor concern associated with the rulemaking. AMI noted that Section 2.24 Automatic Weighing Systems of the 1999 edition of NIST Handbook 44 is a tentative code, has only a trial or experimental status, and is not intended to be enforced by weights and measures officials. AMI expressed concern that FSIS inspection program employees would not interpret Section 2.24 as tentative and would enforce the requirements of Section 2.24 against existing equipment in meat and poultry plants before it is adopted as a permanent code. AMI requested that, prior to the effective date of the rule, FSIS issue some kind of notification to its inspection program personnel explaining that Section 2.24 is a tentative code and is not enforceable against existing equipment.

The direct final rule updates a document, NIST Handbook 44, that has previously been approved for incorporation by reference in the Code of Federal Regulations. The current FSIS regulations reference the 1994 edition of NIST Handbook 44, published in November 1993. The 1994 edition of the handbook does not include Section 2.24 Automatic Weighing Systems. In the 1999 edition of Handbook 44, it is clearly stated that Section 2.24 has only a trial or experimental status, and that it is not intended to be enforced by weights and measures officials. However, Section 2.24 is intended to be used by the National Type Evaluation Program for type evaluation of automatic weighing systems, which permits these devices to be tested to ensure conformance with a nationally accepted standard.

When FSIS issues new regulations, it provides the new or revised regulations to inspection program employees. The Agency also provides inspection program employees with the necessary implementing instructions. Therefore, FSIS will issue notification to the field employees explaining that Section 2.24 Automatic Weighing Systems is a tentative code, and that it is not to be enforced until it is upgraded to become a permanent code.

Because FSIS did not receive any adverse comments or intent to submit adverse comments in response to the direct final rule, the effective date remains as November 30, 1999.

Done at Washington, DC, on: December 14, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–33205 Filed 12–22–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21, 50, and 54

RIN 3150–AG12

Use of Alternative Source Terms at Operating Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow holders of operating licenses for nuclear power plants to voluntarily replace the traditional source term used in design basis accident analyses with alternative source terms. This action will allow interested licensees to pursue cost beneficial licensing actions to reduce unnecessary regulatory burden without compromising the margin of safety of the facility. The NRC is announcing the availability of a draft regulatory guide and a draft Standard Review Plan section on this subject for public comment. The NRC is also amending its regulations to revise certain sections to conform with the final rule published on December 11, 1996, concerning reactor site criteria.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1081; or by Internet electronic mail to sfl@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of Public Comments
III. Section-by-Section Analysis
IV. Draft Regulatory Guide; Issuance, Availability
V. Draft Standard Review Plan Section; Issuance, Availability
VI. Referenced Documents
VII. Finding of No Significant Environmental Impact; Availability
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IX. Regulatory Analysis
X. Regulatory Flexibility Act Certification
XI. Backfit Analysis
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XIII. National Technology Transfer and Advancement Act

I. Background

A holder of an operating license (i.e., the licensee) for a light-water power reactor is required by regulations issued by the NRC (or its predecessor, the U.S. Atomic Energy Commission, (AEC)) to submit a safety analysis report (or, for early reactors, a hazard summary report) that contains assessments of the radiological consequences of potential accidents and an evaluation of the proposed facility site. The NRC uses this information in its evaluation of the suitability of the reactor design and the proposed site as required by its regulations contained in 10 CFR Parts 50 and 100. Section 100.11, which was adopted by the AEC in 1962 (27 FR 3509; April 12, 1962), requires an applicant to assume (1) a fission product release from the reactor core, (2) the expected containment leak rate, and (3) the site meteorological conditions to establish an exclusion area and a low population zone. This fission product release is based on a major accident that would result in substantial release of appreciable quantities of fission products from the core to the containment atmosphere. A note to § 100.11 states that Technical Information Document (TID) 14844, ''Calculation of Distance Factors for

Power and Test Reactors,'' may be used as a source of guidance in developing the exclusion area, the low population zone, and the population center distance. Changes to the design of the facility and the procedures for operating the facility are evaluated in part by determining whether there are changes to the calculated fission product release.

The fission product release from the reactor core into containment is referred to as the ''source term'' and it is characterized by the composition and magnitude of the radioactive material, the chemical and physical properties of the material, and the timing of the release from the reactor core. The accident source term is used to evaluate the radiological consequences of design basis accidents (DBAs) in showing compliance with various requirements of the NRC's regulations. Although originally used for site suitability analyses, the accident source term is a design parameter for accident mitigation features, equipment qualification, control room operator radiation doses, and post-accident vital area access doses. The measurement range and alarm setpoints of some installed plant instrumentation and the actuation of some plant safety features are based in part on the accident source term. The TID–14844 source term was explicitly stated as a required design parameter for several Three Mile Island (TMI)-related requirements.

The NRC's methods for calculating accident doses, as described in Regulatory Guide 1.3, ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss of Coolant Accident for Boiling Water Reactors''; Regulatory Guide 1.4, ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss of Coolant Accident for Pressurized Water Reactors''; and NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' were developed to be consistent with the TID–14844 source term and the whole body and thyroid dose guidelines stated in § 100.11. In this regulatory framework, the source term is assumed to be released immediately to the containment at the start of the postulated accident. The chemical form of the radioiodine released to the containment atmosphere is assumed to be predominantly elemental, with the remainder being small fractions of particulate and organic iodine forms. Radiation doses are calculated at the exclusion area boundary (EAB) for the first 2 hours and at the low population zone (LPZ) for the assumed 30-day duration of the accident. The whole body dose comes primarily from the noble gases in the source term. The thyroid dose is based on inhalation of radioiodines. In analyses performed to date, the thyroid dose has generally been limiting. The design of some engineered safety features, such as containment spray systems and the charcoal filters in the containment, the building exhaust, and the control room ventilation systems, are predicated on these postulated thyroid doses. Subsequently, the NRC adopted the whole body and thyroid dose criteria in Criterion 19 of 10 CFR Part 50, Appendix A (36 FR 3255; February 20, 1971).

The source term in TID–14844 is representative of a major accident involving significant core damage and is typically postulated to occur in conjunction with a large loss-of-coolant accident (LOCA). Although the LOCA is typically the maximum credible accident, NRC experience in reviewing license applications has indicated the need to consider other accident sequences of lesser consequence but higher probability of occurrence. Some of these additional accident analyses may involve source terms that are a fraction of those specified in TID–14844. The DBAs were not intended to be actual event sequences but, rather, were intended to be surrogates to enable deterministic evaluation of the response of the plant engineered safety features. These accident analyses are intentionally conservative in order to address uncertainties in accident progression, fission product transport, and atmospheric dispersion. Although probabilistic risk assessments (PRAs) can provide useful insights into system performance and suggest changes in how the desired defense in depth is achieved, defense in depth continues to be an effective way to account for uncertainties in equipment and human performance. The NRC's policy statement on the use of PRA methods (60 FR 42622; August 16, 1995) calls for the use of PRA technology in all regulatory matters in a manner that complements the NRC's deterministic approach and supports the traditional defense-in-depth philosophy.

Since the publication of TID–14844, significant advances have been made in understanding the timing, magnitude, and chemical form of fission product releases from severe nuclear power plant accidents. Many of these insights developed out of the major research efforts started by the NRC and the nuclear industry after the accident at Three Mile Island (TMI). In 1995, the NRC published NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' which utilized this research to provide more physically based estimates of the accident source term that could be applied to the design of future light-water power reactors. The NRC sponsored significant review efforts by peer reviewers, foreign research partners, industry groups, and the general public (request for public comment was published in 57 FR 33374; July 28, 1992).

The information in NUREG–1465 presents a representative accident source term (''revised source term'') for a boiling-water reactor (BWR) and for a pressurized-water reactor (PWR). These revised source terms are described in terms of radionuclide composition and magnitude, physical and chemical form, and timing of release. Where TID–14844 addressed three categories of radionuclides, the revised source terms categorize the accident release into eight groups on the basis of similarity in chemical behavior. Where TID–14844 assumed an immediate release of the activity, the revised source terms have five release phases that are postulated to occur over several hours, with the onset of major core damage occurring after 30 minutes. Where TID–14844 assumed radioiodine to be predominantly elemental, the revised source terms assume radioiodine to be predominantly cesium iodide (CsI), an aerosol that is more amenable to mitigation mechanisms.

For DBAs, the NUREG–1465 source terms (up to and including the early in-vessel phase) are comparable to the TID–14844 source term with regard to the magnitude of the noble gas and radioiodine release fractions. However, the revised source terms offer a more representative description of the radionuclide composition and release timing. The NRC has determined (SECY–94–302, December 19, 1994) that design basis analyses will address the first three release phases—coolant, gap, and in-vessel. The ex-vessel and late in-vessel phases are considered to be inappropriate for design basis analysis purposes. These latter releases could only result from core damage accidents with vessel failure and core-concrete interactions.

The objective of NUREG–1465 was to define revised accident source terms for regulatory application for future light water reactors (LWRs). The NRC's intent was to capture the major relevant insights available from severe accident research to provide, for regulatory purposes, a more realistic portrayal of the amount of the postulated accident source term. These source terms were derived from examining a set of severe accident sequences for LWRs of current

design. Because of general similarities in plant and core design parameters, these results are considered to be applicable to evolutionary and passive LWR designs. The revised source term has been used in evaluating the Westinghouse AP600 standard design certification application. (A draft version of NUREG–1465 was used in evaluating Combustion Engineering's (CE's) System 80+ design.)

The NRC considered the applicability of the revised source terms to operating reactors and determined that the current analytical approach based on the TID–14844 source term would continue to be adequate to protect public health and safety, and that operating reactors licensed under this approach would not be required to reanalyze accidents using the revised source terms. The NRC concluded that some licensees may wish to use an alternative source term in analyses to support operational flexibility and cost-beneficial licensing actions and that some of these applications could provide concomitant improvements in overall safety and in reduced occupational exposure. The NRC initiated several actions to provide a regulatory basis for operating reactors to voluntarily amend their facility design bases to enable use of the revised source term in design basis analyses. First, the NRC solicited ideas on how an alternative source term might be implemented. In November 1995, the Nuclear Energy Institute (NEI) submitted its generic framework, Electric Power Research Institute Technical Report TR–105909, ''Generic Framework for Application of Revised Accident Source Term to Operating Plants.'' This report and the NRC response were discussed in SECY–96–242 (November 25, 1996). Second, the NRC initiated an assessment of the overall impact of substituting the NUREG–1465 source terms for the traditionally used TID–14844 source term at three typical facilities. This was done to evaluate the issues involved with applying the revised source terms at operating plants. SECY–98–154 (June 30, 1998) described the conclusions of this assessment. Third, the NRC accepted license amendment requests related to implementation of the revised source terms at a small number of pilot plants. Experience has demonstrated that evaluation of a limited number of plant-specific submittals improves regulation and regulatory guidance development. The review of these pilot projects is currently in progress. Insights from these pilot plant reviews have been incorporated into the regulatory guidance that was developed in conjunction with this rulemaking. Fourth, the NRC initiated an assessment on whether rulemaking would be necessary to allow operating reactors to use an alternative source term. This final rule and the supporting regulatory guidance have resulted from this assessment.

This final rulemaking for use of alternative source terms is applicable to holders of operating licenses issued prior to January 10, 1997, under 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and to holders of renewed licenses under 10 CFR Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' whose initial operating license was issued prior to January 10, 1997. The regulations of Part 50 are supplemented by those in other parts of Chapter I of Title 10, including Part 100, ''Reactor Site Criteria.'' Part 100 contains language that qualitatively defines a required accident source term and contains a note that discusses the availability of TID–14844. With the exception of § 50.34(f), there are no explicit requirements in Chapter I of Title 10 to use the TID–14844 accident source term. Section 50.34(f), which addresses additional TMI-related requirements, is only applicable to a limited number of construction permit applications pending on February 16, 1982, and to applications under Part 52.

An applicant for an operating license is required by § 50.34(b) to submit a final safety analysis report (FSAR) that describes the facility and its design bases and limits, and presents a safety analysis of the structures, systems, and components of the facility as a whole. Guidance in performing these analyses is given in regulatory guides. In its review of the more recent applications for operating licenses, the NRC has used the review procedures in NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants'' (SRP). These review procedures reference or provide acceptable assumptions and analysis methods. The facility FSAR documents the assumptions and methods actually used by the applicant in the required safety analyses. The NRC's finding that a license may be issued is based on the review of the FSAR, as documented in the Commission's safety evaluation report (SER). Fundamental assumptions that are design inputs, including the source term, were required to be included in the FSAR and became part of the design basis [1] of the facility. From a regulatory standpoint, the requirement to use the TID–14844 source term is expressed as a licensee commitment (typically to Regulatory Guide 1.3 or 1.4) documented in the facility FSAR, and is subject to the requirements of § 50.59.

In 1996 (61 FR 65175; December 11, 1996), the NRC amended its regulations in 10 CFR Parts 21, 50, 52, 54, and 100. That regulatory action produced site criteria for future sites, presented a stable regulatory basis for seismic and geologic siting and the engineering design of future nuclear power plants to withstand seismic events, and relocated source term and dose requirements for future plants into Part 50. Because these dose requirements tend to affect reactor design rather than siting, they are more appropriately located in Part 50. This decoupling of siting from design is consistent with the future licensing of facilities using standardized plant designs, the design features of which have been or will be certified in a separate design certification rulemakings. This decoupling of siting from design was directed by Congress in the 1980 Authorization Act for the NRC. Because the revised criteria would not apply to operating reactors, the non-seismic and seismic reactor site criteria for operating reactors were retained as Subpart A and Appendix A to Part 100, respectively. The revised reactor site criteria were added as Subpart B in Part 100, and revised source term and dose requirements were moved to § 50.34. The existing source term and dose requirements of Subpart A of Part 100 will remain in place as the licensing bases for those operating reactors that do not elect to use an alternative source term.

In relocating the source term and dose requirements for future reactors to § 50.34, the NRC retained the requirements for the exclusion area and the low population zone, but revised the associated numerical dose criteria to replace the two different doses for the whole body and the thyroid gland with a single, total effective dose equivalent (TEDE) value. The dose criteria for the whole body and the thyroid, and the

[1] As defined in § 50.2, design bases means that information which identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be (1) restraints derived from generally accepted ''state of the art'' practices for achieving functional goals, or (2) requirements derived from analysis (based on calculation and/or experiments) of the effects of a postulated accident for which a structure, system, or component must meet its functional goals. The NRC considers the accident source term to be an integral part of the design basis because it sets forth specific values (or range of values) for controlling parameters that constitute reference bounds for design.

immediate 2-hour exposure period were largely predicated by the assumed source term being predominantly noble gases and radioiodines instantaneously released to the containment and the assumed ''single critical organ'' method of modeling the internal dose used at the time that Part 100 was originally published. However, the current dose criteria, by focusing on doses to the thyroid and the whole body, assume that the major contributor to doses will be radioiodine. Although this may be appropriate with the TID–14844 source term, as implemented by Regulatory Guides 1.3 and 1.4, it may not be true for a source term based on a more complete understanding of accident sequences and phenomenology.

The postulated chemical and physical form of radioiodine in the revised source terms is more amenable to mitigation and, as such, radioiodine may not always be the predominant radionuclide in an accident release. The revised source terms include a larger number of radionuclides than did the TID–14844 source term as implemented in regulatory guidance. The whole body and thyroid dose criteria ignore these contributors to dose. The NRC amended its radiation protection standards in Part 20 in 1991 (56 FR 23391; May 21, 1991) replacing the single, critical organ concept for assessing internal exposure with the TEDE concept that assesses the impact of all relevant nuclides upon all body organs. TEDE is defined to be the deep dose equivalent (for external exposure) plus the committed effective dose equivalent (for internal exposure). The deep dose equivalent (DDE) is comparable to the present whole body dose; the committed effective dose equivalent (CEDE) is the sum of the products of doses (integrated over a 50-year period) to selected body organs resulting from the intake of radioactive material multiplied by weighting factors for each organ that are representative of the radiation risk associated with the particular organ.

The TEDE, using a risk-consistent methodology, assesses the impact of all relevant nuclides upon all body organs. Although it is expected that in many cases the thyroid could still be the limiting organ and radioiodine the limiting radionuclide, this conclusion cannot be assured in all potential cases. The revised source terms postulate that the core inventory is released in a sequence of phases over 10 hours, with the more significant release commencing at about 30 minutes from the start of the event. The assumption that the 2-hour exposure period starts immediately at the onset of the release is inconsistent with the phased release postulated in the revised source terms. The final rule adopts the future LWR dose criteria for operating reactors that elect to use an alternative source term.

An accidental release of radioactivity can result in radiation exposure to control room operators. Normal ventilation systems may draw this activity into the control room where it can result in external and internal exposures. Control room designs differ but, in general, design features are provided to detect the accident or the activity and isolate the normal ventilation intake. Emergency ventilation systems are activated to minimize infiltration of contaminated air and to remove activity that has entered the control room. Personnel exposures can also result from radioactivity outside of the control room. However, because of concrete shielding of the control room, these latter exposures are generally not limiting. The objective of the control room design is to provide a location from which actions can be taken to operate the plant under normal conditions and to maintain it in a safe condition under accident conditions. General Design Criterion 19 (GDC–19), ''Control Room,'' of Appendix A to 10 CFR Part 50 (36 FR 3255; February 20, 1971), establishes minimum requirements for the design of the control room, including a requirement for radiation protection features adequate to permit access to and occupancy of the control room under accident conditions. The GDC–19 criteria were established for judging the acceptability of the control room design for protecting control room operators under postulated design basis accidents, a significant concern being the potential increases in offsite doses that might result from the inability of control room personnel to adequately respond to the event.

The GDC–19 criteria are expressed in terms of whole body dose, or its equivalent to any organ. The NRC did not revise the criteria when Part 20 was amended (56 FR 23391; May 21, 1991) instead deferring such action to individual facility licensing actions (NUREG/CR–6204, ''Questions and Answers Based on the Revised 10 CFR Part 20''). This position was taken in the interest of maintaining the licensing basis for those facilities already licensed. The NRC is replacing the current dose criteria of GDC–19 for future reactors and for operating reactors that elect to use an alternative source term with a criterion expressed in terms of TEDE. The rationale for this revision is similar to the rationale, discussed earlier in this preamble, for revising the dose criteria for offsite exposures.

On January 10, 1997 (61 FR 65157), the NRC amended 10 CFR Parts 21, 50, 52, 54, and 100 of its regulations to update the criteria used in decisions regarding power reactor siting for future nuclear power plants. The NRC intended that future licensing applications in accordance with Part 52 utilize a source term consistent with the source term information in NUREG–1465 and the accident TEDE criteria in Parts 50 and 100. However, during the final design approval (FDA) and design certification proceeding for the Westinghouse AP600 advanced light-water reactor design, the NRC staff and Westinghouse determined that exemptions were necessary from §§ 50.34(f)(2)(vii), (viii), (xxvi), and (xxviii) and 10 CFR Part 50, Appendix A, GDC–19. This final rule would eliminate the need for these exemptions for future applicants under Part 52 by making conforming changes to Part 50, Appendix A, GDC–19 and § 50.34.

II. Analysis of Public Comments

The NRC published a proposed rule in the **Federal Register** (64 FR 12117, March 31, 1999); that would provide a regulatory framework for the voluntary implementation of alternative source terms as a change to the design basis at currently licensed power reactors, while retaining the existing regulatory framework for currently licensed power reactor licensees who choose not to implement an alternative source term. The rule proposed relocating source term and dose requirements that apply primarily to plant design into 10 CFR Part 50 for operating reactors that choose to implement an alternative source term. The rule also proposed conforming changes to § 50.34(f) and Part 50, Appendix A, GDC–19 to eliminate the need for exemptions for future applicants under Part 52.

The NRC received seven letters commenting on the proposed rule. All comments including those received by the NRC after the expiration of the public comment period but before June 25, 1999, were considered. The commenters included two State regulatory agencies, two nuclear industry groups and three utilities. The State of Florida Department of Community Affairs indicated that they had no comments on the proposed rule. The State of New Jersey Department of Environmental Protection concurred with the NRC's position on the use of an AST in emergency preparedness applications and stated a desire to review the draft regulatory guidance when issued. Winston & Strawn

submitted comments on behalf of the Nuclear Utility Backfitting and Reform Group (NUBARG). The Nuclear Energy Institute (NEI) submitted comments on behalf of the nuclear industry. Two of the utilities provided comments, while the third endorsed the comments submitted by NEI. Copies of these letters are available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

1. NUBARG Comments

NUBARG supports the rule, noting that the rule as proposed defines an acceptable regulatory process for implementing more realistic accident source terms. NUBARG requested clarification in the final rule of situations in which an alternative source term (AST) may be applied in future backfitting [2] decisions. First, NUBARG suggests that the NRC clarify the extent it intends to use the revised source term in assessing whether new generic requirements provide a cost-justified, substantial increase in safety in accordance with NRC's backfitting rule, § 50.109. NUBARG believes that continued use of the source term in TID–14844 for this purpose in spite of its known limitations would be inappropriate and could lead to overly conservative estimates of the safety impact of proposed new requirements. Second, NUBARG suggests a similar clarification for plant-specific backfit decisions for plants that have not opted to implement the revised source term. NUBARG believes that the NRC has discretion to take all relevant factors into account in making its safety benefit assessment of the proposed backfit, including the current state of knowledge concerning the accident source term. NUBARG suggested that the statements of considerations accompanying the final rule address these issues. NUBARG also suggests that relevant NRC guidance should also be revised to reflect NRC policy in these areas.

NRC Response. When radiological consequence analyses are involved, the NRC expects to use a technically appropriate AST in evaluating generic and plant-specific backfitting analyses, including those proposed for facilities that have not implemented an AST. The NRC agrees with the NUBARG position that the NRC has discretion to take all new information on accident source terms into account. The NRC's guidance for evaluating proposed NRC regulatory actions (including backfitting) are contained in NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' and NUREG/BR–0184, ''Regulatory Analysis Technical Evaluation Handbook.'' These documents state that value and impact (including adverse effects on health and safety) parameters are to be best estimates, preferably mean or expected values. These documents also provide that analyses are to be based largely on risk considerations.

2. NEI Comment 1

NEI stated that the Section-by-Section Analysis in the proposed rule notice is consistent with the NRC's intent to permit limited application of the new research results. NEI noted that these limited applications are of two types: (1) application of alternative source term radiological composition and magnitude in a quantitative analysis relative to the effect on the performance of a given engineered safety feature; or (2) application of only the timing aspects in conjunction with the original TID–14844 source term. NEI stated that proposed § 50.67 appears to apply to applications where a licensee would use a completely new source term such as NUREG–1465 in all aspects of the plant design. The NEI comment acknowledged that further guidance in a subsequent regulatory guide and standard review plan is helpful and necessary. Nonetheless, NEI is concerned that licensee pursuit of either of these limited applications might ultimately require seeking an exemption to § 50.67, or require extensive analysis. NEI recommended that the NRC should: (1) revise the proposed rule language to accommodate limited application of an alternative source term as done in the Section-By-Section Analysis; (2) provide clarification in the Statement of Consideration (SOC) for the rule; and (3) for applications that continue to use the TID source term but incorporate attributes of newer technical insights such as timing of releases, specify that the provisions of the proposed rule do not apply.

NRC Response. The language of § 50.67(b) requires an evaluation of the consequences of applicable design basis accidents. The NRC believes that the use of the modifier applicable provides the basis for processing selective implementations. Design basis accidents not applicable to a particular selective implementation would not be required to be evaluated. The NRC expects that the licensee will evaluate all applicable impacts of the proposed AST implementation. While a selective implementation may result in a reduced scope of evaluation, the licensee must still demonstrate that the AST implementation and any associated proposed modifications will not result in accident conditions exceeding the criteria specified in § 50.67. Therefore, these criteria are applicable to full and selective implementations alike. The scope of the required re-analyses will depend on the specific application proposed by the licensee. Guidance with regard to this scope is properly provided in the draft regulatory guide prepared for this rule. Therefore, the NRC has decided against revising the rule language as suggested by NEI. Consistent with the second NEI recommendation, the NRC has modified paragraph D of the section-by-section analysis to clarify this issue.

3. NEI Comment 2

In its second comment, NEI noted that the SOC provides that licensees may need to perform additional evaluations of equipment qualifications (§ 50.49). The SOC should discuss the circumstances when such an evaluation may be necessary. NEI recommended that the SOC should be amended to state that regardless of source term used, the licensee would be required to re-evaluate the equipment qualification only when a plant modification alters the plant configuration so that the underlying assumptions, with respect to dose distribution and effects, are materially altered. NEI summarized conclusions of several references in support of its position. NEI stated that there is no basis to require or expect additional analyses of equipment qualification if a licensee applied the alternative source term in limited scope applications, absent a plant configuration change that materially alters the dose distribution and effects assumed in existing analyses.

NRC Response. The re-baselining study prepared by the NRC staff (SECY–98–154, June 30, 1998) considered the impact of an AST on analyses of the postulated integrated radiation doses for plant components exposed to containment atmosphere radiation sources and those exposed to containment sump radiation sources. The staff's conclusions regarding the atmosphere sources are consistent with those identified by NEI in its comment. However, the re-baselining study also concluded that the increased concentration of cesium in the containment sump water could result in

[2] As provided in § 50.109, Backfitting is defined as the modification of or addition to systems, structures, components, or the design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position.

an increase in the postulated integrated radiation doses for certain plant components subject to equipment qualification. It is because of this conclusion that the NRC included the discussion in the SOC regarding re-evaluation of equipment environmental qualification. The NEI comment provides no additional information that would cause the NRC to change its position on this matter. Further, the NRC has determined that it is necessary to consider the potential impact of the postulated cesium concentration in the containment sump water as it applies to all operating power reactors, not just to those licensees amending their design basis to use an AST. Since the postulated increase in the integrated dose occurs only following an accident, there is no adverse effect on equipment relied upon to perform safety functions immediately following an accident. Rather, this issue affects equipment that is required to be operable longer than about 30 days to 4 months after an accident. As such, the NRC determined that continued plant operation does not pose an immediate threat to public health and safety. Also, should such long-term equipment fail there will not be an undue threat to public health and safety as protective actions for the public would have already been implemented by the time the postulated failure could occur. In addition, the time period between the onset of the event and the projected failure allows compensatory measures to be taken to prevent the equipment failure or to restore the degraded safety function. The NRC will evaluate this issue as a generic safety issue to determine whether further regulatory actions are justified. The final regulatory guide, or subsequent revisions thereto, is expected to reflect the resolution of this generic safety issue.

4. NEI Comment 3

NEI recommends that the definition of Source Term in § 50.2 be revised to ''Source term refers to the magnitude and mix of radionuclides released from the fuel, their physical and chemical form, and the timing of their release.'' NEI stated that the language in the proposed rule would prohibit the use of § 50.67 for accidents such as the fuel handling accident.

NRC Response. The NRC agrees with the proposed revision. The proposed definition was consistent with the definition of source term as used in NUREG–1465, which was written primarily to address loss of coolant accidents (LOCA). The regulatory guidance for this rule extends the NUREG–1465 source terms to other accidents which involve core damage. The definition suggested by NEI is consistent with the proposed use of the AST. The § 50.2 definition has been revised in the final rule to reflect the change suggested by NEI and that suggested by Arizona Public Service Comment 1 below.

5. NEI Comment 4

NEI stated that the proposed rule does not permit new test reactors to use an alternative source term. New test reactors would have to use the Part 100 Subpart A, ''Evaluation Factors for Stationary Power Reactor Site Applications Before January 10, 1997, and for Testing Reactors,'' even though their application for an operating license would be filed after January 10, 1997. The use of Section 50.67, ''Accident Source Term,'' is limited to holders of operating licenses issued before January 10, 1997. This wording prohibits new test reactors from using the alternative source term. NEI recommended that § 50.67 be amended to allow new test reactors to use an alternative source term.

NRC Response. Section 50.67 applies only to holders of licenses for operating reactors, including test reactors, whose licenses were issued before January 10, 1997. There is no regulatory requirement for a specific source term for reactors to be licensed in the future, including test reactors. Accordingly, no regulatory action is necessary to accommodate the NEI recommendation.

6. Duke Energy Corporation Comment

Duke Energy Corporation (Duke) endorsed the comments submitted on behalf of the industry by NEI. Duke stated that the proposed § 50.67(b)(1) was not clear regarding whether licensees will be allowed to use a revised source term on a limited basis (e.g., for analyses of a specific accident or function), or whether they will be required to review the entire radiological consequence analyses to apply for the new source term. Duke suggested that necessary guidance be provided in the draft regulatory guidance to allow for limited use of the new source terms where such use can be justified.

NRC Response. This comment is similar to NEI Comment 1 addressed previously. As stated in the SOC, the NRC will consider justifiable limited (i.e., selective) applications of an AST. Although a selective implementation may result in a reduced scope of evaluation, the licensee must still demonstrate that the AST implementation and any associated proposed modifications will not exceed the criteria specified in § 50.67. The scope of the required re-analyses will depend on the specific application proposed by the licensee. Regulatory guidance on selective implements and the scope of required re-analyses has been included in the draft guide and are available as announced in this **Federal Register** notice.

7. Arizona Public Service Company Comment 1

Arizona Public Service Company (APS) noted that the SOC statement, ''a subsequent change to the source term must be made through a license amendment'' could be interpreted as requiring prior NRC approval for any change in the magnitude and mix of radionuclides released from the reactor core. APS stated that this interpretation could place additional restrictions on licensee efforts at economical fuel management, including reload design.

NRC Response. The NRC agrees with the APS comment. The NRC had intended the phrase ''magnitude and mix'' to refer to the fractions of the fission product inventory of the radionuclides released from the reactor fuel. The NRC intent for the provision in question was to require approval for changes in the radioactivity release fractions, the radionuclides released, their physical and chemical form, and the timing of their release. Since ''magnitude and mix'' could be a source of confusion, the NRC has modified the § 50.2 definition of Source Term in the final rule to read: ''Source term refers to the magnitude and mix of the radionuclides released from the fuel, expressed as fractions of the fission product inventory in the fuel, as well as their physical and chemical form, and the timing of their release.'' This is consistent with NUREG–1465 when it refers to ''magnitude and mix,'' since the NUREG–1465 presents these data in the form of tables of release fractions and radionuclides. This revised language also addresses NEI Comment 3 above.

8. Arizona Public Service Company Comment 2

In its second comment, APS noted that NUREG–1465 contains a disclaimer that the accident source terms provided therein may not be applicable to fuel irradiated in excess of 40 GWD/MTU. The NRC has licensed core designs with fuel irradiations of up to 62 GWD/MTU. APS questioned whether the NRC staff was going to address the affect of high burnups on a generic basis, or on a facility-by-facility basis.

NRC Response. The AST tabulated in the draft regulatory guidance, which

differs in some aspects from that provided in NUREG–1465, is applicable to peak rod average irradiations up to 62 GWD/MTU. Attachment 1 to the regulatory analysis for this rulemaking describes the bases of this extension in fuel irradiation as it applies to the AST. There are some facility-by-facility considerations. For example, the increase in core inventory for some long-lived radionuclides and the change in isotopic mix due to the increase in plutonium fission as the fuel ages is addressed by the Draft Guide-1081 provision that licensees re-analyze the core inventory based on current operating parameters, including fuel burnup.

III. Section-by-Section Analysis

A. Section 50.2

The general ''definitions'' section for Part 50 is supplemented by adding a definition of source term for the purpose of § 50.67. In NUREG–1465, the source term is defined by five projected characteristics: (1) magnitude of radioactivity release, (2) radionuclides released, (3) physical form of the radionuclides released, (4) chemical form of the radionuclides released, and (5) timing of the radioactivity release. The definition of source term in § 50.2 embodies the NUREG–1465 definition; however, the § 50.2 definition includes the clarifying phrase, ''expressed as fractions of the fission product inventory in the fuel,'' (see prior response to Arizona Public Service Comment 1). Although all five characteristics should be addressed in applications proposing the use of an alternative source term, there may be technically justifiable applications in which all five characteristics need not be addressed. The NRC intends to allow licensees flexibility in implementing alternative source terms consistent with maintaining a conservative, clear, logical, and consistent plant design basis. The regulatory guidance that supports this final rule describes an acceptable basis for defining the characteristics of an alternative source term.

B. Section 50.67(a)

This paragraph defines the licensees that may seek to revise their current radiological source term with an alternative source term. The final rule is applicable to holders of operating licenses that were issued under 10 CFR Part 50 before January 10, 1997, and to holders of renewed licenses issued under 10 CFR Part 54 whose initial operating license was issued prior to January 10, 1997. The final rule does not require licensees to revise their current source term. The NRC considered the acceptability of the TID–14844 source term at current operating reactors and determined that the analytical approach based on the TID–14844 source term would continue to be adequate to protect public health and safety, and that operating reactors licensed under this approach should not be required to reanalyze design basis accidents using a new source term. The final rule does not explicitly define an alternative source term. In lieu of an explicit reference to NUREG–1465, Footnote 1 to the final rule identifies the significant attributes of an accident source term. The regulatory guidance that is being issued to support this final rule will identify ASTs (based on the NUREG–1465 source terms) that are acceptable alternatives to the source term in TID–14844, and will provide implementation guidance. This approach will provide for future revised source terms if they are developed and will allow licensees to propose additional alternatives for NRC consideration.

C. Section 50.67(b)(1)

This paragraph of § 50.67 identifies the information that a licensee must submit as part of a license amendment application to use an alternative source term. Because of the extensive use of the accident source term in the design and operation of a power reactor and the potential impact on postulated accident consequences and margins of safety of a change of such a fundamental design assumption, the NRC has determined that any change to the design basis to use an alternative source term should be reviewed and approved by the NRC in the form of a license amendment. Changes to the source term, by itself, would ordinarily constitute a no significant hazards consideration. In addition, generic analyses performed by the NRC staff in support of this final rule have indicated that there are potential changes to the facility as documented in the FSAR that will constitute a no significant hazards consideration. However, these determinations will have to be made for each proposed change based upon facility-specific evaluations. The procedural requirements for processing a license amendment are presented in §§ 50.90 through 50.92.

The NRC's regulations provide a regulatory mechanism for a licensee to effect a change in its design basis in § 50.59[3] that allows a licensee to make changes to the facility as described in the final safety analysis report (FSAR) without prior NRC approval, if the proposed change meets certain criteria specified in § 50.59. If the criteria are not met, the licensee must request NRC approval of the change using the license amendment process detailed in § 50.90. Significant to this final rule is the criterion that NRC review is required if the proposed change would result in a greater than minimal increase in consequences of an accident or malfunction. In many applications, alternative source terms may reduce the postulated consequences of the accident or malfunction. For this reason, the NRC determined that the regulatory framework of § 50.59 might not provide assurance that this change in the design basis would be recognized by the licensee as needing review by the NRC staff.

After a licensee has been authorized to substitute an alternative source term in its design basis, subsequent changes to the facility that involve an alternative source term may be processed under § 50.59 or § 50.90, as appropriate. However, a subsequent change to the fractions of the fission product inventory of the radionuclides released from the reactor fuel, their chemical and physical form, or the timing of their release as tabulated in the regulatory guidance (with deviations proposed by the licensee and approved by the NRC) could not be implemented under § 50.59. This provision applies only to these tabulated parameters.

The final rule will require the applicant to perform analyses of the consequences of applicable design basis accidents previously analyzed in the safety analysis report and to submit a description of the analysis inputs, assumptions, methodology, and results of these analyses for NRC review. Applicable evaluations may include, but are not limited to, those previously performed to show compliance with § 100.11, § 50.49, Part 50 Appendix A GDC–19, § 50.34(f), and NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' requirements II.B.2, II.B.3, III.D.3.4. The regulatory guidance that supports this final rule will provide guidance on the scope and extent of analyses used to show compliance with this rule and on the assumptions and methods used therein. It is not the NRC's intent that all of the design basis radiological analyses for a facility be

[3] Section 10 CFR 50.59 is being amended in a parallel, but separate, rulemaking action. That rulemaking, when implemented is expected to replace the unreviewed safety question (USQ) concept. Further, the criteria for consequences are being revised from ''may be increased'' to ''result in more than a minimal increase.'' Those changes are not expected to invalidate the conclusions drawn in this analysis.

performed again as a prerequisite for approval of the use of an alternative source term. Nor is it the NRC's intent that EAB, LPZ, and control room dose calculations be performed for all applications under § 50.67. The NRC does expect that the applicant will perform sufficient evaluations, supported by calculations as warranted, to demonstrate the acceptability of the proposed amendment.

D. Sections 50.67(b)(2)(i),(ii), (iii)

These subparagraphs contain the three criteria for NRC approval of the license amendment to use an alternative source term. A detailed rationale for the use of 0.25 Sv (25 rem) TEDE as an accident dose criterion and the use of the 2-hour exposure period resulting in the maximum dose for future LWRs is provided at 61 FR 65157 (December 11, 1996). The same considerations that formed the basis for that rationale are similarly applicable to operating reactors that elect to use an alternative source term. The NRC believes that it is technically appropriate and logical to extend the philosophy of decoupling of design and siting, and the dose criteria established for future LWRs to operating reactors that elect to use an alternative source term.

The NRC is replacing the current GDC–19 dose criteria for operating reactors that elect to use an alternative source term with a criterion of 0.05 Sv (5 rem) TEDE for the duration of the accident. This criterion is included in § 50.67 as well as in GDC–19 in order to co-locate all of the dose requirements associated with alternative source terms. The bases for the NRC's decision are: first, that the criteria in GDC–19 and that in the final rule are based on a primary occupational exposure limit. Second, the language in GDC–19: ''5 rem whole body, or its equivalent to any part of the body'' is subsumed by the definition of TEDE in § 20.1003 and by the 0.05 Sv (5 rem) TEDE annual limit in § 20.1201(a). Although the weighting factors stated in § 20.1003 for use in determining TEDE differ in magnitude from the weighting factors implied in the 0.3 Sv (30 rem) thyroid criteria used for showing compliance with GDC–19, these differences are the result of improvement in the science of assessing internal exposures and do not represent a reduction in the level of protection. Third, as discussed earlier, the use of TEDE in conjunction with alternative source terms has been deemed appropriate and necessary. Fourth, the use of TEDE for the control room dose criterion is consistent with the use of TEDE in the accident dose criteria for offsite exposure.

The NRC has not included a ''capping'' limitation, an additional requirement that the dose to any individual organ not be in excess of some fraction of the total as provided for routine occupational exposures. The bases for the NRC's decision are: first, that this non-inclusion of a ''capping'' limitation is consistent with the final rule published in December 11, 1996 (61 FR 65157), with regard to doses to persons offsite. Second, the use of 0.05 Sv (5 rem) TEDE as the control room criterion does not imply that this would be an acceptable exposure during emergency conditions, or that other radiation protection standards of Part 20, including individual organ dose limits, might not apply. This criterion is provided only to assess the acceptability of design provisions for protecting control room operators under postulated DBA conditions. The DBA conditions assumed in these analyses, although credible, generally do not represent actual accident sequences but are specified as conservative surrogates to create bounding conditions for assessing the acceptability of engineered safety features. Third, § 20.1206 permits a once-in-a-lifetime planned special dose of five times the annual dose limits. Also, Environmental Protection Agency (EPA) guidance sets a limit of five times the annual dose limits for workers performing emergency services such as lifesaving or protection of large populations.

Considering the individual organ weighting factors of § 20.1003 and assuming that only the exposure from a single organ contributed to TEDE, the organ dose, although exceeding the dose specified in § 20.1201(a), would be less than that considered acceptable as a planned special dose or as an emergency worker dose. The NRC is not suggesting that control room dose during an accident can be treated as a planned special exposure or that the EPA emergency worker dose limits are an alternative to GDC–19 or the final rule. However, the NRC does believe that these provisions offer a useful perspective that supports the conclusion that the organ doses implied by the 0.05 Sv (5 rem) criterion can be considered to be acceptable due to the relatively low probability of the events that could result in doses of this magnitude.

Although the dose criteria in the final rule supersede the dose criteria in GDC–19, the other provisions of GDC–19 remain applicable.

There may be technically justifiable implementations of an AST that would not require calculation of the EAB, LPZ, or control room doses. For example, a proposed modification to change the closure time of a containment isolation valve from 2 seconds to 5 seconds may be based on the timing insights of the AST. Although a specific calculation might not be necessary in this case, the licensee is still required to affirm with reasonable assurance that the doses would comply with these stated criteria.

E. 10 CFR Part 50, Appendix A, GDC–19

GDC–19 is changed to include the TEDE dose criterion for control room design for applicants for construction permits, design certifications, and combined licenses that submitted applications after January 10, 1997 (the effective date of the 1996 rulemaking adopting the TEDE criterion), and for those licenses using an alternative source term under § 50.67. The change to GDC–19 addresses the use of alternative source terms at operating reactors and a deficiency identified in the regulatory framework for early site permits, standard design certifications, and combined licenses under Part 52. Sections 52.18, 52.48, and 52.81 establish that applications filed under Part 52, Subparts A, B, and C, respectively, will be reviewed according to the standards given in 10 CFR Parts 20, 50, 51, 55, 73, and 100 to the extent that those standards are technically relevant to the proposed design. Therefore, GDC–19 is pertinent to applications under Part 52.

The final rule that became effective on January 10, 1997 (61 FR 65157; December 11, 1996), established accident TEDE criteria (in § 50.34) for applicants under Part 52 but did not change the existing control room whole body (or equivalent) dose criterion in GDC–19. Thus, exemptions from the dose criteria in the current GDC–19 were necessary in the design certification process for the Westinghouse AP600 advanced LWR in order to use the 0.05 Sv (5 rem) TEDE criterion deemed necessary for use with alternative source terms. Exemptions will arguably be necessary for future applicants for construction permits, design certifications, and combined licenses. This amendment will eliminate the need for these exemptions.

F. Sections 21.3, 50.2, 50.49(b)(1)(i)(C), 50.65(b)(1), and 54.4(a)(1)(iii)

These sections are revised to conform with the relocation of accident dose criteria from § 100.11 to § 50.67 for operating reactors that have amended their design bases to use an alternative source term.

G. Section 50.34

A new footnote to § 50.34 has been added to define what constitutes an accident source term. This new footnote is identical to the existing footnote 1 to § 100.11, and was added to provide for consistency between Parts 50 and 100.

H. Sections 50.34(f)(2)(vii), (viii), (xxvi) and (xxviii)

These paragraphs are revised to replace an explicit reference to the ''TID–14844 source term'' with a more general reference to ''accident source term.'' These changes potentially affect three classes of applicants. The first affected class is comprised of applicants for design certification under Part 52, Subpart B. Section 52.47(a)(1)(ii) states that applications for combined licenses must contain, inter alia, ''demonstration of compliance with any technically-relevant portions of the Three Mile Island requirements set forth in § 50.34(f).'' Section 50.34(f) contains several references to the TID–14844 source term. These references were modified to delete the reference to TID–14844. This change makes it clear that applicants for combined licenses should not use the TID–14844 source term but should use the source term in the referenced design certification, or a source term that is justified in the combined license application. The second affected class is comprised of applicants for combined licenses under Part 52, Subpart C. Section 52.79(b) makes the requirements of 52.47(a)(1)(i) applicable if a certified design is not referenced. Thus, the combined license applicant is also subject to the requirements of Section 50.34(f).

The third affected class is the small subset of plants that had construction permits pending on February 16, 1982. With the proposed change, these plants could use either the TID–14844 source term or an alternative source term in their operating license applications.

IV. Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission is issuing for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public information such as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the NRC staff in its review of applications for permits and licenses. Copies of the draft guide may be obtained as described in Section VI, ''Referenced Documents,'' of these statements of consideration. You may also download copies from the NRC's interactive rulemaking forum website through the NRC home page (http://ruleforum.llnl.gov/cgi-bin/rulemake).

The draft guide, temporarily identified by its task number DG–1081 (which should be mentioned in all correspondence concerning this draft guide) is titled ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.'' This guide is intended for Division 1, ''Power Reactors.'' This draft guide is being developed to provide regulatory guidance on the implementation of an alternative source term at an operating reactor. The guide addresses issues involving limited or selective implementation of an alternative source term and probabilistic risk assessment (PRA) issues related to plant modifications based on an alternative source term, and provides guidance on the scope and extent of affected design basis accident (DBA) radiological analyses and associated acceptance criteria. The guide includes revised assumptions and methods for each affected DBA in a series of appendices. These appendices supersede the guidance in Regulatory Guides 1.3, 1.4, 1.5, 1.25, and 1.77, and supplement guidance in Regulatory Guide 1.89 for those facilities using an alternative source term.

The draft guide has not received complete NRC staff review and does not represent an official NRC staff position.

Previous draft versions of DG–1081 have been made publicly available to support technical interactions with the public. This **Federal Register** announcement provides an opportunity for the public to provide comments on the DG–1081 guidance. The NRC staff will consider the public comments in its efforts to finalize the regulatory guidance.

The Commission invites advice and recommendations on the content of the draft regulatory guide. Comments and suggestion are particularly requested on the following questions.

A. Scope of Implementation

1. The guidance provided in the draft regulatory guide is intended to allow licensees the maximum flexibility in pursuing technically justifiable AST implementations provided that a clear, consistent, and logical design basis is maintained. Comments are specifically requested on the following questions.

A. Does the proposed guidance provide the desired flexibility while providing reasonable assurance that a clear, consistent, and logical design basis will be maintained?

B. Is there a less complex alternative approach that would provide the desired flexibility while maintaining a clear, consistent, and logical design basis?

C. Should the Commission allow licensees that have received approval for a selective implementation to extend the AST and the TEDE criteria to other design basis applications (that do not involve reanalysis of the DBA LOCA) under § 50.59 rather than under § 50.67 as currently proposed?

2. The guidance would allow selective implementation of the characteristics (i.e., the fractions of fission product inventory of the radionuclides released from the reactor fuel, their chemical and physical form, and the timing of their release) of an AST. The Commission believes that implementations based only on the timing insights of an AST may be technically justifiable. The Commission believes that the other combinations may be internally inconsistent. Comments are specifically requested on the following questions.

A. What other combinations of AST characteristics are technically consistent?

B. What plant modifications might be based on these combinations?

B. Scope of Re-Analyses

1. The draft regulatory guide provides guidance on the scope of the re-analyses that should be performed to support an AST implementation. Comments are requested on the following questions.

A. Is the proposed guidance on the scope of re-analyses technically appropriate and clear? How could it be improved?

B. The guidance allows licensees to disposition certain impacts of an AST on the basis of the NRC staff's re-baselining study. Does this study or other documents provide a sufficient basis for the Commission to generically disposition these impacts?

2. It may be possible for licensees to demonstrate that the doses from certain affected analyses assessed using the prior source term and dose methodology would be greater than the doses obtained using a proposed AST and the TEDE methodology. The proposed guidance would allow the licensee to disposition these affected analyses without re-calculation. Nonetheless, the design basis would now include the approved AST and TEDE criteria. The guidance in the draft regulatory guide would require the licensee to update the calculation to be consistent with the approved AST and dose methodology described in the facility design basis in

the event of a subsequent re-calculation. Comments are requested on the following questions.

A. Should the Commission allow licensees to continue to use the prior source term and dose criteria for these analyses and not require that they be updated on subsequent revisions?

B. If the analyses are not updated, how will licensees assure that the earlier conclusion that the analyses are limiting remains valid following subsequent revisions?

3. Analyses of the integrated radiation doses for environmental qualification of certain equipment important to safety will be affected by the increased concentration of radioactive cesium in the containment sump water. The Commission has been considering the position that licensees proposing to implement an AST must address all impacts of the proposed implementation, including the impact of the increased cesium concentration. However, the Commission now believes it may be necessary for all operating power reactors to address the postulated increase in the cesium concentration. The Commission will consider this issue as a generic safety issue. Comments are requested on the following questions.

A. Is there information that should be considered by the Commission in resolving this generic issue?

B. If the Commission should conclude that there is safety significance but that the costs of implementing corrective actions are not justified on a generic basis, should licensees who are voluntarily proposing to amend their design basis to use an AST be required to address the impact of the increased cesium concentration?

C. If a licensee proposes a change in the plant configuration that would result in an increase in the integrated dose for one or more components and this licensee is also proposing, or has already implemented an AST, should the re-analysis of the integrated dose be based on that AST or on the prior TID14844 source term?

Comments may be accompanied by relevant information or supporting data. Written comments may be mailed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Mail Stop O16C1. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 7, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://ruleforum.llnl.gov/cgi-bin/rulemake). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; or by internet electronic mail to cag@nrc.gov. For information about the draft guide, contact Mr. Stephen F. LaVie, (301) 415–1081; Internet electronic mail sfl@nrc.gov.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

V. Draft Standard Review Plan Section; Issuance, Availability

The Nuclear Regulatory Commission is issuing for public comment a draft of a new section to NUREG–0800, ''Standard Review Plan.'' Standard review plan (SRP) sections are prepared for the guidance of the Office of Nuclear Reactor Regulation staff responsible for the review of applications to construct and operate nuclear power plants. These documents are made available to the public as part of the Commission's policy to inform the nuclear industry and the general public of regulatory procedures and policies. The draft SRP Section 15.0.1, is titled ''Radiological Consequence Analyses Using Alternative Source Terms.'' The SRP section complements draft regulatory guide DG–1081. The draft SRP section has not received complete NRC staff review and does not represent an official NRC staff position.

Copies of the draft SRP section may be obtained as described in Section VI, ''Referenced Documents,'' of these statements of consideration. You may also download copies from the NRC's interactive rulemaking forum website through the NRC home page (http://ruleforum.llnl.gov/cgi-bin/rulemake).

Comments on the content of the draft SRP section are invited. Comments may be accompanied by relevant information or supporting data. Comments should be submitted as described above for the draft regulatory guide. Although a time limit is given for comments on this draft SRP section, comments and suggestions in connection with items for inclusion in SRP sections currently being developed or improvements in all published SRP sections are encouraged at any time.

VI. Referenced Documents

Copies of NUREG–0737, NUREG–0800, NUREG–1465, NUREG/BR–0058, NUREG/BR–184, and NUREG/CR–6204 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies also are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy also is available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Single copies of regulatory guides, both active and draft may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, USNRC, Washington DC 20555–0001, or by fax to (301) 415–2289, or by email to distribution@nrc.gov. Active guides may also be purchased from the National Technical Information Service on a standing order basis. Details of this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of active and draft guides are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington DC.

Copies of SECY–94–302, SECY–96–242, SECY–98–154, SECY–98–289, TID–14844, and TR–105909 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

VII. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this regulation is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule allows operating reactors to replace the traditional TID–14844 source term with a more realistic source term based on the insights gained from extensive accident research activities. The actual accident sequence and progression are not changed; it is the regulatory assumptions regarding the accident that would be affected by the change. The use of an alternative source term alone cannot increase the core damage frequency (CDF) or the large early release frequency (LERF) or actual offsite or onsite radiation doses. An alternative source term could be used to justify changes in the plant design that might have an impact on CDF or LERF or that might increase offsite or onsite doses. Those plant changes that do not

require prior NRC review and approval pursuant to § 50.59 are not likely to involve any significant increase in environmental impacts. The § 50.59 criteria are sufficiently stringent that any potential change in plant design that could have an adverse environmental impact in all likelihood could not be made by the licensee without prior NRC review and approval. Every plant change that requires NRC review and approval under § 50.59 requires a license amendment and, therefore, the preparation of an environmental assessment to determine whether the proposed change involves any significant environmental impact. Thus, this final rule, by itself, will not result in plant changes that involve any significant increase in environmental impacts. The final rule does not affect non-radiological plant effluents.

The NRC requested public comments on any environmental justice considerations that may be related to this rule. No public comments relevant to the draft environmental assessment or environmental justice considerations were received. The NRC requested the views of the States on the environmental assessment for this rule. No comments relevant to the draft environmental assessment or environmental justice considerations were received.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory NRC, Washington, DC 20555–0001, telephone: (301) 415–1081, or by Internet electronic mail to sfl@nrc.gov.

VIII. Paperwork Reduction Act Statement

This final rule increases the burden on licensees by requiring that when seeking to revise their current accident source term in design basis radiological consequence analyses, they apply for an amendment under § 50.90. The public burden for this information collection is estimated to average 609 hours per request. Because the burden for this information collection is insignificant relative to the total burden estimated, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

IX. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis are available from Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–1081, or by Internet electronic mail to sfl@nrc.gov.

X. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the definition of ''small entities'' found in the Regulatory Flexibility Act or within the size standards established by the NRC (April 11, 1995; 60 FR 18344).

XI. Backfit Analysis

The NRC has determined that the backfit rule in 10 CFR 50.109 does not apply to this final rule, and that a backfit analysis is not required for this rulemaking because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). This final rule amends the NRC's regulations by establishing alternate requirements that may be voluntarily adopted by licensees, and makes changes to the regulations to conform them to a 1996 rulemaking.

XII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

XIII. National Technology Transfer and Advancement Act

The National Technology Transfer Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule the NRC is establishing a government-unique standard in Section 50.67(b)(2) by specifying accident radiation dose criteria. These criteria were issued for use by future license applicants by an earlier rulemaking (61 FR 65157, December 11, 1996) and, by this final rule, are being applied to operating reactors that voluntarily use an alternative source term. No voluntary consensus standard has been identified that could be used instead of the government-unique standard.

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons noted in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing the following amendments to 10 CFR Parts 21, 50, and 54:

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

2. Section 21.3 is amended by republishing the introductory text and revising paragraph (1)(i)(C) of the

definition of Basic Component to read as follows:

§ 21.3 Definitions.

As used in this part:

Basic component. (1)(i) * * *

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–9601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–9190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–9190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–9415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

4. Section 50.2 is amended by republishing the introductory text and revising paragraph (1)(iii) of the definition of Basic component, and by adding in alphabetical order the definition for Source term to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

Basic component * * *

(1) * * *

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

Source term refers to the magnitude and mix of the radionuclides released from the fuel, expressed as fractions of the fission product inventory in the fuel, as well as their physical and chemical form, and the timing of their release.

* * * * *

5. Section 50.34 is amended by revising paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(f) * * *

(2) * * *

(vii) Perform radiation and shielding design reviews of spaces around systems that may, as a result of an accident, contain accident source term [11] radioactive materials, and design as necessary to permit adequate access to important areas and to protect safety equipment from the radiation environment. (II.B.2)

(viii) Provide a capability to promptly obtain and analyze samples from the reactor coolant system and containment that may contain accident source term [11] radioactive materials without radiation exposures to any individual exceeding 5 rems to the whole body or 50 rems to the extremities. Materials to be analyzed and quantified include certain radionuclides that are indicators of the degree of core damage (e.g., noble gases, radioiodines and cesiums, and nonvolatile isotopes), hydrogen in the containment atmosphere, dissolved gases, chloride, and boron concentrations. (II.B.3)

* * * * *

(xxvi) Provide for leakage control and detection in the design of systems outside containment that contain (or might contain) accident source term [11] radioactive materials following an accident. Applicants shall submit a leakage control program, including an initial test program, a schedule for re-testing these systems, and the actions to be taken for minimizing leakage from such systems. The goal is to minimize potential exposures to workers and public, and to provide reasonable assurance that excessive leakage will not prevent the use of systems needed in an emergency. (III.D.1.1)

* * * * *

(xxviii) Evaluate potential pathways for radioactivity and radiation that may lead to control room habitability problems under accident conditions resulting in an accident source term [11] release, and make necessary design provisions to preclude such problems. (III.D.3.4)

* * * * *

6. Section 50.49 is amended by revising paragraph (b)(1)(i)(C) to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) The capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guidelines in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

7. Section 50.65 is amended by revising paragraph (b)(1) to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

* * * * *

(b) * * *

(1) Safety-related structures, systems and components that are relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

8. Part 50 is amended by adding § 50.67 to read as follows:

§ 50.67 Accident source term.

(a) *Applicability.* The requirements of this section apply to all holders of operating licenses issued prior to January 10, 1997, and holders of renewed licenses under part 54 of this chapter whose initial operating license was issued prior to January 10, 1997, who seek to revise the current accident source term used in their design basis radiological analyses.

(b) *Requirements.* (1) A licensee who seeks to revise its current accident source term in design basis radiological

[11] The fission product release assumed for these calculations should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release of appreciable quantities of fission products.

consequence analyses shall apply for a license amendment under § 50.90. The application shall contain an evaluation of the consequences of applicable design basis accidents [1] previously analyzed in the safety analysis report.

(2) The NRC may issue the amendment only if the applicant's analysis demonstrates with reasonable assurance that:

(i) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 0.25 Sv (25 rem) [2] total effective dose equivalent (TEDE).

(ii) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage), would not receive a radiation dose in excess of 0.25 Sv (25 rem) total effective dose equivalent (TEDE).

(iii) Adequate radiation protection is provided to permit access to and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 0.05 Sv (5 rem) total effective dose equivalent (TEDE) for the duration of the accident.

9. Part 50, Appendix A, section II, ''Protection by Multiple Fission Product Barriers,'' ''Criterion 19—Control room'' is revised to read as follows:

Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

* * * * *

II. Protection by Multiple Fission Product Barriers

* * * * *

Criterion 19—Control room. A control room shall be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions, including loss-of-coolant accidents. Adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident. Equipment at appropriate locations outside the control room shall be provided (1) with a design capability for prompt hot shutdown of the reactor, including necessary instrumentation and controls to maintain the unit in a safe condition during hot shutdown, and (2) with a potential capability for subsequent cold shutdown of the reactor through the use of suitable procedures.

Applicants for and holders of construction permits and operating licenses under this part who apply on or after January 10, 1997, applicants for design certifications under part 52 of this chapter who apply on or after January 10, 1997, applicants for and holders of combined licenses under part 52 of this chapter who do not reference a standard design certification, or holders of operating licenses using an alternative source term under § 50.67, shall meet the requirements of this criterion, except that with regard to control room access and occupancy, adequate radiation protection shall be provided to ensure that radiation exposures shall not exceed 0.05 Sv (5 rem) total effective dose equivalent (TEDE) as defined in § 50.2 for the duration of the accident.

* * * * *

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

10. The authority citation for Part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842), E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

11. Section 54.4 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 54.4 Scope.

(a) * * *

(1) * * *

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

Dated at Rockville, Maryland, this 17th day of December 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–33283 Filed 12–22–99; 8:45 am]

BILLING CODE 7590–01–P

[1] The fission product release assumed for these calculations should be based upon a major accident, hypothesized for purposes of design analyses or postulated from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release of appreciable quantities of fission products.

[2] 2 The use of 0.25 Sv (25 rem) TEDE is not intended to imply that this value constitutes an acceptable limit for emergency doses to the public under accident conditions. Rather, this 0.25 Sv (25 rem) TEDE value has been stated in this section as a reference value, which can be used in the evaluation of proposed design basis changes with respect to potential reactor accidents of exceedingly low probability of occurrence and low risk of public exposure to radiation.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AG23

AP600 Design Certification

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify the AP600 standard plant design under Subpart B of 10 CFR part 52. This action is necessary so that applicants or licensees intending to construct and operate an AP600 design may do so by referencing this regulation [AP600 design certification rule (DCR)]. The applicant for certification of the AP600 design was Westinghouse Electric Company LLC (hereinafter referred to as Westinghouse).

EFFECTIVE DATE: The effective date of this rule is January 24, 2000. The incorporation by reference of certain documents listed in this regulation is approved by the Director of the Office of the Federal Register as of January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Mail Stop O–12 G15, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or telephone (301) 415–3145, or e-mail: *jnw@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR part 52 established the process for obtaining design certifications. On June 26, 1992, Westinghouse tendered its application for certification of the AP600 design with the NRC. Westinghouse submitted this application in accordance with Subpart B and Appendix O of 10 CFR part 52. The NRC formally accepted the application as a docketed application for design certification (Docket No. 52–003) on December 31, 1992 (58 FR 3982, January 12, 1993). Information submitted before that date can be found under Project No. 676.

The NRC staff issued a final safety evaluation report (FSER) related to certification of the AP600 standard plant design in September 1998 (NUREG–1512, 63 FR 48772). The FSER documents the results of the staff's safety review of the AP600 design against the requirements of 10 CFR part 52, subpart B, and delineates the scope of the technical details considered in evaluating the design. The final design approval for the AP600 design was issued on September 3, 1998, and published in the **Federal Register** on September 11, 1998 (63 FR 48772). Subsequently, Westinghouse submitted the AP600 Design Control Document (DCD) on November 30, 1998, and four revisions to the DCD. The NRC staff reviewed these revisions and determined that they did not affect the findings in the FSER. The NRC's evaluation of the DCD is discussed in Supplement No. 1 to the FSER. A notice of availability for Supplement No. 1 will be published in the **Federal Register**. The FSER and Supplement No. 1 provide the bases for the Commission's approval of the AP600 standard plant design through design certification. A copy of the FSER may be obtained from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 or the National Technical Information Service, Springfield, VA 22161–0002.

II. Public Comment

Subpart B of 10 CFR part 52 provides for Commission approval of standard designs for nuclear power facilities (e.g., design certification) through rulemaking. In accordance with the Administrative Procedure Act (APA), Part 52 provides the opportunity for the public to submit written comments on the proposed design certification rule. However, Part 52 goes beyond the requirements of the APA by providing the public with an opportunity to request a hearing before the Atomic Safety and Licensing Board Panel in a design certification rulemaking. Therefore, on May 20, 1999, the NRC published a proposed rule in the **Federal Register** (64 FR 27626) that invited public comment and provided the public with the opportunity to request an informal hearing before an Atomic Safety and Licensing Board.

The period for requesting an informal hearing or submitting comments on the proposed DCR, AP600 DCD, or draft environmental assessment expired on August 3, 1999. The NRC did not receive any requests for an informal hearing during this period, but it did receive a comment from a member of the public. This individual did not comment on the AP600 DCD, draft environmental assessment, or proposed DCR. Rather, the commenter expressed views on new nuclear power plants and nuclear waste. Therefore, the Commission did not change the proposed DCR, AP600 DCD, or draft environmental assessment [except for editorial revisions and updates to the supplementary information on applicable regulations] and has adopted this rule [Appendix C to 10 CFR Part 52] as final.

III. Section-by-Section Discussion of Design Certification Rule

The final rule for the AP600 standard plant design is nearly identical to the two design certification rules (DCRs) for the U.S. ABWR and the System 80+ designs, which the NRC previously adopted. These DCRs are set forth in 10 CFR part 52, appendix A (U.S. ABWR, 62 FR 25800, May 12, 1997) and appendix B (System 80+, 62 FR 27840, May 21, 1997). The AP600 DCR emulates the U.S. ABWR and System 80+ DCRs, inasmuch as the three designs were reviewed contemporaneously against the same technical requirements. Furthermore, many of the procedural issues and their resolutions for the ABWR and the System 80+ DCRs (e.g., the two-tier structure, Tier 2*, the scope of issue resolution) were developed after extensive discussions with nuclear industry representatives, and Westinghouse participated in those discussions. It was the NRC's intent and Westinghouse's expectation that the resolutions for these issues in the ABWR and System 80+ rulemakings would also be applied to the AP600 design certification. Accordingly, the NRC has modeled the AP600 DCR on the existing DCRs for the ABWR and System 80+ designs, with certain departures. These departures were necessary to acknowledge that Westinghouse is the applicant for the AP600 DCR, and to account for differences in the AP600 design documentation (including Tier 2* information), design features, and environmental assessment (including severe accident mitigation design alternatives). The only significant change was the inclusion of the investment protection short-term availability controls in Sections II, III, and VI of the AP600 DCR.

The following discussion sets forth the purpose and key aspects of each portion of the final AP600 design certification rule. All section, paragraph, and subparagraph references are to the provisions in Appendix C to 10 CFR part 52.

A. Introduction

The purpose of Section I of appendix C to 10 CFR part 52 (''this appendix'') is to identify the standard plant design that is approved by this design certification rule and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a combined license (COL) contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide this information, then the COL applicant must meet the requirements in 10 CFR 52.63(c). Also, subparagraph X.A.1 of this appendix imposes a requirement on the design certification applicant to maintain the generic DCD throughout the time period in which this appendix may be referenced.

B. Definitions

The terms Tier 1, Tier 2, Tier 2*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR part 52 was developed. The design certification applicants and the NRC staff used these terms in implementing the two-tiered rule structure that was proposed by representatives of the nuclear industry after issuance of 10 CFR part 52. During consideration of the comments received on Appendices A and B to Part 52, the Commission determined that it would be useful to distinguish between the ''plant-specific DCD'' and the ''generic DCD,'' the latter of which is incorporated by reference into this

appendix and remains unaffected by plant-specific departures. This distinction is necessary in order to clarify the obligations of applicants and licensees that reference this appendix. Also, the technical specifications that are located in Section 16.1 of the generic DCD are designated as ''generic technical specifications'' in order to facilitate the special treatment of this information under this appendix. Therefore, appropriate definitions for these additional terms are included in this appendix.

The Tier 1 portion of the design-related information contained in the DCD is certified by this appendix and, therefore, subject to the special backfit provisions in paragraph VIII.A of this appendix. An applicant who references this appendix is required to incorporate by reference and comply with Tier 1, under paragraph III.B and subparagraph IV.A.1 of this appendix. This information consists of an introduction to Tier 1, the system based and non-system based design descriptions and corresponding inspections, tests, analyses, and acceptance criteria (ITAAC), significant interface requirements, and significant site parameters for the design. The design descriptions, interface requirements, and site parameters in Tier 1 were derived entirely from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information is provided in Section 14.3 of the FSER. Changes to or departures from the Tier 1 information must comply with paragraph VIII.A of this appendix.

The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification. The ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility must comply with the design descriptions in the plant-specific DCD unless changes are made in accordance with the change process in Section VIII of this appendix. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii) and must be met by the site-specific design features of a facility that references this appendix. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii). An application that references this appendix must demonstrate that the site parameters (both Tier 1 and Tier 2) are met at the proposed site (refer to III.D of this SOC).

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this appendix but is not certified. Tier 2 information is subject to the backfit provisions in paragraph VIII.B of this appendix. Tier 2 includes the information required by 10 CFR 52.47 (with the exception of generic technical specifications, conceptual design information, and the evaluation of severe accident mitigation design alternatives) and the supporting information on inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. As with Tier 1, paragraph III.B and subparagraph IV.A.1 of this appendix require an applicant who references this appendix to incorporate Tier 2 by reference and to comply with Tier 2, except for the COL action items, including the investment protection short-term availability controls in Section 16.3 of the generic DCD. The definition of Tier 2 makes clear that Tier 2 information has been determined by the Commission, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved (''sufficient'') method for meeting Tier 1 requirements. However, there may be other acceptable ways of complying with Tier 1. The appropriate criteria for departing from Tier 2 information are specified in paragraph VIII.B of this appendix. Departures from Tier 2 do not negate the requirement in paragraph III.B to reference Tier 2.

A definition of ''combined license (COL) action items'' (combined license information), which is part of the Tier 2 information, has been added to clarify that COL applicants, who reference this appendix, are required to address these matters in their license application, but the COL action items are not the only acceptable set of information. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or combined license, these items are not requirements for the licensee unless such items are restated in its FSAR.

The investment protection short-term availability controls, which are set forth in Section 16.3 of the generic DCD, were added to the list of information that is part of Tier 2. This set of requirements was added to Tier 2 to make it clear that the availability controls are not operational requirements for the purposes of paragraph VIII.C of this appendix. Rather, the availability controls are associated with specific design features, and the availability controls may be changed in the same manner as other Tier 2 information.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as ''Tier 2*'' information and, as discussed in greater detail in the section-by-section explanation for paragraph VIII.B, a plant-specific departure from Tier 2* information requires prior NRC approval. However, the Tier 2* designation expires for some of this information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2* information and the time at which its status as Tier 2* expires is set forth in subparagraph VIII.B.6 of this appendix. Some Tier 2* requirements, concerning special preoperational tests, are designated to be performed only for the first plant or first three plants referencing the AP600 DCR. The Tier 2* designation for these selected tests will expire after the first plant or first three plants complete the specified tests. However, a COL action item requires that subsequent plants shall also perform the tests or justify that the results of the first-plant-only or first-three-plants-only tests are applicable to the subsequent plant. The Commission is interested in comments addressing whether the first-plant-only or first-three-plants-only limitations should be part of the Tier 2* information for these specified tests.

During development of Appendices A and B to Part 52, the Commission decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs, maintained by each applicant and licensee who references this appendix.The generic DCDs (identical to each other) would reflect generic changes to the version of the DCD approved in this design certification rulemaking. The generic changes would occur as the result of generic rulemaking by the Commission (subject to the change criteria in Section VIII of this appendix). In addition, the Commission understood that each applicant and licensee referencing this appendix would be required to submit and maintain a plant-specific DCD. This plant-specific DCD would contain (not

just incorporate by reference) the information in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, any plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chose to make in accordance with the relevant processes in Section VIII of this appendix. Thus, the plant-specific DCD would function akin to an updated Final Safety Analysis Report, in the sense that it would provide the most complete and accurate information on a plant's licensing basis for that part of the plant within the scope of this appendix. Therefore, this appendix defines both a generic DCD and plant-specific DCD. Also, the Commission decided to treat the technical specifications in Section 16.1 of the generic DCD as a special category of information and to designate them as generic technical specifications. A COL applicant must submit plant-specific technical specifications that consist of the generic technical specifications, which may be modified under paragraph VIII.C of this appendix, and the remaining plant-specific information needed to complete the technical specifications, including bracketed values. The Final Safety Analysis Report (FSAR) that is required by § 52.79(b) will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific technical specifications.

C. Scope and Contents

The purpose of Section III of this appendix is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph A of this section is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications into this appendix and paragraph B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly-issued regulation, has the force and effect of law. Tier 1 and Tier 2 information, as well as the generic technical specifications, have been combined into a single document called the generic design control document, in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the requirements of the OFR for incorporation by reference (1 CFR Part 51). One of the requirements of OFR for incorporation by reference is that the design certification applicant must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A of this appendix identifies a representative of Westinghouse who can be contacted to obtain a copy of the generic DCD.

Paragraphs A and B of Section III also identify the investment protection short-term availability controls in Section 16.3 of the generic DCD as part of the Tier 2 information. During its review of the AP600 design, the NRC determined that residual uncertainties associated with passive safety system performance increased the importance of non-safety-related active systems in providing defense-in-depth functions that back-up the passive systems. As a result, Westinghouse developed some administrative controls to provide a high level of confidence that active systems having a significant safety role are available when challenged. Westinghouse named these additional controls ''investment protection short-term availability controls,'' and the Commission included this statement in Section III to ensure that these availability controls are binding on applicants and licensees that reference this appendix and will be enforceable by the NRC. The NRC's evaluation of the availability controls is provided in Chapter 22 of the FSER.

The generic DCD (master copy) for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date generic DCD will also be available at the NRC's Public Document Room. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section VIII of this appendix, then at the completion of the rulemaking the NRC will request approval of the Director, OFR for the changed incorporation by reference and change its copies of the generic DCD and notify the OFR and the design certification applicant to change their copies. The Commission is requiring that the design certification applicant maintain an up-to-date copy under subparagraph X.A.1 of this appendix because it is likely that most applicants intending to reference the standard design will obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD will be maintained by the applicant or licensee that references this appendix in a plant-specific DCD, under subparagraph X.A.2.

In addition to requiring compliance with this appendix, paragraph B clarifies that the conceptual design information and Westinghouse's evaluation of severe accident mitigation design alternatives are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are intermingled throughout Tier 2. As provided by 10 CFR 52.47(a)(1)(ix), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant does not need to conform with the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. Section 1.8 of Tier 2 identifies the location of the conceptual design information. Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents does not constitute design requirements. The Commission's assessment of this information is discussed in Section IV of this SOC on environmental impacts. The detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), were not included in the generic DCD, as requested by NEI and the applicant for design certification. The NRC agreed with the request to delete this information because conformance with the deleted portions of the PRA is not necessary. Also, the NRC's position is predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that will require a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA supporting this rulemaking and maintain it throughout the operational life of the facility.

Paragraphs C and D of section III set forth the manner in which potential conflicts are to be resolved. Paragraph C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph D establishes the generic DCD as the controlling document in the event

of an inconsistency between the DCD and either the application for certification of the AP600 design (AP600 Standard Safety Analysis Report) or the final safety evaluation report for the certified standard design.

Paragraph E makes it clear that design activities that are wholly outside the scope of this design certification may be performed using site-specific design parameters, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision applies to site-specific portions of the plant, such as the administration building. Because this statement is not a definition, the Commission decided that the appropriate location is in Section III of this appendix.

D. Additional Requirements and Restrictions

Section IV of this appendix sets forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A sets forth the information requirements for these applicants. This appendix distinguishes between information and/or documents which must actually be included in the application or the DCD, versus those which may be incorporated by reference (*i.e.*, referenced in the application as if the information or documents were actually included in the application), thereby reducing the physical bulk of the application. Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, and the page number(s) and table(s) containing the relevant information to be incorporated by reference.

Subparagraph A.1 requires an applicant who references this appendix to incorporate by reference this appendix in its application. The legal effect of such incorporation by reference is that this appendix is legally binding on the applicant or licensee. Subparagraph A.2.a is intended to make clear that the initial application must include a plant-specific DCD. This assures, among other things, that the applicant commits to complying with the DCD. This paragraph also requires the plant-specific DCD to use the same format as the generic DCD and to reflect the applicant's proposed departures and exemptions from the generic DCD as of the time of submission of the application. The Commission expects that the plant-specific DCD will become the plant's final safety analysis report (FSAR), by including within its pages, at the appropriate points, information such as site-specific information for the portions of the plant outside the scope of the referenced design, including related ITAAC, and other matters required to be included in an FSAR by 10 CFR 50.34 and 52.79. Integration of the plant-specific DCD and remaining site-specific information into the plant's FSAR, will result in an application that is easier to use and should minimize ''duplicate documentation'' and the attendant possibility for confusion. Subparagraph A.2.a is also intended to make clear that the initial application must include the reports on departures and exemptions as of the time of submission of the application.

Subparagraph A.2.b requires that the application include the reports required by paragraph X.B of this appendix for exemptions and departures proposed by the applicant as of the date of submission of its application. Subparagraph A.2.c requires submission of plant-specific technical specifications for the plant that consists of the generic technical specifications from Section 16.1 of the DCD, with any changes made under paragraph VIII.C of this appendix, and the technical specifications for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification. The applicant must also provide the plant-specific information designated in the generic technical specifications, such as bracketed values.

Subparagraph A.2.d makes it clear that the applicant must provide information demonstrating that the proposed site falls within the site parameters for this appendix and that the plant-specific design complies with the interface requirements, as required by 10 CFR 52.79(b). If the proposed site has a characteristic that exceeds one or more of the site parameters in the DCD, then the proposed site is unacceptable for this design unless the applicant seeks an exemption under Section VIII of this appendix and justifies why the certified design should be found acceptable on the proposed site. Subparagraph A.2.e requires submission of information addressing COL Action Items, which are identified in the generic DCD as Combined License Information, in the application. The Combined License Information identifies matters that need to be addressed by an applicant that references this appendix, as required by Subpart C of 10 CFR part 52. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in its application (FSAR). Subparagraph A.2.f requires that the application include the information required by 10 CFR 52.47(a) that is not within the scope of this rule, such as generic issues that must be addressed, in whole or in part, by an applicant that references this rule. Subparagraph IV.A.3 requires the applicant to physically include, not simply reference, the proprietary and safeguards information referenced in the DCD, or its equivalent, to assure that the applicant has actual notice of these requirements.

Paragraph IV.B reserves to the Commission the right to determine in what manner this design certification may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR part 52 or this design certification rule, or on a case-by-case basis in the context of a specific application for a 10 CFR part 50 construction permit or operating license. This provision is necessary because the previous design certifications were not implemented in the manner that was originally envisioned at the time that 10 CFR part 52 was created. The Commission's concern is with the manner in which ITAAC were developed and the lack of experience with design certifications in license proceedings. Therefore, it is appropriate to have some uncertainty regarding the manner in which this appendix could be referenced in a 10 CFR part 50 licensing proceeding.

E. Applicable Regulations

The purpose of Section V of this appendix is to specify the regulations that were applicable and in effect at the time that this design certification was approved. These regulations consist of the technically relevant regulations identified in paragraph V.A, except for the regulations in paragraph V.B that are not applicable to this certified design (exempt).

Paragraph V.A identifies the regulations in 10 CFR parts 20, 50, 73, and 100 that are applicable to the AP600 design. After the NRC staff issued its FSER for the AP600 design (NUREG–1512, September 1998), the Commission amended several existing regulations and adopted new regulations. The Commission has reviewed these regulations to determine if they are applicable to this design and, if so, to determine if the design meets these regulations. The Commission finds that the AP600 design either meets the requirements of these regulations or that these regulations are not applicable to the design, as discussed below. The Commission's determination of the applicable regulations was made as of the date specified in paragraph V.A of

this appendix. The specified date is the date that this appendix was approved by the Commission and signed by the Secretary of the Commission.

10 CFR 20, Transfer for Disposal and Manifests; Minor Technical Conforming Amendment (63 FR 50127; September 21, 1998)

This amendment to Part 20 removed expired provisions from the regulations on low-level waste shipment manifest information. The previous regulation included dual implementation procedures that allow use of one of two manifesting procedures. This is a procedural requirement that applies to licensees and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 30 and 50, Financial Assurance Requirements for Decommissioning Nuclear Power Reactors (63 FR 50465; September 22, 1998)

This amendment to the regulations requires power reactor licensees to report periodically on the status of their decommissioning funds, and on changes in their external trust agreements and other financial assurance mechanisms. This regulation applies to licensees and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50 and 70, Criticality Accident Requirements (63 FR 63127; November 12, 1998)

This amendment to the regulations provides licensees of light-water nuclear reactors with greater flexibility in meeting the requirement to maintain a criticality monitoring system in each area in which special nuclear material is handled, used, or stored. The criticality monitoring system is not considered to be part of the plant design and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50, Changes to Quality Assurance Programs (64 FR 9030; February 23, 1999)

This amendment to 10 CFR 50.54(a) allows licensees to make routine or administrative quality assurance (QA) program changes, which do not have an adverse impact on the effectiveness of their QA program, without obtaining NRC approval in advance. This is a procedural requirement that can be utilized after issuance of a license and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50 and 73, Frequency of Reviews and Audits for Emergency Preparedness Programs, Safeguards Contingency Plans, and Security Programs for Nuclear Power Reactors (64 FR 14814; March 29, 1999)

This amendment to the regulations allows licensees to change the frequency of independent reviews and audits of their emergency preparedness programs, safeguards contingency plans, and security programs. This is a procedural requirement that can be utilized after issuance of a license and, therefore, is not applicable to either NRC issuance of design certification or applicants for design certification.

10 CFR 50, Codes and Standards: IEEE National Consensus Standard (64 FR 17944; April 13, 1999)

This amendment to 10 CFR 50.55a(h) incorporates IEEE Std. 603–1991 by reference, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. The NRC staff reviewed the AP600 design against this IEEE standard, as described in the FSER, and the Commission has determined that the AP600 design meets the applicable portions of this new requirement [10 CFR 50.55a(h)].

10 CFR 50, Industry Codes and Standards; Amended Requirements (64 FR 51370; September 22, 1999)

This amendment to 10 CFR 50.55a incorporates by reference more recent editions and addenda of the ASME Boiler and Pressure Vessel Code (ASME Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants. The amended requirements in 10 CFR 50.55a apply to both design and operation of nuclear plants.

The requirements that apply to the AP600 design [10 CFR 50.55a(a)(2)] are addressed in the exemption discussion below. The other amended requirements in 10 CFR 50.55a, e.g. inservice inspection and testing, are not applicable to either NRC issuance of design certification or applicants for design certification.

In paragraph V.B of this appendix, the Commission identified the regulations that do not apply to the AP600 design. The Commission has determined that the AP600 design should be exempt from portions of 10 CFR 50.34, 50.55a, 50.62, and Appendix A to Part 50, as described in the FSER (NUREG–1512) and/or summarized below:

(1) Paragraph (a)(1) of 10 CFR 50.34—Whole Body Dose Criterion

This regulation sets forth dose criteria to be used in siting determinations. The NRC staff performed its evaluation of the radiological consequences of postulated design basis accidents for the AP600 design against the dose criterion specified in 10 CFR 50.34(a)(1)(ii)(D) because it was the Commission's intent that the new dose criterion be used for future nuclear power plants. However, when the NRC codified the new reactor site criteria for nuclear power plants (61 FR 65157; December 11, 1996), it made an error in the assignment of applicants that could use the new dose criterion [25 rem TEDE], versus those that must use the whole body criterion. The assignment of applicants in 10 CFR 50.34(a)(1), who must use the whole body criterion, should not have included applicants for a design certification or combined license who applied prior to January 10, 1997 (refer to 61 FR 65158). The Commission adopted 25 rem TEDE as the new dose criterion for future plant evaluation purposes, because this value is essentially the same level of risk as the current criterion (61 FR 65160). Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that application of the 25 rem whole body criterion is not necessary to achieve the underlying purpose of the rule because 25 rem TEDE is essentially the same level of risk. On this basis, the Commission concludes that the AP600 design review can be performed pursuant to the new dose criterion [25 rem TEDE] and an exemption from the requirements of 10 CFR 50.34(a)(1) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(2) Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console

10 CFR 50.34(f)(2)(iv) requires that an application provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, be capable of displaying a full range of important plant parameters and data trends on demand, and be capable of indicating when process limits are being approached or exceeded. Westinghouse answered this requirement, in Section 18.8.2 of the DCD, with an integrated design rather than a stand-alone, add-on system, as is used at most current operating plants. Specifically, Westinghouse integrated the SPDS requirements into the design requirements for the alarm and display systems. In NUREG–0800, the NRC staff indicated that, for applicants who are in the early stages of the control room

design, the ''function of a separate SPDS may be integrated into the overall control room design'' (p. 18.0–1). Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the requirement for an SPDS console need not be applied in this particular circumstance to achieve the underlying purpose because Westinghouse has provided an acceptable alternative that accomplishes the intent of the regulation. On this basis, the Commission concludes that an exemption from the requirements of 10 CFR 50.34(f)(2)(iv) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(3) Paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms in TID 14844

Pursuant to 10 CFR 52.47(a)(ii), an applicant for design certification must demonstrate compliance with any technically relevant TMI requirements in 10 CFR 50.34(f). The TMI requirements in 10 CFR 50.34(f)(2)(vii), (viii), (xxvi), and (xxviii) refer to the accident source term in TID 14844. Specifically, 10 CFR 50.34(f)(2)(xxviii) requires the evaluation of pathways that may lead to control room habitability problems ''under accident conditions resulting in a TID 14844 source term release.'' Similar wording appears in requirements (vii), (viii), and (xxvi). Westinghouse has adopted the new source term technology summarized in NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' dated February 1995, not the old TID 14844 source term cited in 10 CFR part 50.34(f). The new source term is a more realistic representation of the source term resulting from postulated design basis accidents, therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that these regulations need not be applied in this particular circumstance to achieve the underlying purpose because Westinghouse has adopted acceptable alternatives that accomplish the underlying intent of the regulations that specify TID 14844. On this basis, the Commission concludes that a partial exemption from the requirements of paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(4) Paragraph (a)(2) of 10 CFR 50.55a—ASME Boiler and Pressure Vessel Code

This regulation mandates that the AP600 design meet the addenda and edition of the ASME Boiler and Pressure Vessel Code (ASME Code) specified in paragraph (b)(1) of 10 CFR 50.55a. The NRC recently amended the version of the ASME Code that is incorporated by reference in paragraph (b)(1), as discussed above.

For the AP600 standard plant, Westinghouse designed the ASME Code Class 1, 2, and 3 components to the 1989 Edition of the ASME Code, Section III (including the 1989 Addenda with certain limitations), as discussed in Section 5.2.1.1 of the AP600 Design Control Document (DCD). However, the amended design requirements incorporate by reference the 1995 Edition up to and including the 1996 Addenda to the ASME Code, Section III. The NRC concluded in its FSER (NUREG–1512) that the use of the 1989 Edition (including the 1989 Addenda with certain limitations as discussed in Section 5.2.1.1 of the DCD) for the design of the ASME Code Class 1, 2, and 3 components in the AP600 plant meets the requirements of 10 CFR 50.55a. The Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(iii) exist in that the 1989 Edition provides an acceptable level of safety that ensures adequate protection to public health and safety, and that the benefits of redesigning the AP600 standard plant to meet the 1995 Edition and 1996 Addenda of the ASME Code, Section III, are outweighed by the substantial costs and delays that redesign would entail at this late date. On this basis, the Commission concludes that an exemption from the requirements of 10 CFR 50.55a(a)(2) is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(5) Paragraph (c)(1) of 10 CFR 50.62—Auxiliary Feedwater System

The AP600 design relies on the passive residual heat removal system (PRHR) in lieu of an auxiliary or emergency feedwater system as its safety-related method of removing decay heat. Westinghouse requested an exemption from a portion of 10 CFR 50.62(c)(1), which requires auxiliary or emergency feedwater as an alternate system for decay heat removal during an ATWS event. The NRC staff concluded that Westinghouse met the intent of the rule by relying on the PRHR system to remove the decay heat and, thereby, met the underlying purpose of the rule. Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the requirement for an auxiliary or emergency feedwater system is not necessary to achieve the underlying purpose of 10 CFR 50.62(c)(1), because Westinghouse has adopted acceptable alternatives that accomplish the intent of this regulation, and the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(6) Appendix A to 10 CFR Part 50, GDC 17—Offsite Power Sources

Westinghouse requested a partial exemption from the requirement in GDC 17 for a second offsite power supply circuit. The AP600 plant design relies on safety-related ''passive'' systems. Unlike operating plants with active safety-related systems, the AP600 safety-related systems only require a small amount of electric power for valves and related instrumentation. The onsite Class 1E batteries and associated dc and ac distribution systems can provide the power for these valves and instrumentation. In addition, if no offsite power is available, it is expected that the non-safety-related onsite diesel generators would be available for important plant functions; however, this non-safety-related ac power is not relied on to maintain core cooling or containment integrity. Therefore, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the requirement need not be applied in this particular circumstance to achieve the underlying purpose of having two offsite power sources because the AP600 design includes an acceptable alternative approach to accomplish safety functions that does not rely on power from the offsite system and, therefore, accomplishes the intent of the regulation. On this basis, the Commission concludes that a partial exemption from the requirements of GDC 17 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

(7) Appendix A to 10 CFR Part 50, GDC 19—Whole Body Dose Criterion

The NRC staff used a criterion of 5 rem TEDE for evaluating the radiological consequences of design basis accidents in the control room of the AP600 design. The NRC staff used the 5 rem TEDE criterion to be consistent with the new reactor site criteria in 10 CFR 50.34(a)(1) [61 FR

65157], although GDC 19 specifies * * * ''5 rem whole body, or its equivalent to any part of the body''* * * The Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that application of the 5 rem whole body criterion is not necessary to achieve the underlying purpose of the rule because a TEDE dose provides essentially the same level of risk as a whole body dose (see 61 FR 65160). On this basis, the Commission concludes that a partial exemption from GDC 19 is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

F. Issue Resolution

The purpose of Section VI of this appendix is to identify the scope of issues that are resolved by the Commission in this rulemaking and; therefore, are ''matters resolved'' within the meaning and intent of 10 CFR 52.63(a)(4). The section is divided into five parts: (A) the Commission's safety findings in adopting this appendix, (B) the scope and nature of issues which are resolved by this rulemaking, (C) issues which are not resolved by this rulemaking, (D) the backfit restrictions applicable to the Commission with respect to this appendix, and (E) the availability of secondary references.

Paragraph A describes in general terms the nature of the Commission's findings, and makes the finding required by 10 CFR 52.54 for the Commission's approval of this design certification rule. Furthermore, paragraph A explicitly states the Commission's determination that this design provides adequate protection of the public health and safety.

Paragraph B sets forth the scope of issues which may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remainder of paragraph B describes the categories of information for which there is issue resolution. Specifically, subparagraph B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (NUREG–1512) and Supplement No. 1, the Tier 1 and Tier 2 information (including the availability controls in Section 16.3 of the generic DCD), and the rulemaking record for this appendix are resolved within the meaning of § 52.63(a)(4). These issues include the information referenced in the DCD that are requirements (i.e., ''secondary references''), as well as all issues arising from proprietary and safeguards information which are intended to be requirements. Subparagraph B.2 provides for issue preclusion of proprietary and safeguards information. Subparagraphs B.3, B.4, B.5, and B.6 clarify that approved changes to and departures from the DCD which are accomplished in compliance with the relevant procedures and criteria in Section VIII of this appendix continue to be matters resolved in connection with this rulemaking. Subparagraph B.7 provides that, for those plants located on sites whose site parameters do not exceed those assumed in Westinghouse's evaluation of severe accident mitigation design alternatives (SAMDAs), all issues with respect to SAMDAs arising under the National Environmental Policy Act of 1969 associated with the information in the Environmental Assessment for this design and the information regarding SAMDAs in Appendix 1B of the generic DCD are also resolved within the meaning and intent of § 52.63(a)(4). In the event an exemption from a site parameter is granted, the exemption applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site parameters but, if the exemption is approved, requests for litigation at the COL stage must meet the requirements of § 2.714 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter exemption.

Paragraph C reserves the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision reflects the fact that operational requirements, including generic technical specifications in Section 16.1 of the DCD, were not completely or comprehensively reviewed at the design certification stage. Therefore, the special backfit provisions of § 52.63 do not apply to operational requirements. However, all design changes will be controlled by the appropriate provision in Section VIII of this appendix. Although the information in the DCD that is related to operational requirements was necessary to support the NRC staff's safety review of this design, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under § 52.63. As a result, if the NRC wanted to change a temperature limit and that operational change required a consequential change to a design feature, then the temperature limit backfit would be controlled by Section VIII (paragraph A or B) of this appendix. However, changes to other operational issues, such as in-service testing and in-service inspection programs, post-fuel load verification activities, and shutdown risk that do not require a design change would not be restricted by § 52.63 (see paragraph VIII.C of this appendix). Paragraph VI.C does allow the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification, e.g. start-up and power ascension testing, are not restricted by § 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed after design certification. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving the right to impose license conditions by rule for post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph D reiterates the restrictions (contained in Section VIII of this appendix) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to structures, systems or components, design features, design criteria, and ITAAC (subparagraph VI.D.3 addresses ITAAC) within the scope of the certified design.

Paragraph E provides the procedure for an interested member of the public to obtain access to proprietary or safeguards information for the AP600 design, in order to request and participate in proceedings identified in paragraph VI.B of this appendix, viz., proceedings involving licenses and applications which reference this appendix. As set forth in paragraph VI.E, access must first be sought from the design certification applicant. If Westinghouse refuses to provide the information, the person seeking access

shall request access from the Commission or the presiding officer, as applicable. Access to the proprietary or safeguards information may be ordered by the Commission, but must be subject to an appropriate non-disclosure agreement.

G. Duration of This Appendix

The purpose of Section VII of this appendix is in part to specify the time period during which this design certification may be referenced by an applicant for a combined license, under 10 CFR 52.55. This section also states that the design certification remains valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to or plant-specific departures from information in the plant-specific DCD must be made pursuant to the change processes in Section VIII of this appendix for the life of the plant.

H. Processes for Changes and Departures

The purpose of Section VIII of this appendix is to set forth the processes for generic changes to or plant-specific departures (including exemptions) from the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this design certification rule. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and Operational requirements. The language of Section VIII distinguishes between generic changes to the DCD versus plant-specific departures from the DCD. Generic changes must be accomplished by rulemaking because the intended subject of the change is the design certification rule itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(2), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change [''modification'' in the language of § 52.63(a)(2)] ''technically irrelevant.'' By contrast, plant-specific departures could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), similar to a § 50.59 departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, Section X of this appendix requires an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as ''change processes.''

Both Section VIII of this appendix and this SOC refer to an ''exemption'' from one or more requirements of this appendix and the criteria for granting an exemption. The Commission cautions that where the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 50.12.

Tier 1 Information

The change processes for Tier 1 information are covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemaking that amends the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. The rulemakings must include an opportunity for hearing with respect to the proposed change, as required by 10 CFR 52.63(a)(1), and the Commission expects such hearings to be conducted in accordance with 10 CFR part 2, Subpart H. Departures from Tier 1 may occur in two ways: (1) the Commission may order a licensee to depart from Tier 1, as provided in subparagraph A.3; or (2) an applicant or licensee may request an exemption from Tier 1, as provided in subparagraph A.4. If the Commission seeks to order a licensee to depart from Tier 1, subparagraph A.3 requires that the Commission find both that the departure is necessary for adequate protection or for compliance, and that special circumstances are present. Subparagraph A.4 provides that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.97(b), which provide an opportunity for a hearing. In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design.

Tier 2 Information

The change processes for the three different categories of Tier 2 information (Tier 2, Tier 2*, and Tier 2* with a time of expiration) are set forth in paragraph VIII.B. The change processes for Tier 2 have the same elements as the Tier 1 change processes, but some of the standards for plant-specific orders and exemptions are different. The Commission adopted a ''50.59-like'' change process (similar to 10 CFR 50.59) in accordance with its SRMs on SECY–90–377 and SECY–92–287A. However, the Commission plans to revise the change process in 10 CFR 50.59 (64 FR 53582). As a result, the Commission will determine whether similar revisions should be made to the ''50.59-like'' change process in subparagraph VIII.B.5, as part of an upcoming 10 CFR part 52 rulemaking (refer to SECY–98–282), of the design certification rules (Appendices A, B, and C to Part 52). Any backfitting implications for future revisions to subparagraph VIII.B.5 of the design certification rules were covered in the 10 CFR 50.59 rulemaking (64 FR 53612).

The process for generic Tier 2 changes (including changes to Tier 2* and Tier 2* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in subparagraph B.1, generic Tier 2 changes are accomplished by rulemaking amending the generic DCD, and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to assure adequate protection of the public health and safety or common defense and security. If a generic change is made to Tier 2* information, then the category and expiration, if necessary, of the new information would also be determined in the rulemaking and the appropriate change process for that new information would apply.

Departures from Tier 2 may occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in subparagraph B.3; (2) an applicant or licensee may request an

exemption from a Tier 2 requirement as set forth in subparagraph B.4; (3) a licensee may make a departure without prior NRC approval in accordance with subparagraph B.5 [the ''50.59-like'' process]; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in subparagraph B.5 as provided in subparagraph B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2* information under subparagraph B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures cannot be imposed except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in subparagraph B.3. However, the special circumstances for the Commission-ordered Tier 2 departures do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required by 10 CFR 52.63(a)(3). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63(a)(3) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2, which by its nature is not as safety significant as Tier 1.

An applicant or licensee may request an exemption from Tier 2 information as set forth in subparagraph B.4. The applicant or licensee must demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design. However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption is subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR 52.63(b)(1). If the exemption is requested by a licensee, then the exemption is subject to litigation in the same manner as a license amendment.

Subparagraph B.5 allows an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to or departure from Tier 1 or Tier 2* information, technical specifications, or involves an unreviewed safety question (USQ) as defined in B.5.b and B.5.c of this paragraph. The technical specifications referred to in B.5.a and B.5.b of this paragraph are the technical specifications in Section 16.1 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific technical specifications are controlling under subparagraph B.5. The bases for the plant-specific technical specifications will be controlled by the bases control procedures for the plant-specific technical specifications (analogous to the bases control provision in the Improved Standard Technical Specifications). The definition of a USQ in B.5.b of this paragraph is similar to the definition in 10 CFR 50.59 and it applies to all information in Tier 2 except for the information that resolves the severe accident issues. The process for evaluating proposed tests or experiments not described in Tier 2 will be incorporated into the change process for the portion of the design that is outside the scope of this design certification. Although subparagraph B.5 does not specifically state, the Commission has determined that departures must also comply with all applicable regulations unless an exemption or other relief is obtained.

The Commission believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the Commission has adopted separate criteria in B.5.c for determining whether a departure from information that resolves severe accident issues constitutes a USQ. For purposes of applying the special criteria in B.5.c, severe accident resolutions are limited to design features when the intended function of the design feature is relied upon to resolve postulated accidents where the reactor core has melted and exited the reactor vessel and the containment is being challenged (severe accidents). These design features are identified in Section 1.9.5 of the DCD, with other issues, and are described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for severe accident issues. However, the special procedure in B.5.c does not apply to design features that resolve so-called beyond design basis accidents or other low probability events. The important aspect of this special procedure is that it is limited solely to severe accident design features, as defined above. Some design features may have intended functions to meet ''design basis'' requirements and to resolve ''severe accidents.'' If these design features are reviewed under subparagraph VIII.B.5, then the appropriate criteria from either B.5.b or B.5.c are selected depending upon the function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under subparagraph VIII.B.5, must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications, as explained above. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review. The evaluation of the relevant matters needs to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, design basis accidents, and severe accidents. The evaluation must also include a review of all relevant secondary references from the DCD because Tier 2 information intended to be treated as requirements is contained in the secondary references. The evaluation should consider Tables 14.3–1 through 14.3–8 and 19.59–29 of the generic DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the safety analyses and probabilistic risk assessment in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key analyses for the AP600 design. Westinghouse provided more detailed cross-references for important analysis assumptions that are included in Tier 1 in its revised response to RAI 640.60 (DCP/NRC 1440—September 15, 1998).

If a proposed departure from Tier 2 involves a change to or departure from Tier 1 or Tier 2* information, technical

specifications, or otherwise constitutes a USQ, then the applicant or licensee must obtain NRC approval through the appropriate process set forth in this appendix before implementing the proposed departure. The NRC does not endorse NSAC–125, ''Guidelines for 10 CFR 50.59 Safety Evaluations,'' for performing safety evaluations required by subparagraph VIII.B.5 of this appendix. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for processing proposed changes under paragraph VIII.B of this appendix.

A party to an adjudicatory proceeding (*e.g.,* for issuance of a combined license) who believes that an applicant or licensee has not complied with subparagraph VIII.B.5 when departing from Tier 2 information, may petition to admit such a contention into the proceeding under B.5.f. This provision was included because an incorrect departure from the requirements of this appendix essentially places the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. Therefore, it follows that properly-founded contentions alleging such incorrectly-implemented departures cannot be considered ''resolved'' by this rulemaking. As set forth in B.5.f of paragraph VIII.B, the petition must comply with the requirements of § 2.714(b)(2) and show that the departure does not comply with subparagraph B.5. Any other party may file a response to the petition. If on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing has been made, the matter shall be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging non-conformance with subparagraph B.5 requirements applicable to Tier 2 departures will be treated as petitions for enforcement action under 10 CFR 2.206.

Subparagraph B.6 provides a process for departing from Tier 2* information. The creation of and restrictions on changing Tier 2* information resulted from the development of the Tier 1 information for the ABWR design. During this development process, the applicants for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references this appendix. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain significant information only exists in Tier 2 and the Commission does not want this significant information to be changed without prior NRC approval. This Tier 2* information is identified in the generic DCD with italicized text and brackets.

Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2* information could expire when the plant first achieves full (100%) power, after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the facility. The determining factors were the Tier 1 information that would govern these areas after first full power and the NRC's judgement on whether prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2* information listed in B.6.c of paragraph VIII.B ceases to retain its Tier 2* designation after full power operation is first achieved following the Commission finding in 10 CFR 52.103(g). Thereafter, that information is deemed to be Tier 2 information that is subject to the departure requirements in subparagraph B.5. By contrast, the Tier 2* information identified in B.6.b of paragraph VIII.B retains its Tier 2* designation throughout the duration of the license, including any period of renewal.

Certain preoperational tests in B.6.c of paragraph VIII.B are designated to be performed only for the first plant or first three plants that reference this appendix. Westinghouse's basis for performing these ''first-plant-only'' and ''first-three-plants-only'' preoperational tests is provided in Section 14.2.5 of the DCD. The NRC staff found Westinghouse's basis for performing these tests and its justification for only performing the tests on the first-plant or first-three-plants acceptable. The NRC staff's decision was based on the need to verify that plant-specific manufacturing and/or construction variations do not adversely impact the predicted performance of certain passive safety systems, while recognizing that these special tests will result in significant thermal transients being applied to critical plant components. The NRC staff believes that the range of manufacturing or construction variations that could adversely affect the relevant passive safety systems will be adequately disclosed after performing the designated tests on the first plant, or the first three plants, as applicable. The COL action item in Section 14.4.6 of the DCD states that subsequent plants shall either perform these preoperational tests or justify that the results of the first-plant-only or first-three-plant-only tests are applicable to the subsequent plant. The Tier 2* designation for these tests will expire after the first plant or first three plants complete these tests, as indicated in B.6.c of paragraph VIII.B.

If Tier 2* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If a plant-specific departure is made from Tier 2* information, then the new designation would apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2* information, the new information is subject to litigation in the same manner as other plant-specific issues in the licensing hearing. If a licensee makes a departure, it will be treated as a license amendment under 10 CFR 50.90 and the finality is in accordance with VI.B.5 of this appendix. Any requests for departures from Tier 2* information that affect Tier 1 must also comply with the requirements in paragraph VIII.A of this appendix.

Operational Requirements

The change process for technical specifications and other operational requirements in the DCD is set forth in paragraph VIII.C of this appendix. This change process has elements similar to the Tier 1 and Tier 2 change process in paragraphs VIII.A and VIII.B, but with significantly different change standards. Because of the different finality status for technical specifications and other operational requirements (refer to III.F of this SOC), the Commission decided to designate a special category of information, consisting of the technical specifications and other operational requirements, with its own change process in paragraph VIII.C. The key to using the change processes in Section VIII is to determine if the proposed change or departure requires a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B applies. However, if a proposed change to the technical specifications or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C applies. The language in paragraph VIII.C also distinguishes between generic (Section 16.1 of DCD) and plant-specific technical specifications to account for the different treatment and

finality accorded technical specifications before and after a license is issued.

The process in subparagraph VIII.C.1 for making generic changes to the generic technical specifications in Section 16.1 of the DCD or other operational requirements in the generic DCD is accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic technical specifications and other operational requirements were completely reviewed and approved in the design certification rulemaking is based upon the extent to which an NRC safety conclusion in the FSER is being modified or changed. If it cannot be determined that the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then there is no backfit restriction under 10 CFR 50.109 because no prior position was taken on this safety matter. Some generic technical specifications contain bracketed values, which clearly indicate that the NRC staff's review was not complete. Generic changes made under subparagraph VIII.C.1 are applicable to all applicants or licensees (refer to subparagraph VIII.C.2), unless the change is irrelevant because of a plant-specific departure.

Plant-specific departures may occur by either a Commission order under subparagraph VIII.C.3 or an applicant's exemption request under subparagraph VIII.C.4. The basis for determining if the technical specification or operational requirement was completely reviewed and approved for these processes is the same as for subparagraph VIII.C.1. If the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there is no restriction on plant-specific changes to the technical specifications or operational requirements, prior to issuance of a license, provided a design change is not required. Although the generic technical specifications were reviewed by the NRC staff to facilitate the design certification review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific technical specifications. The process for petitioning to intervene on a technical specification or operational requirement is similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present (subparagraph VIII.C.5).

Finally, the generic technical specifications will have no further effect on the plant-specific technical specifications after the issuance of a license that references this appendix. The bases for the generic technical specifications will be controlled by the change process in paragraph VIII.C of this appendix. After a license is issued, the bases will be controlled by the bases change provision set forth in the administrative controls section of the plant-specific technical specifications.

I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

The purpose of Section IX of this appendix is to set forth how the ITAAC in Tier 1 of this design certification rule are to be treated in a license proceeding. Paragraph A restates the responsibilities of an applicant or licensee for performing and successfully completing ITAAC, and notifying the NRC of such completion. Subparagraph A.1 makes it clear that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been successfully completed. Subparagraph A.2 requires the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met.

Subparagraphs B.1 and B.2 essentially reiterate the NRC's responsibilities with respect to ITAAC as set forth in 10 CFR 52.99 and 52.103(g). Finally, subparagraph B.3 states that ITAAC do not, by virtue of their inclusion in the DCD, constitute regulatory requirements after the licensee has received authorization to load fuel or for renewal of the license. However, subsequent modifications must comply with the design descriptions in the DCD unless the applicable requirements in 10 CFR 52.97 and Section VIII of this appendix have been complied with. As discussed in paragraph III.D of this SOC, the Commission will defer a determination of the applicability of ITAAC and their effect in terms of issue resolution in 10 CFR Part 50 licensing proceedings to such time that a Part 50 applicant decides to reference this appendix.

J. Records and Reporting

The purpose of Section X of this appendix is to set forth the requirements for maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix is similar to the requirements for records and reports in 10 CFR part 50, except for minor differences in information collection and reporting requirements, as discussed in V of this SOC. Subparagraph X.A.1 of this appendix requires that a generic DCD and the proprietary and safeguards information referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD was developed, in part, to meet the requirements for incorporation by reference, including availability requirements. Therefore, the proprietary and safeguards information could not be included in the generic DCD because it is not publicly available. However, the proprietary and safeguards information was reviewed by the NRC and, as stated in subparagraph VI.B.2 of this appendix, the Commission considers the information to be resolved within the meaning of 10 CFR 52.63(a)(4). Because this information is not in the generic DCD, the proprietary and safeguards information, or its equivalent, is required to be provided by an applicant for a license. Therefore, to ensure that this information will be available, a requirement for the design certification applicant to maintain the proprietary and safeguards information was added to subparagraph X.A.1 of this appendix. The acceptable version of the proprietary and safeguards information is identified (referenced) in the version of the DCD that is incorporated into this rule. The generic DCD and the acceptable version of the proprietary and safeguards information must be maintained for the period of time that this appendix may be referenced.

Subparagraphs A.2 and A.3 place record-keeping requirements on the applicant or licensee that references this design certification to maintain its plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix. The term ''plant-specific'' was added to paragraph A.2 and other Sections of this appendix to distinguish between the generic DCD that is incorporated by reference into this appendix, and the plant-specific DCD that the applicant is required to submit under paragraph IV.A of this appendix. The requirement to maintain the generic changes to the generic DCD is explicitly

stated to ensure that these changes are not only reflected in the generic DCD, which will be maintained by the applicant for design certification, but that the changes are also reflected in the plant-specific DCD. Therefore, records of generic changes to the DCD will be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Paragraph X.A of this appendix does not place record-keeping requirements on site-specific information that is outside the scope of this rule. As discussed in III.D of this SOC, the final safety analysis report required by 10 CFR 52.79 will contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase ''site-specific portion of the final safety analysis report'' in X.B.3.d of this appendix refers to the information that is contained in the final safety analysis report for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by paragraph IV.A of this appendix). Therefore, this rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule, because the plant-specific DCD is part of the final safety analysis report for the facility.

Subparagraphs B.1 and B.2 of this appendix establish reporting requirements for applicants or licensees that reference this rule that are similar to the reporting requirements in 10 CFR part 50. For currently operating plants, a licensee is required to maintain records of the basis for any design changes to the facility made under 10 CFR 50.59. Section 50.59(b)(2) requires a licensee to provide a summary report of these changes to the NRC annually, or along with updates to the facility final safety analysis report under 10 CFR 50.71(e). Section 50.71(e)(4) requires that these updates be submitted annually, or 6 months after each refueling outage if the interval between successive updates does not exceed 24 months.

The reporting requirements in subparagraph B.3 of this appendix vary according to four different time periods during a facilities' lifetime. Under B.3.a of paragraph X.B, if an applicant that references this rule decides to make departures from the generic DCD, then the departures and any updates to the plant-specific DCD must be submitted with the initial application for a license. Under B.3.b of paragraph X.B, the applicant may submit any subsequent reports and updates along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than once a year, this should not be an excessive burden on the applicant. Under B.3.c of paragraph X.B, summary reports must be submitted quarterly during the period of facility construction. This increase in frequency of summary reports of departures from the plant-specific DCD is in response to the Commission's guidance on reporting frequency in its SRM on SECY–90–377, dated February 15, 1991.

Quarterly reporting of design changes during the period of construction is necessary to closely monitor the status and progress of the construction of the plant. To make its finding under 10 CFR 52.99, the NRC must monitor the design changes made in accordance with Section VIII of this appendix. The ITAAC verify that the as-built facility conforms with the approved design and emphasizes design reconciliation and design verification. Quarterly reporting of design changes is particularly important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during preoperational testing. The frequency of updates to the plant-specific DCD is not increased during facility construction. After the facility begins operation, the frequency of reporting reverts to the requirement in X.B.3.d of paragraph X.B, which is consistent with the requirement for plants licensed under 10 CFR part 50.

IV. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the Commission's regulations in 10 CFR part 51, subpart A, that this design certification rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the final environmental assessment, is that this amendment to 10 CFR part 52 does not authorize the siting, construction, or operation of a facility using the AP600 design; it only codifies the AP600 design in a rule. The NRC will evaluate the environmental impacts and issue an EIS, as appropriate, in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the final environmental assessment for the AP600 design, the NRC reviewed Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents in Appendix 1B of the AP600 Standard Safety Analysis Report (SSAR). The Commission finds that Westinghouse's evaluation provides a reasonable assurance that certifying the AP600 design will not exclude severe accident mitigation design alternatives for a future facility that would prove cost beneficial had they been considered as part of the original design certification application. These issues are considered resolved for the AP600 design.

The final environmental assessment (EA), upon which the Commission's finding of no significant impact is based, and the AP600 SSAR are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the EA are also available from Jerry N. Wilson, Mailstop O–12 G15, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

V. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB) on August 10, 1999 (OMB #3150–0151). If an application is submitted, the additional public reporting burden for this information collection is estimated to average 8 person-hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VI. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

VII. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant economic impact upon a substantial number of small entities. The final rule provides for certification of a nuclear power plant design. Neither the design certification applicant, nor prospective nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

VIII. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this amendment because it does not impose new or changed requirements on existing 10 CFR Part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

IX. Small Business Regulatory Enforcement Fairness Act

As required by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, OMB.

X. National Technology Transfer and Advancement Act

The National Technology and Transfer Act of 1995 (Act), Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. This rule provides for certification of a nuclear power plant design. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. For these reasons, the Commission concludes that the Act does not apply to this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 52.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

1. The authority citation for 10 CFR Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.51, 52.57, 52.63, 52.75, 52.77, 52.78, 52.79, 52.89, 52.91, 52.99, and appendices A, B, and C.

3. A new Appendix C to 10 CFR Part 52 is added to read as follows:

Appendix C to Part 52—Design Certification Rule for the AP600 Design

I. Introduction

Appendix C constitutes the standard design certification for the AP600[1] design, in accordance with 10 CFR Part 52, Subpart B. The applicant for certification of the AP600 design is Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information;

[1] AP600 is a trademark of Westinghouse Electric Company LLC.

2. Information required for a final safety analysis report under 10 CFR 50.34;

3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

4. Combined license (COL) action items (combined license information), which identify certain matters that shall be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

5. The investment protection short-term availability controls in Section 16.3 of the DCD.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in VIII.B.6 of this appendix. This designation expires for some Tier 2* information under VIII.B.6.

G. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications in the AP600 DCD (12/99 revision) are approved for incorporation by reference by the Director of the Office of the Federal Register on January 24, 2000 in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the generic DCD may be obtained from Mr. Brian A. McIntyre, Manager, Advanced Plant Safety and Licensing, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, PA 15230–0355. A copy of the generic DCD is available for examination and copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001. Copies are also available for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20582; and the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in Appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP600 design or NUREG–1512, ''Final Safety Evaluation Report Related to Certification of the AP600 Standard Design,'' (FSER), then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix.

2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the AP600 DCD, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary and safeguards information referenced in the AP600 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under Part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP600 design are in 10 CFR Parts 20, 50, 73, and 100, codified as of December 16, 1999, that are applicable and technically relevant, as described in the FSER (NUREG–1512) and the supplementary information for this section.

B. The AP600 design is exempt from portions of the following regulations:

1. Paragraph (a)(1) of 10 CFR 50.34—whole body dose criterion;

2. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;

3. Paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Term in TID 14844;

4. Paragraph (a)(2) of 10 CFR 50.55a—ASME Boiler and Pressure Vessel Code;

5. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system;

6. Appendix A to 10 CFR Part 50, GDC 17—Offsite Power Sources; and

7. Appendix A to 10 CFR Part 50, GDC 19—whole body dose criterion.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP600 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP600 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(4) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held pursuant to 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3), and the rulemaking record for certification of the AP600 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP600 design;

3. All generic changes to the DCD pursuant to and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD pursuant to and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that proceeding;

5. All departures from the DCD that are approved by license amendment, but only for that proceeding;

6. Except as provided in VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in VIII.B.5 of this appendix that do not require prior NRC approval;

7. All environmental issues concerning severe accident mitigation design alternatives (SAMDAs) associated with the information in the NRC's environmental assessment for the AP600 design and Appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the SAMDA evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP600 DCD, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, http://www.nrc.gov, and/or at the NRC's Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from January 24, 2000, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and § 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 information.

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or involves an unreviewed safety question as defined in paragraphs B.5.b and B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the plant-specific DCD may be increased;

(2) A possibility for an accident or malfunction of a different type than any evaluated previously in the plant-specific DCD may be created; or

(3) The margin of safety as defined in the basis for any technical specification is reduced.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure involves an unreviewed safety question as defined in paragraph B.5 of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2*

matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) ASME Boiler and Pressure Vessel Code, Section III, and Code Case N–284.

(3) Design Summary of Critical Sections.

(4) ACI 318, ACI 349, and ANSI/AISC—690.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) Instrumentation and control system design processes, methods, and standards.

(10) PRHR natural circulation test (first plant only).

(11) ADS and CMT verification tests (first three plants only).

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.758(b) are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.714(b)(2) and must demonstrate why special circumstances as defined in 10 CFR 2.758(b) are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.99 and 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a Section 103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.97 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written safety evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the safety evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its

plant-specific DCD, which reflect the generic changes to the generic DCD and the plant-specific departures made pursuant to Section VIII of this appendix. These updates shall be filed in accordance with the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs B.1 and B.2 of this section must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application shall include the report and any updates to the plant-specific DCD.

b. During the interval from the date of application to the date of issuance of a license, the report and any updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. During the interval from the date of issuance of a license to the date the Commission makes its findings under 10 CFR 52.103(g), the report must be submitted quarterly. Updates to the plant-specific DCD must be submitted annually.

d. After the Commission has made its finding under 10 CFR 52.103(g), reports and updates to the plant-specific DCD may be submitted annually or along with updates to the site-specific portion of the final safety analysis report for the facility at the intervals required by 10 CFR 50.71(e), or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 16th day of December, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–33142 Filed 12–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG36

List of Approved Spent Fuel Storage Casks: (VSC–24) Revision; Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Pacific Sierra Nuclear Associates (PSNA) VSC–24 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 1 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published with the direct final rule.

FOR FURTHER INFORMATION CONTACT: Stan Turel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6234 (E-mail: spt@nrc.gov).

SUPPLEMENTARY INFORMATION: On September 22, 1999 (64 FR 51187), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the PSNA VSC–24 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 modifies the present cask system design to permit a licensee to store burnable poison rod assemblies in VSC–24 casks along with the spent fuel under the provisions of the general license issued under 10 CFR 72.210. The direct final rule was to become effective on December 6, 1999. The NRC also concurrently published an identical proposed rule on September 22, 1999 (64 FR 51270).

In the September 22, 1999, direct final rule, NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the **Federal Register**. As a result, the direct final rule would not take effect.

On December 3, 1999, the NRC published a document extending the effective date of the direct final rule from December 6, 1999 to January 5, 2000 (64 FR 67700). The NRC received significant adverse comments on the direct final rule; therefore, the NRC is withdrawing the direct final rule. As stated in the September 22, 1999, direct final rule, NRC will address the comments received on the September 22, 1999, companion proposed rule in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 17th day of December, 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 99–33350 Filed 12–22–99; 8:45 am]

BILLING CODE 7590–01–P

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Part 400

RIN 3004–ZA00

Loan Guarantee Decisions; Availability of Environmental Information

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Interim final rule and request for comments.

SUMMARY: In accordance with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (''NEPA''), the Emergency Steel Guarantee Loan Board (''Board'') is adopting NEPA procedures. Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities under NEPA. The purpose of these procedures is to ensure that environmental information is available to the Board as it makes decisions concerning applications for loan guarantees. In addition, these amendments add language to clarify the collateral and security interests necessary for each guarantee and extend the deadline for the submission of applications.

DATES: *Effective Date:* This rule is effective December 23, 1999.

Comments: Comments may be submitted no later than February 22, 2000.

ADDRESSES: Comments may be submitted to: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay E. Dittus, Executive Director, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Council on Environmental quality's regulations, 40 CFR Parts 1500 to 1508, implementing the National Environmental Policy Act (''NEPA''), the Emergency Steel Guarantee Loan Board is adopting NEPA procedures. The NEPA process is intended to help public officials make decisions based on an understanding of the environmental consequences of their actions. The purpose of the Board's procedures is to ensure that necessary environmental information is available to the Board as it makes loan guarantee decisions.

Pursuant to the Emergency Steel Guarantee Loan Program, 13 CFR 400.206, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of NEPA. Environmental data or documentation concerning the use of the proceeds of any loan guaranteed

under this Program must be provided by the Lender to the Board. Once this information is received, an environmental assessment of the proposed project will be completed by the Board. This information will accompany each applicant's loan guaranteed application during the Board's review and selection process.

These procedures enumerate the types of actions that will trigger the Board's NEPA procedures. Any action classified as a ''major Federal action'' is subject to NEPA review. Typically, a government loan guarantee involving actions such as any project involving construction and/or installations; any project involving ground disturbing activities; and any project supporting renovation, other than remodeling, are considered major Federal actions. Such actions will require the preparation of an environmental assessment providing a description of the existing environment, a description of the future of the environment without the project, supporting documentation concerning the project and its environmental affects, an analysis of viable alternatives throughout the proposed project area, and mitigation measures designed to alleviate the environmental consequences of the proposed project. However, the Board has determined that certain actions, that are otherwise major Federal actions, normally do not have a significant impact on the quality of the human environment and are, therefore, categorically excluded from the environmental impact statement requirements of NEPA. For instance, guarantees for loans for the working capital needs of the Borrower and guarantees for the refinancing of outstanding indebtedness of the Borrower are categorically excluded from the need to prepare an environmental assessment or an environmental impact statement under NEPA.

In addition to setting forth the Board's NEPA procedures, these amendments make one change to the substantive program regulations contained in subpart C of part 400. As currently written, the Board's regulations could be interpreted to require a borrower to provide a security interest in all of its property, even if the value of that property far exceeds the amount of the loan. These amendments clarify that the Board requires a first lien on any property purchased, refinanced, or substantially improved with the proceeds of the guaranteed loan and a minimum security interest of equal status with the highest security interest in any other property of the Borrower's pledged to secure the loan. The borrower would have discretion to determine which of its other property it would pledge. A key factor in the Board's decision-making will be the priority of the security interest in collateral, as well as the quality of the collateral. Thus, applications giving the government a higher security interest on higher quality collateral will be evaluated higher in the application review process than those applications providing a lesser level of security interest.

Finally, in response to industry concerns over the time frame for the submission of completed applications, the deadline for the submission of applications has been extended to January 31, 2000. The current regulations establish a deadline of December 30, 1999, for the filing of a complete application with the Board.

Administrative Law Requirements

Executive Order 12866

This interim final rule has been determined not to be a significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Environmental impact statement, Freedom of Information, Loan Programs—Steel, Reporting and recordkeeping requirements.

Jay E. Dittus,

Executive Director, Emergency Steel Guarantee Loan Board.

For the reasons set forth in the preamble, the Emergency Steel Loan Guarantee Board amends 13 CFR part 400 as follows:

PART 400—[AMENDED]

1. The authority citation for part 400 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 252 (15 U.S.C. 1841 note).

2. Section 400.204(c)(2) is revised to read as follows:

§ 400.204 Loan terms.

* * * * *

(c) * * *

(2) Without limiting the Lender's or Borrower's obligations under paragraph (c) of this section, at a minimum, the loan shall be secured by:

(i) A fully perfected and enforceable security interest and/or lien, with first priority over conflicting security interests or other liens in all property acquired, improved, refinanced, or derived from the loan funds;

(ii) A fully perfected and enforceable security interest and/or lien in any other property of the Borrower's pledged to secure the loan, including accessions, replacements, proceeds, or property given by a third party as Security for the loan, the priority of which shall be, at a minimum, equal in status with the existing highest voluntarily granted or acquired interest or lien;

* * * * *

3. Section 400.205(a) is revised to read as follows:

§ 400.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 8 p.m. EST, January 31, 2000, in the U.S. Department of Commerce, Washington, DC 20230. Applications which have been provided to a delivery service on or before January 30, 2000, with ''delivery guaranteed'' before 8 p.m. on January 30, 2000, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of January 30, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

* * * * *

4. Section 400.206 is amended by removing paragraphs (b) and (c), redesignating paragraph (d) as paragraph (b), adding paragraph (c) and revising paragraph (a) to read as follows:

§ 400.206 Environmental requirements.

(a)(1) *In general.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as ''major Federal actions'' subject to NEPA procedures are discussed generally in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any project, permanent or temporary, that will involve construction and/or installations;

(B) Any project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. (ii) Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form XYZ, ''Environmental Assessment and Compliance Findings for Related Environmental Laws;'' and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

* * * * *

(c) *National Environmental Policy Act.* (1) *Purpose.* The purpose of this paragraph (c) is to adopt procedures for compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.,* by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply: *Categorical exclusion* means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

Environmental assessment means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

EIS means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

FONSI means a finding of no significant impact on the quality of the human environment after the completion of an environmental assessment.

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Working capital loan means money used by an ongoing business concern to fund its existing operations.

(3) *Delegations to Executive Director.* (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Executive Director. The Executive Director will prepare or, at his or her discretion, coordinate replies to such correspondence.

(ii) With respect to actions of the Board, the Executive Director will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (1) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word ''normally'' is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Borrower, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential

addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) the Executive Director will request that the Lender and Borrower provide information concerning all potentially significant environmental impacts of the Borrower's proposed project pursuant to 13 CFR 400.206. The Executive Director, consulting at his discretion with CEQ, will review the information provided by the Lender and Borrower. Though no specific format for an environmental assessment is prescribed, it shall be a separate document, suitable for public review and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed project, should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. These sources should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the proposed project.

(ii) The Executive Director, in preparing an environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the project for which the proceeds of the loan sought to be guaranteed under the Program will be used, as describe in 40 CFR 1506.3.

(iii) Because of the statute's admonition to the Board to make its decisions as soon as possible after receiving applications, the Board will not:

(A) Publish notice of intent to prepare an environmental assessment, as describe in 40 CFR 1501.7;

(B) Conduct scoping, as described in 40 CFR 1501.7; and

(C) Seek comments on the environmental assessment, as described in 40 CFR 1503.1.

(iv) If, on the basis of an environmental assessment, it is determined that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Executive Director shall remain a record of these decisions, making them available to interested parties upon request. Requests should be directed to the Executive Director, Emergency Steel Guarantee Loan Program, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Prior to a final loan guarantee decision, a copy of the NEPA documentation shall be sent to the Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after an environmental assessment has been completed, it is determined that an EIS is necessary, it and other related documentation will be prepared by the Executive Director in accordance with section 102(2)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Executive Director may seek additional information from the applicant in preparing the EIS. Once the document is prepared, it shall be submitted to the Board. If the Board considers a document unsatisfactory, it shall be returned to the Executive Director for revision or supplementation prior to a loan guarantee decision; otherwise the Board will transmit the document to the Environmental Protection Agency.

(ii)(A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(*1*) The format and contents of the draft and final EIS shall be as discussed in 40 CFR 1502.

(*2*) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(*3*) The Executive Director, consulting at his discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(*4*) NEPA requires that the decision making ''utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts.'' 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(*1*) Have an adverse environmental impact; or

(*2*) Limit the choice of reasonable alternatives.

(*3*) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking ''major Federal actions.'' A loan guarantee shall not be made before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal; will be prepared. This record of decision will be prepared at the time the decision is made.

[FR Doc. 99–33378 Filed 12–22–99; 8:45 am]

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EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Part 500

RIN 3003–ZA00

Loan Guarantee Decision; Availability of Environmental Information

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Interim final rule; request for comments.

SUMMARY: In accordance with the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (''NEPA''), the Emergency Oil and Gas Guaranteed Loan Board (''Board'') is adopting NEPA procedures. Environmental data or

documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities under NEPA. The purpose of these procedures is to ensure that environmental information is available to the Board as it makes decisions concerning applications for loan guarantees. In addition to setting forth the Board's NEPA procedures, these amendments make three changes. First, language is added to clarify the collateral and security interests necessary for each guarantee. Second, language is added creating a tiered system for the submission of financial statements for Borrowers based on the type of qualified oil and gas company applying and the amount of the loan sought. Third, these amendments extend the deadline for the submission of applications.

DATES: *Effective Date:* This rule is effective December 23, 1999.

Comments: Comments may be submitted no later than February 22, 2000.

ADDRESSES: Comments may be submitted to: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Charles E. Hall, Executive Director, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Council on Environmental Quality's regulations 40 CFR Parts 1500 to 1508, implementing the National Environmental Policy Act (''NEPA''), the Emergency Oil and Gas Guaranteed Loan Board is adopting NEPA procedures. The NEPA process is intended to help public officials make decisions based on an understanding of the environmental consequences of their actions. The purpose of the Board's procedures is to ensure that necessary environmental information is available to the Board as it makes loan guarantee decisions.

Pursuant to the Emergency Oil and Gas Guaranteed Loan Program, 13 CFR 500.206, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of NEPA. Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board. Once this information is received, an environmental assessment of the proposed project will be completed by the Board. This information will accompany each applicant's loan guarantee application during the Board's review and selection process.

These procedures enumerate the types of actions that will trigger the Board's NEPA procedures. Any action classified as a ''major Federal action'' is subject to NEPA review. Typically, a government loan guarantee involving actions such as any project involving construction and/or installations; any project involving ground disturbing activities; and any project supporting renovation, other than remodeling, are considered major Federal actions. Such actions will require the preparation of an environmental assessment providing a description of the existing environment, a description of the future of the environment without the project, supporting documentation concerning the project and its environmental affects, an analysis of viable alternatives throughout the proposed project area, and mitigation measures designed to alleviate the environmental consequences of the proposed project. However, the Board has determined that certain actions, that are otherwise major Federal actions, normally do not have a significant impact on the quality of the human environment and are, therefore, categorically excluded from the environmental impact statement requirements of NEPA. For instance, guarantees for loans for the working capital needs of the Borrower and guarantees for the refinancing of outstanding indebtedness of the Borrower are categorically excluded from the need to prepare an environmental assessment or an environmental impact statement under NEPA.

In addition to setting forth the Board's NEPA procedures, these amendments make three changes to the substantive program regulations contained in Subpart C of part 500. First, as currently written, the Board's regulations could be interpreted to require a borrower to provide a security interest in all of its property, even if the value of that property far exceeds the amount of the loan. These amendments clarify that the Board requires a first lien on any property purchased, refinanced, or substantially improved with the proceeds of the guaranteed loan and a minimum security interest of equal status with the highest security interest in any other property of the Borrower's pledged to secure that loan. The borrower would have discretion to determine which of its other property it would pledge. A key factor in the Board's decision-making will be the priority of the security interest in collateral, as well as the quality of the collateral. Thus, applications giving the government a higher security interest on higher quality collateral will be evaluated higher in the application review process than those applications providing a lesser level of security interest.

Second, the Board's current regulations require the submission of three years of independently audited financial statements as part of the application. While public companies are required to have independent audits performed annually, many small private companies do not have such audits performed. Some lenders may not require audited financial statements to determine that a borrower is credit worthy. To address this issue, the Board is amending its regulations to create a tiered system for the submission of financial statements for Borrowers based on the type of qualified oil and gas company applying and the amount of the loan sought. For independent oil and gas companies, a two tiered system is created. For loan proposals under $5 million, the Applicant is required to submit three years for financial statements for the Borrower reviewed by a certified public accountant prepared following generally accepted accounting principles (GAAP). For loan proposals greater than $5 million, the Applicant is required to submit a financial statement for the Borrower of the most recent year audited by an independent certified public accountant and financial statements from the two prior years reviewed by a certified public accountant prepared following GAAP. Service companies, in contrast, will be required to submit consolidated financial statements for the previous three years audited by an independent certified public accountant. Failure to submit full audited statements for the three years historical period may affect the risk assigned to a loan and will be part of the evaluation criteria the Board uses in making their decisions.

Third, in response to industry concerns over the time frame for the submission of completed applications, the deadline for the submission of applications has been extended to January 31, 2000. The current regulations establish a deadline of December 30, 1999, for the filing of complete application with the Board.

Administrative Law Requirements

Executive Order 12866

This interim final rule has been determined not to be a significant for purposes of Executive Order 12866.

Administration Procedure Act

This rule is exempt from the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(A), as it involves a matter relating to Board procedures and practice. Similarly, because this rule of procedure does not have a substantive effect on the public, it is not subject to a 30 day delay in effective date, as normally is required under 5 U.S.C. 553(d). However, the Board is interested in receiving public comment and is, therefore, issuing this rule as interim final.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials is required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandate Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparataion of a Federalism Assessment.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Environmental impact statement, Freedom of Information, Loan Programs—Oil and Gas, Reporting and recordkeeping requirements.

Charles E. Hall,

Executive Director, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set forth in the preamble, the Emergency Oil and Gas Guaranteed Loan Board amends 13 CFR part 500 as follows:

PART 500—[AMENDED]

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.204(c)(2) is revised to read as follows:

§ 500.204 Loan terms.

* * * * *

(c) * * *

(2) Without limiting the Lender's or Borrower's obligations under paragraph (c) of this section, at a minimum, the loan shall be secured by:

(i) A fully perfected and enforceable security interest and or lien, with first priority over conflicting security interests or other liens in all property acquired, improved, or derived from the loan funds; and

(ii) A fully perfected and enforceable security interest and or lien in any other property of the Borrower's pledged to secure the loan, including accessions, replacements, proceeds, or property given by a third party as Security for the loan, the priority of which shall be, at a minimum, equal in status with the existing highest voluntarily granted or acquired interest or lien;

* * * * *

3. Section 500.205 is amended by revising paragraphs (a) and (b)(8) to read as follows:

§ 500.205 Application process.

(a) *Application process.* An original application and three copies must be received by the Board no later than 8 p.m. EST, January 31, 2000, in the U.S. Department of Commerce, Washington, DC 20230. Applications which have been provided to a delivery service on or before January 30, 2000, with ''delivery guaranteed'' before 8 p.m. on January 30, 2000, will be accepted for review if the Applicant can document that the application was provided to the delivery service with delivery to the address listed in this section guaranteed prior to the closing date and time. A postmark of January 30, 2000, is not sufficient to meet this deadline as the application must be received by the required date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

(b) * * *

(8)(i) An independent oil and gas company, as defined in section 201(c)(3)(A)(i) of the Act, is required to submit:

(A) For loans less than $5 million, three years of financial statements reviewed by a certified public accountant following generally accepted accounting principles, as well as any interim financial statements; or

(B) For loans of $5 million or greater, three years of financial statements must be submitted. The most recent year's statement must be audited by an independent certified public accountant. Statements from the prior two years must be reviewed by a certified public accountant following generally accepted accounting principles. In addition, any interim financial statements and associated notes must be submitted as well.

(ii) A service company, as defined in section 201(c)(3)(A)(ii) of the Act, is required to submit consolidated financial statements of the Borrower for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes.

* * * * *

4. Section 500.206 is amended by removing paragraphs (b) and (c), redesignating paragraph (d) as paragraph (b), adding paragraph (c) and revising paragraph (a) to read as follows:

§ 500.206 Environmental requirements.

(a)(1) *In General.* Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and Executive Orders. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as ''major Federal actions'' subject to NEPA procedures are discussed generally in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any project, permanent or temporary, that will involve construction and/or installations;

(B) Any project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Lender.* (i) Environmental data or documentation concerning the use of the proceeds of any loan guaranteed under this Program must be provided by the Lender to the Board to assist the Board in meeting its legal responsibilities. The Lender may obtain this information from the Borrower. Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the loan at issue;

(D) The information required for the completion of Form XYZ, ''Environmental Assessment and Compliance Findings for Related Environmental Laws;'' and

(E) Any other information that can be used by the Board to ensure compliance with environmental laws.

(ii) All information supplied by the Lender is subject to verification by the Board.

* * * * *

(c) *National Environmental Policy Act.* (1) *Purpose.* The purpose of this paragraph (c) is to adopt procedures for compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply:

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

Environmental assessment means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

EIS means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

FONSI means a finding of no significant impact on the quality of the human environment after the completion of an environmental assessment.

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Working Capital Loan means money used by an ongoing business concern to fund its existing operations.

(3) Delegations to Executive Director. (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Executive Director. The Executive Director will prepare or, at his or her discretion, coordinate replies to such correspondence.

(ii) With respect to actions of the Board, the Executive Director will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (i) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word ''normally'' is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Borrower, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) The Executive Director will request that the Lender and Borrower provide information concerning all potentially significant environmental impacts of the Borrower's proposed project pursuant to 13 CFR 500.206. The Executive Director, consulting at his discretion with CEQ, will review the information provided by the Lender and Borrower. Though no specific format for an environmental assessment is prescribed, it shall be a separate document and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed project, should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. Such references should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or

irretrievable commitments of resources to the proposed project.

(ii) The Executive Director, in preparing an environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the project for which the proceeds of the loan sought to be guaranteed under the Program will be used, as described in 40 CFR 1506.3.

(iii) Because of the statute's admonition to the Board to make its decisions as soon as possible after receiving applications, the Board will not:

(A) Publish notice of intent to prepare an environmental assessment, as described in 40 CFR 1501.7;

(B) Conduct scoping, as described in 40 CFR 1501.7; and

(C) Seek comments on the environmental assessment, as described in 40 CFR 1503.1.

(iv) If, on the basis of an environmental assessment, it is determined that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Executive Director shall maintain a record of these decisions, making them available to interested parties upon request. Requests should be directed to the Executive Director Emergency Oil and Gas Guarantee Loan Program, 14th Street and Constitution Avenue, NW., Washington DC 20230. Prior to a final loan guarantee decision, a copy of the NEPA documentation shall be sent to their Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after an environmental assessment has been completed, it is determined that an EIS is necessary, it and other related documentation will be prepared by the Executive Director in accordance with section 102(*2*)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Executive Director may seek additional information from the applicant in preparing the EIS. Once the document is prepared, it shall be submitted to the Board. If the Board considers a document unsatisfactory, it shall be returned to the Executive Director for revision or supplementation prior to a loan guarantee decision; otherwise the Board will transmit the document to the Environmental Protection Agency.

(ii)(A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(*1*) The format and contents of the draft and final EIS shall be as discussed in 40 CFR 1502.

(*2*) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(*3*) The Executive Director, consulting at his discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and depth.

(*4*) NEPA requires that the decision making ''utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts.'' 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(*1*) Have an adverse environmental impact; or

(*2*) Limit the choice of reasonable alternatives.

(*3*) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking ''major Federal actions.'' A loan guarantee shall not be make before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal; will be prepared. This record of decision will be prepared at the time the decision is made.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Diclazuril

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for medicated feed applications to add an entry stating the maximum Type B level and assay limits for diclazuril Type B and C medicated feeds. The **Federal Register** document that reflected approval of Schering-Plough Animal Health Corp.'s new animal drug application (NADA) for use of diclazuril Type A medicated articles for making Type C medicated broiler feeds failed to provide that entry.

DATES: This regulation is effective December 23, 1999.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 2, 1999 (64 FR 35923), FDA published a final rule that reflected the approval of Schering-Plough Animal Health Corp.'s NADA 141–951. The NADA provides for use of a Type A medicated article containing 0.2 percent of diclazuril (CLINACOX™) to make Type C broiler feeds used for the prevention of coccidiosis. The final rule added 21 CFR 556.175 and 558.198 to reflect the approval, but failed to amend § 558.4 (21 CFR 558.4) to add an entry stating the maximum Type B level and assay limits for diclazuril Type B and C medicated feeds. At this time, § 558.4 is amended in paragraph (d) in the table ''Category I'' accordingly.

As provided in 21 CFR part 20 and 514.11(e)(2)(ii), a freedom of information summary of safety and effectiveness data and information required to support approval of the application was placed on file in the Dockets Management Branch, Food and Drug Administration, upon publication of the approval.

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

List of Subjects 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.4 is amended by adding an entry alphabetically to the Category I table in paragraph (d) to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent [1] type A	Type B maximum (200x)	Assay limits percent [1] type B/C [2]
*	*	*	*
Diclazuril	90–110	182 g/t (0.02%)	85–115/70–120
*	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drug that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

Dated: December 14, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–33281 Filed 12–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 44

[DoD Directive 1200.7]

RIN 0790–AF57

Screening the Ready Reserve

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule provides guidance governing screening of Reserve component members of the U.S. military departments relative to their civilian employment. The purpose of the screening program is to ensure availability of Ready Reserve members for military mobilization purposes. The intended effect of the screening is to preclude conflicts between Reserve mobilization obligations and Federal civilian employment requirements during times of war or national emergency.

EFFECTIVE DATE: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Dan Kohner, (703) 693–7479.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this is not a significant regulatory action. The rule does not:

1. Have an annual effect to the economy of $100 million or more, or otherwise have material adverse economic effects.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or,

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601). The Department of Defense is not subject to the RFA when making rules related to a ''military or foreign affairs function of the United States'' or to Executive Order 12866 for those regulations that ''pertain to a military or foreign affairs function of the United States [other that procurement functions or import-export of non-defense articles].''

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. Interagency Report Control Number 0192–DOD–AN remains in effect, with a current expiration date of September 30, 1998.

List of Subjects in 32 CFR Part 44

Armed forces reserves.

Accordingly, 32 CFR part 44 is revised to read as follows:

PART 44—SCREENING THE READY RESERVE

Sec.

44.1 Purpose.
44.2 Applicability.
44.3 Definitions.
44.4 Policy.
44.5 Responsibilities.
Appendix A to Part 44—Guidance

Authority: 10 U.S.C. 10145.

§ 44.1 Purpose.

Updates DoD policy and responsibilities for the screening of Ready Reservists under 10 U.S.C. 1003, 1005, and 1209.

§ 44.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard, when it is not operating as a Military Service in the Navy by agreement with the Department of Transportation), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities and all other organizational entities within the Department of Defense (hereafter referred to collectively as the ''DoD Components''). The term ''Military Services'' as used in this part, refers to the Army, the Navy, the Air Force and the Marine Corps.

§ 44.3 Definitions.

For purposes of this part, the following definitions apply:

Extreme community hardship. A situation that, because of a Reservist's mobilization, may have a substantially adverse effect on the health, safety, or welfare of the community. Any request for a determination of such hardship shall be made by the Reservist and must be supported by documentation, as required by the Secretary concerned.

Extreme personal hardship. An adverse impact on a Reservist's dependents resulting from his or her mobilization. Any request for a determination of such hardship shall be made by the Reservist and must be supported by documentation, as required by the Secretary concerned.

Individual Ready Reserve. Within the Ready Reserve of each of the Reserve Components there is an Individual Ready Reserve. The Individual Ready Reserve consists of members of the Ready Reserve who are not in the Selected Reserve or the Inactive National Guard.

Key employee. Any Federal employee occupying a key position.

Key position. A Federal position that shall not be vacated during a national emergency or mobilization without SERIOUSLY impairing the capability of the parent Federal Agency or office to function effectively. The four categories of Federal key positions are set out in this paragraph. The first three categories are, by definition, key positions. However, the third category, Article III Judges, provides for exceptions on a case-by-case basis. The fourth category requires a case-by-case determination and designation as described in the following:

(1) The Vice President of the United States or any official specified in the order of presidential succession as in 3 U.S.C. 19.

(2) The members of the Congress and the heads of the Federal Agencies appointed by the President with the consent of the Senate. For this part, the term ''the heads of the Federal Agencies'' does not-include any person appointed by the President with the consent of the Senate to a Federal Agency as a member of a multimember board or commission. Such positions may be designated as key positions only in accordance with paragraph (4) of this definition.

(3) *Article III Judges.* However, each Article III Judge, who is a member of the Ready Reserve and desires to remain in the Ready Reserve, must have his or her position reviewed by the Chief Judge of the affected Judge's Circuit. If the Chief Judge determines that mobilization of the Article III Judge concerned will not seriously impair the capability of the Judge's court to function effectively, the Chief Judge will provide a certification to that effect to the Secretary of the Military Department concerned. Concurrently, the affected Judge will provide a statement to the Secretary concerned requesting continued service in the Ready Reserve and acknowledging that he or she may be involuntarily called to active duty (AD) under the laws of the United States and the Directives and Regulations of the Department of Defense and pledging not to seek to be excused from such orders based upon his or her judicial duties.

(4) Other Federal positions determined by the Federal Agency heads, or their designees, to be key positions in accordance with the guidelines in the appendix to this part.

Mobilization. Involuntary call-up of Reserve component members in accordance with 10 U.S.C. 12301, 12302, or 12304. That includes full mobilization, partial mobilization and, selective mobilization (Presidential Reserve Call-Up Authority).

Ready reserve. Reserve unit members or individual Reserve and National Guard members, or both, liable for AD, as provided in 10 U.S.C. 12301, 12302, and, for some members, 10 U.S.C. 12304. It consists of the Selected Reserve, the Individual Ready Reserve, and the Inactive National Guard.

Selected reserve. A category of the Ready Reserve in each of the Reserve components. The Selected Reserve consists of units, and, as designated by the Secretary concerned, of individual Reserve members, trained as prescribed in 10 U.S.C. 10147(a)(1) or 32 U.S.C. 502(a), as appropriate.

Standby reserve. The Standby Reserve consists of those units or members, or both, of the Reserve components, other than those in the Ready Reserve or the Retired Reserve, who are liable for active duty only as provided for in 10 U.S.C. 12301 and 12306. The Standby Reserve consists of personnel who are maintaining their military affiliation without being in the Ready Reserve, but have been designated ''key civilian employees,'' or have a temporary hardship or disability. Those individuals are not required to perform training and are not part of the Ready Reserve. The Standby Reserve is a pool of trained individuals who may be mobilized as needed to fill manpower needs in specific skills. The Standby Reserve consists of the active status list and the inactive status list categories.

§ 44.4 Policy.

It is DoD policy that:

(a) Members of the Ready Reserve shall be screened (see the appendix to this part for specific screening guidance) at least annually to meet the provisions of 10 U.S.C. 10149 and to provide a Ready Reserve force composed of members who:

(1) Meet Military Service wartime standards of mental, moral, professional, and physical fitness.

(2) Possess the military qualifications required in the various ranks, ratings, and specialties.

(3) Are available immediately for active duty (AD) during a mobilization or as otherwise required by law.

(b) On mobilization under 10 U.S.C. 12301(a) or 10 U.S.C. 12302, all personnel actions relating to the screening program shall be held in abeyance, and all members remaining in the Ready Reserve shall be considered immediately available for AD service. After such a mobilization is ordered, no deferment, delay, or exemption from mobilization shall be granted to Ready Reservists because of their civilian employment. On involuntary activation of Reserve members under 10 U.S.C. 12304 (Presidential Reserve Call-Up Authority), the Secretary of Defense, or designee, shall make a determination regarding the continuation or cessation of personnel actions related to the screening program.

(c) All Ready Reservists shall be retained in the Ready Reserve for the entire period of their statutory obligation or voluntary contract. Exceptions to that policy are made in paragraphs (g), (h), and (i) of this section, or may be made by the Secretaries concerned, in accordance with 10 U.S.C. 10145 and 10146.

(d) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other applicable authority of the State, commonwealth, or territory concerned (including the District of Columbia) in accordance with 10 U.S.C. 10146.

(e) Any eligible member of the Standby Reserve may be transferred back to the Ready Reserve when the reason for the member's transfer to the Standby Reserve no longer exists in accordance with 10 U.S.C. 10150 and DoD Instruction 1200.15.[1]

(f) Ready Reservists whose immediate recall to AD during an emergency would create an extreme personal or community hardship shall be transferred to the Standby Reserve or the Retired Reserve, or shall be

[1] Copies may be obtained at http://web7.whs.osd.mil/corres.htm.

discharged, as applicable, except as specified in paragraph (b) of this section.

(g) Ready Reservists who are designated key employees or who occupy key positions, as defined in this section, shall be transferred to the Standby Reserve or the Retired Reserve, or shall be discharged, as appropriate, except as specified in paragraph (b) of this section.

(h) Ready Reservists who are also DoD civilian employees may not hold a mobilization assignment to the same positions that they fill as civilian employees. Those Ready Reservists shall be reassigned or transferred, as applicable. Reserve component military technicians (dual status), as members of Reserve units, are excluded from this provision.

(i) Ready Reservists who are preparing for the ministry in an accredited theology or divinity school cannot be involuntarily called to AD or required to participate in inactive duty training (IDT) in accordance with 10 U.S.C. 12317. Accordingly, such Ready Reservists (other than those participating in a military Chaplain Candidate or Theology Student Program) shall be transferred to the Standby Reserve (active status list) for the duration of their ministerial studies and duties at accredited theology or divinity schools. Ready Reservists participating in a military Chaplain Candidate or Theology Student Program may continue their Ready Reserve affiliation and engage in AD and IDT.

(j) Ready Reservists may not be transferred from the Ready Reserve solely because they are students, interns, residents, or fellows in the healthcare professions. On mobilization, they either shall be deferred or shall be mobilized in a student, intern, resident, or fellow status until qualified in the applicable medical specialty, as prescribed by the Secretaries of the Military Departments.

(k) The Secretaries concerned, or their designees, shall make determinations for mobilization availability on a case-by-case basis, consistent with this part, and not by class or group determinations.

§ 44.5 Responsibilities.

(a) The *Deputy Secretary of Defense* shall adjudicate, before mobilization, conflicts between the mobilization manpower needs of the civilian sector and the military that the Ready Reserve Screening process has identified, but has not resolved.

(b) The *Assistant Secretary of Defense for Reserve Affairs*, under the *Under Secretary of Defense for Personnel and Readiness*, shall:

(1) Provide oversight and policy support to the overall Ready Reserve screening program, and manage and control the Federal sector screening program in accordance with 10 U.S.C. 10149, Executive Order 11190, and pp. 63–66 of House Appropriations Committee Report 95–451, which is available from the Government Printing Office, Washington, DC 20401.

(2) Annually, provide Federal Agencies with a listing of all Federal employees who are also Ready Reservists to assist them in conducting employer screening activities.

(3) Prepare an annual report on the status of Ready Reservists employed by the Federal Government.

(4) Employ the guidance in appendix A of this part in coordinating the screening program with employers of Ready Reservists.

(5) Coordinate conflicts between the mobilization manpower needs of the civilian sector and the military identified but not resolved through the Ready Reserve Screening process.

(c) The *Secretaries of the Military Departments* shall:

(1) Screen, at least annually, all Ready Reservists under their jurisdiction to ensure their immediate availability for active duty (AD) and to ensure compliance with 10 U.S.C. 10149.

(2) Ensure coordination with the Assistant Secretary of Defense for Reserve Affairs to resolve conflicts (identified, but not resolved through the Ready Reserve screening process) between the mobilization manpower needs of the civilian sector and the military.

(3) Review recommendations for removal of both Federal and other civilian employees from the Ready Reserve submitted by employers and take applicable action.

(4) After making a removal determination in response to a petition for such action, promptly transmit the results of that determination to the Ready Reservist concerned and his/her employer.

(5) Transfer Ready Reservists identified as occupying key positions to the Standby Reserve or the Retired Reserve, or discharge them, as applicable.

(6) Ensure that Ready Reservists not on AD are examined as to physical fitness in accordance with DoD Directive 1332.18.[2]

(7) Process members of the Ready Reserve who do not participate satisfactorily in accordance with DoD Instruction 1200.15 and DoD Directive 1215.13.[3]

(8) Ensure that all Ready Reservists have a favorably completed background check for military service suitability on file (*e.g.*, Entrance National Agency Check (ENTNAC), NAC).

(9) Ensure that personnel records systems incorporate information on any factors that limit the mobilization availability of a Ready Reservist.

(10) Develop and maintain current information pertaining to the mobilization availability of Ready Reservists.

Appendix A to Part 44—Guidance

Deputy Secretary of Defense

The Deputy Secretary of Defense shall adjudicate, before mobilization, conflicts between the mobilization manpower needs of the civilian sector and the military that the Ready Reserve screening process has identified, but has not resolved.

Employers of Ready Reservists

(a) Federal Employers

(1) To ensure that Federal employees essential to the continuity of the Federal Government are not retained as members of the Ready Reserve, the following guidance is provided:

(i) Conduct annual screening program as provided for by the Assistant Secretary of Defense for Reserve Affairs.

(ii) Responses from Federal Agencies shall be reported under Interagency Report Control Number 0912–DoD–AN, ''Ready Reservists in the Federal Government,'' in accordance with DoD 8910.1–M.[4]

(iii) Federal Agency heads, or their designees, concerned shall designate those positions that are of essential nature to, and within, the organization as ''key positions,'' and shall require that they shall NOT be filled by Ready Reservists to preclude such positions from being vacated during a mobilization. Upon request from Federal Agencies, Secretaries of the Military Departments shall verify the essential nature of the positions being designated as ''key,'' and shall transfer Ready Reservists occupying key positions to the Standby Reserve or the Retired Reserve or shall discharge them, as applicable, under 10 U.S.C. 10149, except as specified in § 44.4 (b).

(iv) In determining whether or not a position should be designated as a ''key position,'' the following questions should be considered by the Federal Agency concerned:

(A) Can the position be filled in a reasonable time after mobilization?

(B) Does the position require technical or managerial skills that are possessed uniquely by the incumbent employee?

(C) Is the position associated directly with defense mobilization?

(D) Does the position include a mobilization or relocation assignment in an

[2] See footnote 1 to § 44.4(e).

[3] See footnote 1 to § 44.4(e).

[4] See footnote 1 to § 44.4(e).

Agency having emergency functions, as designated by Executive Order 12656?

(E) Is the position directly associated with industrial or manpower mobilization, as designated in Executive Orders 12656 and 12919?

(F) Are there other factors related to the national defense, health, or safety that will make the incumbent of the position unavailable for mobilization?

(2) [Reserved]

(b) *Non-Federal Employers of Ready Reservists.* Non-Federal employers of Ready Reservists, particularly in the fields of public health and safety and defense support industries, are encouraged to adopt personnel management procedures designed to preclude conflicts between the emergency manpower needs of civilian activities and the military during a mobilization. Employers also are encouraged to use the Federal key position guidelines contained in this appendix for making their own key position designations and, when applicable, for recommending key employees for removal from the Ready Reserve.

(c) All employers who determine that a Ready Reservist is a key employee, in accordance with the guidelines in this appendix, should promptly report that determination, using the letter format at the end of this appendix, to the applicable Reserve personnel center, requesting the employee be removed from the Ready Reserve.

Individual Ready Reservists

(a) Each Ready Reservist who is not a member of the Selected Reserve is obligated to notify the Secretary concerned of any change of address, marital status, number of dependents, or civilian employment and any other change that would prevent a member from meeting mobilization standards prescribed by the Military Service concerned (10 U.S.C. 10205).

(b) All Ready Reservists shall inform their employers of their Reserve military obligation.

List of Reserve Personnel Centers to Which Reserve Screening Determination and Removal Requests Shall be Forwarded

Army Reserve

Army Reserve Personnel Command
1 Reserve Way
ATTN: ARPC–PSP–T
St. Louis, MO 63132

Naval Reserve

Commander
Navy Personnel Command (Pers 91)
5720 Integrity Drive
Millington, TN 38055–9100

Marine Corps Reserve

Commanding General
Marine Corps Reserve Support Command
ATTN: IRR Division
15303 Andrews Road
Kansas City, MO 64147–1207

Air Force Reserve

Commander
Air Reserve Personnel Center/DPAF
6760 E. Irvington Pl. #2600
Denver, CO 80280–2600

Army and Air National Guard

Submit requests to the adjutant general of the applicable State, commonwealth, or territory (including the District of Columbia).

Coast Guard Reserve

Commander (CGPC–RPM)
U.S. Coast Guard Personnel Command
2100 Second St. S.W.
Washington, DC 20593

Letter Format to Reserve Personnel Centers Requesting That Employee be Removed From the Ready Reserve

From: (Employer-Agency or Company)
To: (Appropriate Reserve Personnel Center)
Subject: Request for Employee to Be Removed from the Ready Reserve

This is to certify that the employee identified below is vital to the nation's defense efforts in (his or her) civilian job and cannot be mobilized with the Military Services in an emergency for the following reasons: [STATE REASONS]

Therefore, I request that (he/she) be removed from the Ready Reserve and that you advise me accordingly when this action has been completed.

The employee is:

1. Name of employee (last, first, M.I.):
2. Military grade and Reserve component:
3. Social security number:
4. Current home address (street, city, State, and ZIP code):
5. Military unit to which assigned (location and unit number):
6. Title of employee's civilian position:
7. Grade or salary level of civilian position:
8. Date (YYMMDD) hired or assigned to position:

Signature and Title of Agency or Company Official.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–32307 Filed 12–22–99; 8:45 am]

BILLING CODE 5000–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Tricare; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Nonavailability Statement Requirement for Maternity Care

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65), which requires that a nonavailability-of-health-care statement shall be required for a non-enrolled beneficiary for TRICARE cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The Act reestablishes a requirement which was previously eliminated under the broad direction of The National Defense Authorization Act of FY 1997, section 734, which removed authority for nonavailiability statements (NASs) for outpatient services. Therefore, the Act changes the existing provisions require an NAS for inpatient delivery but do not require an NAS for outpatient prenatal and post-partum care. The change will significantly contribute to continuity of care for maternity patients. In furtherance of that principle, and consistent with the previous policy, an NAS for maternity care shall not be required when a beneficiary has other health insurance for primary coverage. This is being issued as an interim final rule in order to comply with the statutory mandate. Public comments, however, are invited and will be considered in connection with possible revisions to this rule.

DATES: This rule is effective October 5, 1999 (the effective date of Section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65) which imposes the requirement). Written comments will be accepted until February 22, 2000.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3801.

SUPPLEMENTARY INFORMATION: This interim final rule implements section 712(c) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106–65) which requires that a nonavailability-of-health-care statement shall be required for TRICARE/CHAMPUS cost-share of maternity care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy. The nonavailability statement requirement applies to non-enrolled TRICARE beneficiaries who live in a catchment area of a military treatment facility (MTF). Except for an emergency or when there is other primary health insurance coverage, these beneficiaries are required to obtain all maternity care from the MTF. If care is unavailable at the MTF, an NAS will be issued for the

beneficiary. The Act changes the existing provisions that require a nonavailability statement (NAS) for inpatient delivery but do not require an NAS for outpatient prenatal, outpatient delivery and post-partum care. The change will provide for continuity of care for maternity patients. Beneficiaries will need one NAS for the entire episode of maternity care that shall remain valid until 42 days following termination of the pregnancy.

Regulatory Procedure

Executive order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This Interim Final Rule is not a significant regulatory action under E.O. 12866, nor would it have a significant impact on small entities. The changes set forth in the interim final rule are minor revision to the existing regulation.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This determination is based on several factors. First, this change directly implements a statutory amendment enacted by Congress expressively for this purpose. Second, this rule implements the statutory policy without embellishment. All public comments are invited.

List of Subject in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR 199 is amended as follows:

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

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

2. Section 199.4(a) is amended by revising paragraphs (a)(9) and (a)(9)(i)(B).

§ 199.4 Basic program benefits.

(a) * * *

* * * * *

(9) *Nonavailability Statements within a 40-mile catchment area.* In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required medical care can be provided through a Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) * * *

(A) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with non-emergency inpatient hospital care and outpatient and inpatient maternity care if such services are available at a facility of the Uniformed Services located within a 40-mile radius of the residence of the beneficiary, except that an NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. For maternity care, an NAS is required for services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit that confirms the pregnancy. The requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

* * * * *

Dated: December 16, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33246 Filed 12–22–99; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37-132]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adopting the exemption rule published on October 18, 1999, at 64 FR 56181 as final. No comments were received during the sixty day comment period.

EFFECTIVE DATE: December 17, 1999.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588-6187.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that this Privacy Act rule is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, 'Regulatory Flexibility Act' (5 U.S.C. 601)

It has been certified that this Privacy Act rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, 'Paperwork Reduction Act' (44 U.S.C. Chapter 35)

It has been certified that this Privacy Act rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of subjects in 32 CFR part 806b

Privacy.

Accordingly, 32 CFR part 806b is revised to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR Part 806b continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix C to Part 806b is amended by adding paragraph (b)(21) as follows:

* * * * *

b. Specific exemptions.* * *

(21) *System identifier and name:* F036 AF DP G, Military Equal Opportunity and Treatment.

(i) *Exemption:* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2)

(iv) *Reasons:* (1) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement. In addition, granting individuals access to information collected while an Equal Opportunity and Treatment clarification/investigation is in progress conflicts with the just, thorough, and timely completion of the complaint, and could possibly enable individuals to interfere, obstruct, or mislead those clarifying/investigating the complaint.

(2) From subsection (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (k) of the Privacy Act of 1974.

(3) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(4) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force—s Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.

Dated: December 16, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33244 Filed 12–22–99; 8:45 am]

BILLING CODE 5001–10–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[Region VII Tracking No. MO 083–1083a; FRL–6510–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve certain portions of the State Implementation Plan (SIP) revisions submitted by the state of Missouri and as revisions to the part 70 (operating permits) program. These revisions established emission and service fees for 1997 and 1998 and clarify language regarding reporting requirements, emission calculations and verification.

DATES: This direct final rule is effective on February 22, 2000 without further notice, unless EPA receives adverse comment by January 24, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7975.

SUPPLEMENTARY INFORMATION:

Background

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter (PM), and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

The CAA requires each state to have a Federally approved SIP which protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

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 generally includes a public notice, public hearing, 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 submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be

addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such 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 are approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violators as described in the CAA.

What is the Part 70 (Operating Permits) Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 (operating permits) program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment, and EPA approval.

What are the Changes that EPA is Approving?

The revisions include two separate amendments to the Missouri ''Submission of Emission Data, Emission Fees and Process Information'' rule which were adopted by the Missouri Air Conservation Commissions approximately one year apart.

The first revision, with a state effective date of December 30, 1997, requires companies to report capture efficiency and control efficiency on control devices and to calculate emissions using MDNR's acceptable estimation methods as guidance. This revision also requires Emission Inventory Questionnaires to be submitted on state forms, clarifies language regarding reporting frequency and emission fees, and revises the installation classification to match the permitting classification.

The second revision, with a state effective date of December 30, 1998, is an annual update to establish emission and service fees for 1997 and 1998 and clarifies the language regarding fee obligations for charcoal kilns to reflect state statutory requirements.

What Action is EPA Taking?

EPA is taking final action to approve, as an amendment to the SIP and the part 70 program, the revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees and Process Information.'' Section (5), relating solely to the assessment of fees for sources subject to the operating permit program, is part of the part 70, Title V program and will not be approved into the SIP. The remainder of the revisions to Rule 10–6.110, which clarifies reporting requirements, methodology for emission calculations, and verification of emissions, is approved into the SIP.

Conclusion

EPA is taking final action to approve, as an amendment to the SIP and the part 70 program, the revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees and Process Information,'' effective December 30, 1998. Section (5) is part of the Title V program and will not be approved into the SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 22, 2000 without further notice unless the Agency receives adverse comments by January 24, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 22, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation.

EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order 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 Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

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 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The 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 permit program approvals under the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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 the 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 preexisting requirements under state 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 United States Senate, the United States House of Representatives, and the United States Comptroller General 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2000. 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

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

Dated: November 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

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 AA—Missouri

2. In § 52.1320 the entry in paragraph (c), table titled EPA-Approved Missouri Regulations, Missouri Citation 10–6.110 is revised to read as follows:

§ 52.1320 Identification of Plan.

* * * * * * *

(c) EPA-approved regulations.

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA Approval date	Explanations
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Submission of Emission Data, Emission Fees and Process Information.	12/30/98	12/23/99	Section (5), Emission Fees, is part of the Title V program and has not been approved as part of the SIP.
*	*	*	*	*

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 741 *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (e) to the entry for Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

Missouri

* * * * *

(e) The Missouri Department of Natural Resources submitted on July 8, 1999, revisions to Missouri rules 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information,'' effective on December 30, 1998.

* * * * *

[FR Doc. 99–32758 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 120999F]

Notification of U.S. Fish Quota Allocations in the Northwest Atlantic Fisheries Organization Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of U.S. fish quota allocations.

SUMMARY: NMFS announces that fish quota allocations are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area.

DATES: Fish quotas are effective January 1, 2000, through December 31, 2000.

ADDRESSES: For more information regarding the High Seas Fishing Compliance Act (HSFCA) Permit and NAFO requirements, please contact the Office of the Regional Administrator, NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9226, fax: 978–281–9371).

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713-2276.

SUPPLEMENTARY INFORMATION: NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation allocations. The principal species managed are cod, flounders, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 1999 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks to be fished during 2000. In addition, the United States received an effort allocation for shrimp in NAFO Division 3M, which will be addressed in a separate notice. The species, fish quota allocation (in metric tons), and location of these U.S. fishing opportunities are as follows:

(1) Redfish 69 mt NAFO Division 3M

(2) Shrimp 67 mt NAFO Division 3L

(3) Squid 453 mt NAFO Subareas 3 & 4

All U.S. fish quota allocations in NAFO are available, on a first-come-first-served basis, to be taken by U.S. vessels in possession of a valid High Seas Fishing Compliance Act (HSFCA) permit and NAFO reporting forms, both of which are available from the NMFS Northeast Regional Office. Note that

vessels issued valid High Seas Fishing Compliance permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. EEZ with multispecies on board the vessel or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.81(e); and

(4) The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence with all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements can be found in the current NAFO Conservation and Enforcement Measures, available on the World Wide Web at <http://www.nafo.ca>.

As the United States Government is required to notify NAFO with information regarding vessels intending to fish in the NAFO Regulatory Area, interested parties are encouraged to express their interest to the Office of the Regional Administrator, NMFS, Northeast Regional Office (see **ADDRESSES**) as soon as possible.

NMFS has received inquiries regarding the possibility of making U.S. fishing opportunities available to U.S. fishing interests using foreign vessels under contractual arrangements. To be consistent with domestic policies and practices under the Magnuson-Stevens Fishery Conservation and Management Act, in particular the provisions relating to the total allowable level of foreign fishing and joint venture fishing, and, in light of the apparent capacity of U.S. vessels to take advantage of NAFO fishing opportunities, NMFS has determined that NAFO fish allocations to the United States will not be made available, at this time, to chartered fishing vessels registered to foreign governments.

In the interests of expanding fishing opportunities for U.S. vessels, the United States has begun seeking additional fishing opportunities in the 3L shrimp fishery by requesting that NAFO members that did not fish their shrimp allocation in 1999 transfer such allocations for use by U.S. vessels. Information regarding any additional fishing opportunities resulting from transfers from other NAFO members will be published in the **Federal Register**.

Dated: December 16, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–33354 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 246
Thursday, December 23, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206–AI93

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a rule to set forth how agencies may use appropriated funds to reduce child care costs for lower income Federal employees. The intended effect of this rule is to enable lower income Federal employees to better afford child care.

DATES: Comments must be received on or before January 24, 2000.

ADDRESSES: Send written comments to Anice V. Nelson, Office of Personnel Management, Room 7315, 1900 E St. N.W., Washington, DC 20415–1300.

FOR FURTHER INFORMATION CONTACT: Patricia Kinney, Office of Personnel Management, 1900 E St. N.W., Room 7315, Washington, DC 20415–1300; Phone: (202) 606–1313; Fax: (202) 606–2091.

SUPPLEMENTARY INFORMATION: Federal families are more challenged than ever before to meet the expenses of child care. Child care is a labor-intensive service that requires adequate, trained staff to provide child care services that are safe and appropriate for children and their families. An increasing number of Federal families are funding that affordable child care is getting more difficult to find even when their own agencies sponsor on or near-site child care centers. Vacancy rates in Federally sponsored child care centers have steadily grown due to the affordability problem. Despite efforts of non-profit organizations to raise funds through charitable contribution, the affordability of child care for lower income Federal employees sometimes remains out-of-reach since child care costs can translate up to 50 percent of a Federal family's total family income.

Reduced child care tuition, as a result of agency contributions permitted by this law, can have significant impact on employees' ability to utilize safe and reliable child care. Benefits to the agencies include better recruitment and retention of qualified personnel, lower absenteeism, and improved morale. Improved retention can result in significant recruitment and training cost savings to agencies. Over the past ten years, anecdotal evidence from on-site Federally sponsored child care centers has shown that more and more employees consider the availability of affordable child care as a major reason for choosing one job over another.

An added benefit for agencies that sponsor on-site child care centers at some of their locations is that they can expect to see improved Federal employee participation in their centers. For small agencies that have been unable to provide agency-sponsored on-site child care centers, this law would permit them to assist their employees with a variety of other child care choices.

Sec. 643 of Pub. L. 106–58 authorizes the use of appropriated funds to assist lower income Federal workers to access child care services. This law, enacted by Congress, became effective on September 29, 1999, and remains in effect for one year. The law enables Federal agencies, for the first time, to assist their civilian employees with costs of child care. Until now, the only financial remedy for Federal employees was through limited fundraising conducted by non-profit boards of directors for Federal child care centers. That type of assistance has been inadequate for lower income Federal employees. Financial assistance for Federal employees in non-Federal child care and for family child care has been virtually non-existent.

Child care exists in a variety of forms. Because child care is not universally available through agency-sponsored child care centers, Pub. L. 106–58 permits agencies to work with a broad range of child care providers to ensure that child care is more affordable to lower income Federal employees.

In summary, the rule authorizes Federal agencies to use appropriated funds from their salaries and expense accounts to assist their lower income Federal employees with the costs of child care in child care centers and family child care homes. Agencies can choose from a number of models for determining employee eligibility and the amount of the tuition assistance subsidy. In light of the fact that agencies have differing needs from one location to another, the proposed rule allows for maximum flexibility so that agencies can take different approaches for making those determinations. Forthcoming guidance from OPM instructs agencies on certain basic tuition assistance program requirements; provides specific steps for implementing the regulation; and includes direction for OPM's reporting requirements. OPM will be interested in learning whether or not the range of flexibilities and sample models were helpful to agencies in determining their definitions of *lower income Federal employees.*

E.O. 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Drug abuse, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 792 of title 5 of the Code of Federal Regulations as follows:

PART 792—FEDERAL EMPLOYEES' HEALTH AND COUNSELING PROGRAMS

1. The authority citation for part 792 is revised to read as follows:

Authority: Sec. 201 of Pub. L. 91–616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2(b)(13) of Pub. L. 98–24 (42 U.S.C. 290dd–1) and sec. 413 of Pub. L. 92–255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Service Act by sec. 2(b)(16)(A) of Pub. L. 98–24 (42 U.S.C.

290ee–1); sec. 643, Pub. L. 106–58, 113 stat. 477.

2. Subpart B is added to read as follows:

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What is the new child care legislation and to whom does it apply?

Sec.

792.200 To whom do ''we'', ''you'', and their variants refer?
792.201 What does the new law permit?
792.202 What is the purpose of the new law?
792.203 Should we notify anyone of our intention to make such a disbursement?
792.204 Are there sample memoranda and other documents available to assist us with this process?
792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?
792.206 What are the benefits to an agency of providing such assistance to its lower income employees?
792.207 Which agency funds can be used for the purpose of this law?
792.208 Is the use of appropriated funds for this purpose mandatory?
792.209 How can agencies take advantage of this new law and when does this law become effective?
792.210 What is the definition of Executive agency?
792.211 What is the definition of tuition assistance program?
792.212 What is the definition of civilian employee?
792.213 What is the definition of a Federally sponsored child care center?
792.214 What is the definition of contractor?
792.215 What is the definition of a child?
792.216 What children are eligible for this subsidy??
792.217 Are children enrolled in summer programs and part-time programs eligible?
792.218 Are part-time Federal employees eligible?
792.219 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?
792.220 What is the process for helping lower income employees with child care tuition?
792.221 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?
792.222 Are there any conditions which the child care provider must meet in order to participate in this program?
792.223 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?
792.224 What is the definition of a lower income Federal employee and how is the amount of the tuition assistance subsidy determined?
792.225 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?
792.226 Do child care subsidies get paid to the Federal employee using the child care?
792.227 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee utilizing the reduced tuition has enrolled his or her child in the child care center or family child care home?
792.228 How will this work where there is a Federally sponsored child care center in a multi-tenant building?
792.229 For how long will tuition assistance be in effect for a Federal employee?
792.230 Can these funds be used for children of Federal employees who are already enrolled in child care?
792.231 Can we place special restrictions or requirements on the use of these funds, how else can we use these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?
792.232 May we use the funds to improve the physical space of the family child care homes or child care centers?
792.233 For how long is the law effective?
792.234 Who will oversee the disbursement and use of these funds?

Subpart B—Agency Use of Appropriate Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does it Apply?

§ 792.200 To whom do ''we'', ''you'', and their variants refer?

Use of pronouns ''we'', ''you'', and their variants throughout this part refers to the agency. OPM is always referred to as ''OPM''.

§ 792.201 What does the new law permit?

Public Law 106–58 (the law) permits agencies to use appropriated funds from their salaries and expense accounts to assist lower income Federal employees with the costs of child care. Employees can benefit from reduced tuition rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

§ 792.202 What is the purpose of the new law?

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

§ 792.203 Should we notify anyone of our intention to make such a disbursement?

Yes, you must provide prior notice to the House Subcommittee on Treasury, Postal Service and General Government and to the Senate Subcommittee on Treasury and General Government and to your appropriations subcommittees. This is a Congressional notification requirement. You must also notify OPM of your intention.

§ 792.204 Are there sample memoranda and other documents available to assist us with his process?

Yes, when you notify OPM of your intent to initiate a program, OPM will provide you with guidance that contains sample memoranda of understanding, sample marketing tools, sample tuition assistance applications, and models for determining tuition assistance eligibility. OPM will also provide agencies with the mandatory reporting form.

§ 792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?

Yes, you are responsible for tracking the utilization of your funds and reporting the results to OPM. OPM will provide you with a mandatory reporting form. OPM is required to provide a report to the appropriations committees no later than September 1, 2000. Therefore, you are required to report your results to OPM no later than August 1, 2000. OPM will provide you with guidance on this subpart.

§ 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?

There are several benefits for the agencies beginning with improved recruitment and retention. Cost savings in recruitment and training costs can be significant. In addition, absenteeism rates related to child care problems can be reduced. Providing such subsidies can also increase morale, particularly among families who cannot afford the child care located at or near a child care center that is sponsored by their agency. The use of funds for lower income families who are enrolled or wish to enroll in Federal child care centers will increase the Federal participation rates where there is a regulatory requirement that at least 50 percent of the children enrolled have parents or guardians who are Federal employees.

§ 792.207 Which agency funds can be used for the purpose of this law?

You are permitted to use funds from your salaries and expense account for the purpose of this law

§ 792.208 Is the use of appropriated funds for this purpose mandatory?

No, the decision to use appropriated funds for the purpose of this law is left to the discretion of the agency.

§ 792.209 How can agencies take advantage of this new law and when does this law become effective?

The law became effective as of September 29, 1999. Agencies are permitted to spend funds beginning on [effective date of final rule].

§ 792.210 What is the definition of Executive agency?

The term *Executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

§ 792.211 What is the definition of tuition assistance program?

The term *tuition assistance program,* for the purposes of this regulation, means the program that results from the expenditure of agency funds to assist lower income Federal employees with child care costs, including, but not limited to, such activities as: determining which employees receive a subsidy, and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee utilization of the program.

§ 792.212 What is the definition of civilian employee?

The term *civilian employee,* for the purposes of this regulation, means all appointive positions in an executive agency.

§ 792.213 What is the definition of a Federally sponsored child care center?

A *Federally sponsored child care center* is a child care center that is located in a building or space that is owned or leased by the Federal government.

§ 792.214 What is the definition of contractor?

Sec. 643 of Pub. L. 106–58 says that child care services provided by contract are covered by this provision. The term *contractor* applies to an organization or individual who provides child care services for which Federal families are eligible. The definition includes center-based child care and family child homes. The term *provider* is typically used to denote contractor in the child care industry. For the purposes of this subpart, the term *provider* is used to denote both center-based child care and family child care homes.

§ 792.215 What is the definition of a child?

For the purposes of this subpart, a *child* is considered to be:

(a) A recognized natural child who lives with the Federal employee in a regular parent-child relationship;

(b) An adopted child;

(c) A stepchild;

(d) A foster child;

(e) A recognized natural child for whom a judicial determination of support has been obtained; or

(f) A recognized natural child to whose support the Federal employee makes regular and substantial contributions.

§ 792.216 What children are eligible for this subsidy?

The law covers Federal employees' children from birth through age 13.

§ 792.217 Are children enrolled in summer programs and part-time programs eligible?

Yes, employees with school-age children (13 years of age and younger) who are enrolled in summer school programs and part-time programs are eligible.

§ 792.218 Are part-time Federal employees eligible?

Yes, Federal employees who work part-time are eligible.

§ 792.219 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?

No. The bill is broad in scope and includes non-Federal center-based child care as well as care in family child care homes, as long as they are licensed and/or regulated by the State and/or local regulating authorities.

§ 792.220 What is the process for helping lower income employees with child care tuition?

(a) OPM guidance includes further explanation, but the process can be summarized in 8 steps:

(1) After completing your collective bargaining obligations, where applicable, notify the Congressional committees and OPM of your decision to use a specific amount of appropriated funds for this purpose;

(2) Determine how you will structure the program and which tuition assistance model you will use;

(3) Determine how you will administer the program;

(4) Advertise the program;

(5) Conduct the application process;

(6) Make the tuition assistance determinations and notify the employees (parents are then charged a reduced tuition rate by the provider);

(7) Provide the funds to the provider or to an organization that will administer the program for you; and

(8) Report the results to OPM on the mandatory reporting form.

(b) [Reserved]

§ 792.221 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?

You are reminded of your obligation to negotiate or consult, as appropriate, with the exclusive representatives of your employees on the implementation of these regulations under 5 U.S.C. 7117.

§ 792.222 Are there any conditions which the child care provider must meet in order to participate in this program?

Yes, the provider, whether center-based or family child care, must be licensed and/or regulated by the State and/or local authorities where the child care service is delivered.

§ 792.223 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?

No, the law does not specify a cap.

§ 792.224 What is the definition of a lower income Federal; employee and how is the amount of tuition assistance subsidy determined?

Each agency makes the determination of the definition of lower income Federal employee. Lower income Federal employee can be defined by an agency in a number of ways. The process for determining both eligibility and the amount of tuition assistance subsidy for each family involves consideration of total family income along with other factors, depending on the tuition assistance model you use. In their guidance to the regulations, OPM will provide examples of models with detailed explanations.

(a) If the model or models you select includes a total family income threshold, you can use criteria such as those from:

(1) The Child Care Development Block Grant as defined (42 U.S.C. § 9858);

(2) A formula based on a percentage of the State poverty level (as many States do for certain programs); or

(3) A set amount of total family income the agency chooses depending on the agency demographics and need to assist lower income Federal employees.

(b) Some models do not require a threshold amount, since eligibility is determined as a function of the relationship between total family income, actual child care tuition costs, and an amount or percentage the agency is willing to pay.

(c) In order to determine the amount of tuition assistance subsidy by which tuition will be reduced for a Federal employee, a number of approaches can be taken. The size of the subsidy is dependent on different income levels. It

can be based on a tuition sliding scale such as that used in the military formula (10 U.S.C. 1791–1798); a formula based on a specific percentage of total family income the family is expected to pay with the agency paying the remaining amount; or a formula based on a specific percentage of child care tuition the family is expected to pay with the agency paying the remaining amount. Each of these approaches is based on different philosophical assumptions and it will be up to the agency to determine which model or models best fits its needs. The models are described in detail in OPM's guidance.

(d) Besides total family income, you may consider extraordinary financial situations to determine eligibility and the subsidy amount.

§ 792.225 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?

The agency or another appropriately identified organization determines eligibility using certain income and/or tuition criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the tuition assistance eligibility and the amount of the subsidy is always determined by the Federal agency.

§ 792.226 Do child care subsidies get paid to the Federal employee using the child care?

No. The child care subsidy is paid to the child care provider. If you choose to have an organization administer your program (see § 792.225), the subsidy is paid to the organization and they, in turn, pay the provider. In any case, the provider will invoice the organization that administers the program.

§ 792.227 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee utilizing the reduced tuition has enrolled his or her child in the child care center or family child care home?

Yes, you may wish to disburse one lump sum to the organization administering the tuition assistance program and they will be responsible for tracking the utilization and providing you with regular reports.

§ 792.228 How will the disbursement covered by § 792.227 work where there is a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies would be pooled together for the benefit of the employees qualified for tuition assistance and whose children are enrolled at the Federally sponsored child care center. The designated organization administering the program (§ 792.225) would then make the individual tuition assistance determinations for the eligible Federal employees based on the tuition assistance model chosen by the agencies. Agencies in the multi-tenant space must agree on the selection of one tuition assistance model for that particular child care center. If an agency chooses to administer its own program, it would not be required to pool its funds with the other agencies or use the model they have chosen for pooled funds. In either case, because the law requires that your funds be used for your civilian employees, the tracking system must include information about the number and income level of your employees who were able to make use of child care services as a result of this law.

§ 792.229 For how long will the tuition assistance be in effect for a Federal employee?

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2000.

§ 792.230 Can these funds be used for children of Federal employees who are already enrolled in child care?

Yes, the funds can be used for children currently enrolled in child care as long as their families meet the tuition assistance eligibility requirements established by your agency.

§ 792.231 Can we place special restrictions or requirements on the use of these funds, how else can we use these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?

(a) Yes, depending on your staffing needs and your employees' situations, including the local availability of child care, you may choose to place restrictions on the use of your funds in one of the following ways:

(1) Fund Federal employees using family child care homes;

(2) Fund Federal employees using your on-site child care center;

(3) Fund Federal families using community, non-Federal child care centers; or

(4) Restrict the use of such funds to one or more locations.

(b) It is up to you to determine whether there will be any restrictions on the use of your appropriated funds for child care tuition costs.

§ 792.232 May we use the funds to improve the physical space of the family child care homes or child care centers?

No, the legislation specifically addresses making the child care more affordable for lower income Federal employees.

§ 792.233 For how long is the law effective?

The law is effective for one year, ending September 30, 2000.

§ 792.234 Who will oversee the disbursement and use of funds?

You will be responsible for tracking the utilization of these funds. OPM's guidance contains details about the oversight of this program and the mandatory reporting requirements.

[FR Doc. 99–33150 Filed 12–20–99; 4:37 pm]

BILLING CODE 6325–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule; request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) proposes to amend its rules of practice and procedure with respect to attorney fee proceedings to provide reimbursement to a prevailing appellant's attorney at his customary billing rate if that rate is consistent with the prevailing community rate where the attorney ordinarily practices. The intent of the proposed amendment is to provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

DATES: Submit comments by February 7, 2000.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board requests comments on a proposal to amend its rule at 5 CFR 1201.203, which governs attorney fee proceedings, to provide that

reimbursement of a prevailing appellant's attorney fees will be at the attorney's customary billing rate if that rate is consistent with the prevailing community rate for similar services where the attorney ordinarily practices. The Board also invites suggestions as to alternatives that might carry out the Board's intent of establishing a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

The current regulation at 5 CFR 1201.203(a)(3) requires submission of evidence of ''the prevailing community rate for similar services that will establish a market value for the attorney's services.'' The regulation does not define the ''community'' to be used in determining the prevailing community rate. Under Board precedent, the prevailing community rate is based on the geographic location where the hearing was held. *Manley* v. *Department of the Air Force,* 67 M.S.P.R. 467, 472–473 (1995).

Applying the general rule that the hearing location determines the reimbursement rate for the attorney can result in inequitable reimbursement. An attorney may be reimbursed at a lower rate than that which prevails at the location of his practice if the prevailing rate for similar services in the community where the hearing is (or would have been) held is lower than that at the location of his practice. It is also possible that an attorney could be reimbursed at a higher rate than that which prevails at the location of his practice if the prevailing rate for similar services at the hearing location is higher than that at the location of his practice. But see *Brown* v. *Department of Health and Human Services,* 50 M.S.P.R. 523 (1991).

The Board's current rule is akin to the Federal courts' ''forum rule.'' In Federal court litigation, the place where the district court sits and where the appeal is filed is one location, and, in that context, that forum makes sense as the relevant community for determining rates. That model, however, no longer fits MSPB cases. In addition to an in-person hearing before an administrative judge, MSPB proceedings currently may be conducted by telephone, mail, facsimile, or video conference. In some cases, no hearing is held. In such situations, the parties, their representatives, and the administrative judge may all be in different geographic locations, and the attorney's work may well be done primarily in a location other than that in which an in-person hearing would have been held.

To reflect the realities of practice before the Board and provide a more equitable scheme for reimbursement of a prevailing appellant's attorney fees, the Board is considering changing its regulation at 5 CFR 1201.203(a)(3) to reimburse a prevailing appellant's attorney at his customary billing rate, with evidence that the rate is consistent with the prevailing rate for similar services in the community in which the attorney ordinarily practices. The proposed rule is similar to the model rule recommended by the Administrative Conference of the United States in implementing the Equal Access to Justice Act (EAJA), 46 FR 32900, 32904–32906 (October 2, 1981) (''prevailing market rate'' for determining allowable attorney fees).

The Board is publishing this rule as a proposed rule pursuant to 5 U.S.C. 1204(h). The Board has made a determination under the Regulatory Flexibility Act, Pub. L. 96–354, 95 Stat. 1164, 5 U.S.C. 601–612, that this proposed regulatory action would not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 1201.

Administrative practice and procedure, Civil rights, Government employees. Accordingly, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 would continue to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Amend § 1201.203 by revising paragraph (a)(3) to read as follows:

§ 1201.203 Proceedings for attorney fees.

(a) * * *

(3) A statement of the attorney's customary billing rate for similar work, with evidence that that rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices; and

* * * * *

Dated: December 20, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–33357 Filed 12–22–99; 8:45 am]

BILLING CODE 7400–01–U

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 615

RIN 3052–AB91

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Stock Issuances

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration is proposing to amend regulations to allow Farm Credit System (System) service corporations to sell stock to non-System entities; and System institutions to adopt bylaws allowing the issuance of unlimited amounts of certain classes of equities.

The purpose of our proposal is to provide System institutions additional opportunities to fulfill their borrowers' needs through service corporations and more efficient issuance of equities related to earnings distributions and transfers of capital. We are also taking this opportunity to make a technical change to one of our regulations pertaining to disclosure requirements.

DATES: Please send your comments to us by January 24, 2000.

ADDRESSES: You may send comments by electronic mail to ''reg-com@fca.gov'' through the Pending Regulations section of our website at ''www.fca.gov.'' You may also mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Joy Strickland, Senior Counsel, or Howard Rubin, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed rule are to:

- Increase the flexibility and usefulness of service corporations;
- Provide adequate disclosures to investors in service corporations organized to exercise the authorities

granted by title VIII of the Farm Credit Act of 1971, as amended (Act); and

• Provide flexibility for the efficient distribution of a System institution's earnings and timely transfers of capital to a System association.

II. Background

A. Incorporation of Service Corporations

On August 18, 1998, we published a notice in the **Federal Register** that invited System institutions to identify existing regulations and policies that impose unnecessary burdens on the FCS. (*See* 63 FR 44176, Aug. 18, 1998.) [1] We received comments from an agricultural credit bank (ACB) and a Farm Credit Bank (FCB) on § 611.1135, which allows only System banks and associations to own stock in service corporations. CoBank, ACB, commented that we should allow more flexibility in creating and operating service corporations to allow non-System institutions to own part of the service corporation. CoBank, ACB, asserted that this flexibility would foster joint endeavors and alliances and create more products and services for System borrowers. The FCB of Texas commented that the Act does not limit service corporation stock ownership to only banks or associations. The FCB further commented that limiting stock ownership may lessen the usefulness of these corporations to System institutions.

B. Capitalization Bylaws

Section 615.5220(a)(3) of our regulations requires that System institutions' bylaws specify the number of shares that will be issued for each class of equities.[2] As System institutions merge, change their charters, or modify their bylaws, we note they experience difficulty in quantifying in their bylaws the amounts of certain equities that may be issued. Those equities include non-voting equities that may be issued in the event the institution requires financial assistance and equities issued to distribute earnings. Several institutions have indicated that the requirements of § 615.5220(a)(3) often result in burden on System institutions' boards because they must estimate the number of these equities necessary in the future. They point out that since these types of equities do not dilute a System institution's shareholder equity, the bylaws should not be required to specify the number authorized.

C. Technical Change

Currently § 615.5250(c)(2) regarding disclosure statements for issuance of stock contains a typographical reference error. The correct reference is to paragraph § 615.5250(c)(1) rather than § 615.5250(d)(1).

III. Analysis of Proposed Changes by Section

A. Section 611.1135

We are proposing to amend § 611.1135 to allow service corporations formed by System banks or associations to issue equity to persons or entities who are not System institutions. We propose that non-voting stock may be issued in unlimited amounts as long as the issuance is consistent with the service corporation's bylaws. We are proposing a limit, however, on the amount of voting stock that can be issued to non-System persons.

We believe that as federally chartered instrumentalities, System institutions should control their service corporations because they are also federally chartered instrumentalities. Therefore, we are proposing that System institutions hold at least 80 percent of the voting stock of their service corporations at all times. We considered various other percentages in deciding what voting stock control percentage to propose. However, we arrived at this proposed percentage for the following reasons:

• An 80 percent voting stock requirement, rather than a simple majority, provides more assurance of System control even when not all System stockholders vote in the same manner.

• It is consistent with voting stock control requirements in § 611.1137, which pertain to service corporations that act as agricultural mortgage marketing facilities.

• Control of a service corporation or subsidiary is also consistent with other banking laws governing non-System service corporations and operating subsidiaries.[3]

We seek your comments on the voting stock control requirement and the appropriate amount of System control that also provides adequate flexibility and usefulness of service corporations.

Congress originally provided authority for formation of corporate subsidiaries in 1980. Congress wanted System institutions to be able to develop the most efficient and effective means for delivery of services to borrowers and other System entities.[4] We have noted that in recent years there has been an increase in System institutions forming alliances to offer a variety of services to their borrowers. This proposed rule will allow System institutions, for example, to purchase an existing service entity and charter it as a service corporation under the Act as a means of offering a new service. This rule would permit the existing service provider to retain an ownership interest.

We are further proposing that service corporations must provide adequate disclosure when issuing stock to persons other than System institutions. The proposed regulations would apply the requirements of § 615.5250(c) and (d) to such stock issuances.

B. Section 611.1137

We are proposing to amend § 611.1137, which allows service corporations to be organized to act as agricultural mortgage marketing facilities by selling loans in the secondary market. We are proposing that these service corporations that issue stock to non-System persons provide adequate disclosures pursuant to the disclosure requirements in § 615.5250(c) and (d).

Section 611.1137 requires that System institutions hold at least 80 percent of the voting stock of their title VIII service corporations at all times. We seek your comments on the voting stock control requirement and the appropriate System control amount that also provides adequate flexibility and usefulness of title VIII service corporations.

While amending §§ 611.1135 and 611.1137, we are taking the opportunity to write them in plain language using a question and answer format. Additionally, we are writing § 611.1136 in plain language. That section pertains to our regulation and examination of

[1] On November 18, 1998, we extended the comment period to January 19, 1999. *See* 63 FR 64013 (Nov. 18, 1998).

[2] There are two current exceptions to this requirement: (1) Stock that is required to be purchased when obtaining a loan; and (2) non-voting stock that is converted from voting stock after the repayment of a loan.

[3] Under the Bank Services Company Act, all of the stock of a bank service company must be owned by one or more insured banks. 12 U.S.C. 1861(b). Federal savings associations may also invest in service corporations only if 100 percent of the corporation's stock is held by other savings associations having offices in the same state. 12 U.S.C. 1464(b)(4)(B). A national bank may establish or acquire an operating subsidiary as long as the parent bank owns more than 50 percent of the voting stock or the parent bank controls the subsidiary and no other party owns more than 50 percent of the voting stock. 12 CFR 5.34. A Federal savings association can have an operating subsidiary as long as the association owns more than 50 percent of the voting shares and no other person exercises effective operating control. 12 CFR 559.2. In addition, pursuant to 12 U.S.C. 1841, which defines terms in connection with bank holding companies, a company has control over a bank or other entity if the company has power to vote 25 percent or more of any class of voting stock.

[4] *See* H.R. Rep. No. 1287, 96th Cong., 2nd Sess., 23 (1980).

incorporated service corporations and unincorporated service organizations.

C. Section 615.5220

We are proposing to amend § 615.5220(a)(3) to allow System institutions to adopt bylaws that provide for issuance of certain equities in unlimited amounts. Current law requires that bylaws, approved by voting shareholders, set forth the number of each class of equities that can be issued, with two exceptions. Those equities that can be issued in unlimited amounts are:

- Equities required to be purchased as a condition of obtaining a loan; and
- Non-voting stock that results when voting stock is converted after the repayment of a loan.

We are proposing to also allow bylaws to provide for the issuance of unlimited amounts of:

- Non-voting stock that an association issues to its funding bank in exchange for the bank transferring capital pursuant to § 615.5171; and
- Equities that institutions provide to borrowers for the sole purpose of distributing that institution's earnings.

We are proposing this change to assure timely transfers of capital to an association as well as the flexibility for the efficient distribution of an institution's earnings. This proposal will not dilute a shareholder's voting rights in an institution or affect a shareholder's preference in the event of an institution liquidation. Any issuance of preferred stock would still require that all shareholders affected by the preference vote on the issuance as described in § 615.5230(b)(1). We note that this proposal does not prevent System institutions' boards and shareholders from stipulating in their institutions' bylaws the amount of capital that may be transferred and earnings distribution equities authorized to be issued.

List of Subjects in 12 CFR Parts 611 and 615

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

For the reasons stated in the preamble, we propose to amend parts 611 and 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Revise subpart I to read as follows:

Subpart I—Service Organizations

Sec.

611.1135 Incorporation of service corporations.
611.1136 Regulation and examination of service organizations.
611.1137 Title VIII service corporations.

Subpart I—Service Organizations

§ 611.1135 Incorporation of service corporations.

(a) *What is the process for chartering a service corporation?* A Farm Credit bank or association (you or your) may organize a corporation with other Farm Credit banks or associations to perform, for you or on your behalf, any function or service that you are authorized to perform under the Act and Farm Credit Administration (we, us, or our) regulations, with two exceptions. Those exceptions are that your corporation may not extend credit or sell insurance services. To organize a service corporation, you must submit an application to us following the applicable requirements of paragraph (c) of this section. If what you propose in your application meets the requirements of the Act, our regulations, and any other conditions we may impose, we may issue a charter for your service corporation making it a federally chartered instrumentality of the United States. Your service corporation will be subject to examination, supervision, and regulation by us.

(b) *Who may own equities in your service corporation?* All Farm Credit banks and associations are eligible to become stockholders in your service corporation. Your service corporation may also issue non-voting and voting stock to persons that are not Farm Credit institutions, provided that at least 80 percent of the voting stock is at all times held by Farm Credit institutions. For the purposes of this subpart, we define persons as individuals or legal entities organized under the laws of the United States or any State or territory thereof.

(c) *What must be included in your application to form a service corporation?* Your application for a corporate charter must include:

(1) The certified resolution of the board of each organizing bank or association authorizing the incorporation;

(2) A request signed by the president(s) of the organizing bank(s) or association(s) to us to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity; and

(3) The proposed articles of incorporation addressing, at a minimum, the following:

(i) The name of your corporation;

(ii) The city and State where the principal offices of your corporation are to be located;

(iii) The general purposes for the formation of your corporation;

(iv) The general powers of your corporation;

(v) The procedures for a Farm Credit bank or association or persons that are not Farm Credit institutions to become a stockholder;

(vi) The procedures to adopt and amend your corporation's bylaws;

(vii) The title, par value, voting and other rights, and authorized amount of each class of stock that your corporation will issue and the procedures to retire each class;

(viii) The notice and quorum requirement for a meeting of shareholders, and the vote required for shareholder action on various matters;

(ix) The procedures and shareholder voting requirements for the merger, voluntary liquidation, or dissolution of your corporation or the distribution of corporate assets;

(x) The standards and procedures for the application and distribution of your corporation's earnings; and

(xi) The length of time your corporation will exist.

(4) The proposed bylaws, which must include the provisions required by § 615.5220(b) of this chapter;

(5) A statement of the proposed amounts and sources of capitalization and operating funds;

(6) Any agreements between the organizing banks and associations relating to the organization or the operation of the corporation; and

(7) Any other supporting documentation that we may request.

(d) *What will we do with your application?* If we approve your completed application, we will issue a charter for your service corporation as a corporate body and a federally chartered instrumentality. We may condition the issuance of a charter, including imposing minimum capital requirements, as we deem appropriate. For good cause, we may deny your application.

(e) *Once your service corporation is formed, how are its articles of incorporation amended?* Your service corporation's articles of incorporation may be amended in either of two ways:

(1) The board of directors of the corporation may request that we amend

the articles of incorporation by sending us a certified resolution of the board of directors of the service corporation and stating:

(i) The section(s) to be amended;

(ii) The reason(s) for the amendment;

(iii) The language of the articles of incorporation provision, as amended; and

(iv) That the requisite shareholder approval has been obtained. The request will be subject to our approval as stated in paragraphs (a) and (c) of this section.

(2) We may at any time make any changes in the articles of incorporation of your service corporation that are necessary and appropriate for the accomplishment of the purposes of the Act.

(f) *When your service corporation issues equities, what are the disclosure requirements?* Your service corporation must provide the disclosures described in § 615.5250(c) and (d) of this chapter.

§ 611.1136 Regulation and examination of service organizations.

(a) *What regulations apply to a service organization?* Because a service organization is formed by banks and associations, it is subject to applicable Farm Credit Administration (we, our) regulations.

(b) *Who examines a service organization?* We examine service organizations.

(c) *What types of service organizations are subject to our regulations and examination?* Incorporated service corporations and unincorporated service organizations formed by banks and associations are subject to our regulations and examination.

§ 611.1137 Title VIII service corporations.

(a) *What is a title VIII service corporation?* A title VIII service corporation is a service corporation organized for the purpose of exercising the authorities granted under title VIII of the Act to act as an agricultural mortgage marketing facility.

(b) *How do I form a title VIII service corporation?* A title VIII service corporation is formed and regulated in the same manner as a service corporation formed under § 611.1135, with one exception. The Federal Agricultural Mortgage Corporation or its affiliates may not form or own stock in a title VIII service corporation.

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

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

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

Subpart I—Issuances of Equities

5. Amend § 615.5220 by revising paragraph (a)(3) to read as follows:

§ 615.5220 Capitalization bylaws.

* * * * *

(a) * * *

(3) The number of shares and par value of equities authorized to be issued for each class of equities. However, the bylaws need not state a limit for these equities:

(i) Equities that are required to be purchased as a condition of obtaining a loan.

(ii) Non-voting stock resulting from the conversion of voting stock due to repayment of a loan.

(iii) Non-voting equities that are issued to an association's funding bank in conjunction with any agreement for a transfer of capital between the association and the bank.

(iv) Equities issued solely for the purpose of distributing an institution's earnings.

* * * * *

§ 615.5250 [Amended]

6. Amend § 615.5250(c)(2) by removing the reference to ''(d)(1)'' and adding in its place, the reference ''(c)(1)''.

Dated: December 16, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–33104 Filed 12–22–99; 8:45 am]

BILLING CODE 6705–01–P

POSTAL SERVICE

39 CFR Part 111

Loading Requirements for PVDS Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is seeking comments on a proposed revision to the Domestic Mail Manual to require that if Periodicals mail is on the same vehicle as Standard Mail prepared for Plant Verified Drop Shipment (PVDS), then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

DATES: Comments must be received on or before January 24, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2405. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC 20260–1540 between 9 a.m. and 4 p.m., Monday through Friday. Photocopies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, (202) 268–6351 or Anne Emmerth, (202) 268–2363.

SUPPLEMENTARY INFORMATION: The Postal Service has been working closely with the National Mailers Technical Advisory Committee (MTAC) Periodicals Service Improvement Team to resolve service issues related to the processing and delivery of Periodicals mail. One item discussed in these meetings was the proper positioning of Periodicals mail in vehicles when it is part of a mixed load (*i.e.,* loaded in the same vehicle as Standard Mail) for destination entry. For service reasons, the Postal Service generally handles Periodicals mail before Standard Mail. Some members of the National Periodicals Service Improvement Team were in favor of adding a requirement mandating that, for vehicles containing both Standard Mail and Periodicals mail prepared for destination entry, the Periodicals mail be loaded toward the tail of the vehicle to allow the Periodicals mail to be offloaded first. This could improve service and also allow the Postal Service to more readily track the arrival and unloading of the Periodicals mail. This issue was also recently discussed at a Periodicals Advisory Group (PAG) meeting, which consisted of both publishers and printers. The PAG also voiced a majority opinion in support of a policy that would require such loading of vehicles containing both Periodicals and Standard Mail.

In view of the support expressed by a number of Periodicals publishers and printers, the Postal Service is hereby soliciting comments on a proposed Domestic Mail Manual revision for PVDS mail to require that if Periodicals mail is on the same vehicle as Standard Mail, then the Periodicals mail must be loaded toward the tail of the vehicle so

that, for each destination entry, Periodicals mail can be offloaded first.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following revisions of the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

2.0 VERIFICATION

* * * * *

2.2 Mail Separation and Presentation

[Revise item 2.2c to read as follows:]

c. For destination entry of PVDS mail, if Periodicals mail is on the same vehicle as Standard Mail (A), then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

* * * * *

E652 Parcel Post

* * * * *

4.0 DEPOSIT

* * * * *

4.2 Mail Separation and Presentation

[Revise item 4.2e to read as follows:]

e. For destination entry of PVDS mail, if Periodicals mail is on the same vehicle as Parcel Post, then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

* * * * *

P750 Plant-Verified Drop Shipment (PVDS)

* * * * *

2.0 PROGRAM PARTICIPATION

* * * * *

[Amend 2.12 to add the following as the next to last sentence:]

2.12 Mailer Transport of PVDS

* * * If Periodicals mail is on the same vehicle as Standard Mail, then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first. * * *

[Amend 2.13 to add the following as the last sentence:]

2.13 Separation of PVDS Mailings

* * * If Periodicals mail is on the same vehicle as Standard Mail, then the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–33339 Filed 12–22–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 083–1083b; FRL–6511–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of approving certain portions of the SIP revisions submitted by the state of Missouri and as revisions to the part 70 (operating permits) program. These revisions established emission and service fees for 1997 and 1998 and clarify language regarding reporting requirements, emission calculations, and verification. In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant 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 action. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by January 24, 2000.

ADDRESSES: Comments may be mailed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 29, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–32759 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 503

[FRL–6513–3]

RIN 2040–AC25

Standards for the Use or Disposal of Sewage Sludge

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend management standards for sewage sludge by adding a numeric concentration limit for dioxin and dioxin-like compounds (''dioxins'') in sewage sludge that is applied to the land, and monitoring, record keeping and reporting requirements for dioxins in sewage sludge that is land applied. Today's action also presents the results of risk assessments for dioxins in sewage sludge that is applied to the land, placed in surface disposal units, or incinerated. Based on these risk assessments, the Agency is not proposing additional numeric standards or management practice requirements

for dioxins in sewage sludge that is placed in surface disposal units or incinerated.

EPA is proposing a standard for dioxins in sewage sludge that is applied to the land in order to protect public health and the environment from unreasonable risks of exposure to dioxins. The Agency's risk assessment for land application of sewage sludge estimates that sewage sludge with concentrations of dioxins above the proposed limit may present an unreasonable cancer risk to specific highly exposed individuals. The purpose of this standard would be to prohibit land application of sewage sludge containing concentrations of dioxins above the limit, and thereby protect the health of highly exposed individuals as well as the health of the general population.

We are also proposing to exclude from the proposed numeric limit and monitoring requirements treatment works with a flow rate equal to or less than one million gallons per day and certain sludge-only entities that receive sewage sludge for further processing prior to land application. This exclusion is based on the relatively small amount of sewage sludge that is prepared by these facilities and entities and, therefore, the low probability that land application of these materials could significantly increase risk from dioxins to human health or the environment.

Finally, we are proposing technical amendments to the frequency of monitoring requirements. These amendments are intended to clarify but, with one exception, not alter the monitoring schedule in the existing sludge rule. The one exception would require preparers of material derived from sewage sludge to determine the appropriate monitoring schedule based on quantity of material derived rather than quantity of sewage sludge received for processing.

DATES: Comments must be received or postmarked on or before midnight February 22, 2000.

ADDRESSES: Written comments and enclosures should be mailed or hand-delivered to: Part 503 Sewage Sludge Use or Disposal Rule; Docket Number W–99–18, Comment Clerk, Water Docket MC–4101, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments may also be submitted electronically to *OW-Docket@epamail.epa.gov.* For additional information see Additional Docket Information section below.

FOR FURTHER INFORMATION CONTACT: Arleen Plunkett, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304), 401 M Street, SW, Washington, DC 20460. (202) 260–3418.

SUPPLEMENTARY INFORMATION:

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II Additional Docket Information
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2. Key Assumptions for the Surface Disposal Risk Assessment
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VI. Other Options that EPA Considered
A. Numeric Standards for All Use or Disposal Practices
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VII. Request for Public Comments
VIII. Regulatory Assessment Requirements
A. Executive Order 12866, Regulatory Planning and Review
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E. Executive Order 13132, Federalism
F. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. National Technology Transfer and Advancement Act
X. List of References

I. Regulated Entities

Entities potentially regulated by this proposed action are those that prepare sewage sludge and/or use or dispose of the sewage sludge through application to the land. Regulated categories and entities include:

Category	Examples of regulated entities
State/Local/Tribal Government	Publicly owned treatment works and other treatment works that treat domestic sewage, that prepare sewage sludge and/or apply sewage sludge to the land.
Federal Government	Federal Agencies with treatment works that treat domestic sewage, that prepare sewage sludge and/or apply sewage sludge to the land.
Industry	Privately-owned treatment works that treat domestic sewage, and persons who receive sewage sludge and change the quality of the sewage sludge before it is used or disposed.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or company is regulated by this action, you should carefully examine the applicability criteria in §§ 503.1 and 503.10 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Additional Docket Information

The record for this rulemaking has been established under docket number W–99–18 and includes supporting documentation as well as the printed paper versions of electronic materials. When submitting written comments to the Water Docket, (see **ADDRESSES** section above) please reference docket number W–99–18 and submit an original and three copies of your comments and enclosures (including references). For an acknowledgment that we have received your information, please include a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes). Comments may also be submitted electronically to: *ow-docket@epamail.epa.gov.* Electronic comments must be submitted as an ASCII, WP5.1, WP6.1or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by docket number W–99–18. Comments and data will also be accepted on discs in WP5.1, WP6.1, WP8, or ASCII file format. To ensure that EPA can read, understand, and, therefore, properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commentors should use a separate paragraph for each issue.

The record is available for inspection from 9:00 am to 4:00 pm Eastern Standard or Daylight time, Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, please call 202–260–3027 to schedule an appointment.

For information on the existing rule in 40 CFR Part 503, you may obtain a copy of A Plain English Guide to the EPA Part 503 Biosolids Rule on the Internet at *http://www.epa.gov/owm/bio.htm* or request the document (EPA publication number EPA/832/R–93/003) from: Municipal Technology Branch, Office of Wastewater Management (4204), Office of Water, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

III. Legal Background

A. Legal Authority Under Which EPA Is Proposing To Take Action

EPA is proposing regulatory amendments to 40 CFR part 503 under section 405(d) and (e) of the Clean Water Act (CWA), 33 U.S.C. 1345(d), (e). In 1987, Congress amended section 405 and, for the first time, set forth a comprehensive program for reducing the potential environmental risks and maximizing the beneficial use of sewage sludge. As amended, section 405(d) of the CWA requires us to establish numeric limits and management practices that protect public health and the environment from the reasonably anticipated adverse effects of toxic pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge from a publicly owned treatment works (POTW) or other treatment works treating domestic sewage through any use or disposal practice for which regulations have been established pursuant to section 405 except in compliance with the section 405 regulations.

Amended section 405(d) also established a timetable for the development of the sewage sludge use or disposal regulations. H. Rep. No. 1004, 99th Cong. 2d. Sess. 158 (1986). Section 405(d) calls for two rounds of sewage sludge regulations. The first round required EPA to establish numeric limits and management practices for toxic pollutants we identified which, based on ''available information on their toxicity, persistence, concentration, mobility, or potential for exposure may be present in sewage sludge in concentrations which may adversely affect public health or the environment.'' CWA section 405(d)(2)(A). The second round concerns toxic pollutants not regulated in the first round ''which may adversely affect public health or the environment.'' CWA Section 405(d)(2)(B).

EPA did not meet the timetable in section 405(d) for promulgating the first round of regulations, and a citizen's suit was filed to require EPA to fulfill this mandate. (*Gearhart* v. *Browner*, Civ. No. 89–6266–HO (D. Ore.)). In accordance with the consent decree entered by the court in this case, EPA promulgated the first round of sewage sludge regulations, 40 CFR Part 503. 58 FR 9248 (Feb. 19, 1993) (''Round One''). The consent decree also established a schedule for identifying additional toxic pollutants in sewage sludge and completing the second round of regulation under section 405(d)(2)(B) (''Round Two''). First, in May 1993, EPA identified 31 pollutants not regulated in Round One that we were considering for regulation. In November 1995, EPA notified the court that it was revising the original list of 31 pollutants and considering two pollutant groups for the second round: polychlorinated dibenzo-p-dioxins/dibenzofurans (PCDD/F) and dioxin-like coplanar polychlorinated biphenyls (PCBs). Under the consent decree as modified by court order signed January 5, 1994, the Administrator is required to sign a notice for publication proposing such regulations no later than December 15, 1999, and to sign a notice taking final action on the proposal no later than December 15, 2001.

B. Prior Regulation of Sewage Sludge Use or Disposal Under the Clean Water Act

As noted above, CWA section 405(d)(2)(A) required the first round of regulation to be based on ''available information on [the] toxicity, persistence, concentration, mobility, or potential for exposure'' of toxic pollutants in sewage sludge. After extensive consultation, EPA initially selected a list of some 50 pollutants to analyze. We then collected available data on those pollutants and developed further information on their toxicity, persistence, means of transport, and environmental fate. For 40 pollutants, we also developed preliminary information on the relative frequency of concentration by analyzing their concentrations in the sewage sludge of 43 to 45 POTWs in 40 cities, which we presented in the report Fate of Priority Pollutants in Publicly Owned Treatment Works (the ''40 Cities Study''). Based on this information and a screening assessment to determine whether any or all of the pollutants may adversely affect human health or the environment, we sorted the pollutants into three groups: (1) those which did not exceed a human health or environmental criterion at the highest concentrations shown in the 40 Cities Study; (2) those for which we lacked sufficient data, and (3) those which warranted further risk analysis for possible regulation under section 405(d)(2)(A) (58 FR 9263–9265).

For the final Round One regulation, we conducted a National Sewage Sludge Survey (NSSS) (Notice of Data Availability, 55 FR 47210 (Nov. 9, 1990)) (USEPA, 1990). We gathered data from sewage sludge samples taken at 180 POTWs, as well as survey data from 475 public treatment facilities with at least secondary wastewater treatment. We designed the NSSS to produce national estimates of (1) concentrations of toxic pollutants in municipal sewage sludge, (2) sewage sludge generation and treatment processes, (3) sewage sludge use or disposal practices and alternative use or disposal practices, and (4) sewage sludge treatment and disposal costs. We analyzed the samples of sewage sludge for a total of 412 pollutants, including every organic, pesticide, dibenzofuran, dioxin and PCB analyte for which EPA had gas

chromatography and mass spectrometry (GC/MS) standards (58 FR 9268–9269).

EPA published the Round One standards (40 CFR part 503) on February 19, 1993. These regulations established requirements for the final use or disposal of sewage sludge under three circumstances:

- When it is applied to the land for a beneficial purpose, including use in home gardens;
- When it is placed in a surface disposal site, including sewage sludge-only landfills; and
- When it is incinerated.

For land application, Part 503 set numeric limits for nine heavy metals in sewage sludge; established operational standards to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction; and established management practices to restrict the application rate and placement of sewage sludge on the land. Regarding surface disposal, part 503 set numeric limits for three metals in sewage sludge, established requirements for the placement and management of a surface disposal site, and established operational standards to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction. For incineration in a sewage sludge incinerator (SSI), part 503 established limits for five pollutants in the sewage sludge fed to a SSI and adopted standards under the Clean Air Act for two additional pollutants. We also established performance standards for SSIs through an operational standard for total hydrocarbon or carbon monoxide emissions. Part 503 also allows disposal of sewage sludge in a municipal solid waste landfill in accordance with 40 CFR part 258. The final rule also requires some monitoring, record keeping and reporting. Standards apply to publicly- and privately-owned treatment works that generate or treat domestic sewage sludge and to anyone who uses or disposes of sewage sludge.

EPA has amended part 503 several times since its initial publication in February 1993. Following promulgation of the Round One rule, several petitions for review were filed challenging various aspects of the rule. In one petition, several mining and chemical concerns challenged the land application molybdenum limits. EPA amended Part 503 to delete the cumulative loading rate and pollutant concentration rate for molybdenum in sewage sludge to be land applied (59 FR 9095, Feb. 25, 1994). Also in that **Federal Register** notice, EPA added continuous monitoring of carbon monoxide as an alternative to continuous monitoring of total hydrocarbons in the sewage sludge incinerator requirements. In another case, *Leather Industries of America* v. *EPA*, 40 F.3d 392 (D.C. Cir. 1994), the court remanded several of the land application requirements. As a result of that decision, EPA deleted all numerical standards for chromium in sewage sludge to be land applied and adjusted the Table 3 limit for selenium. (60 FR 54764, Oct. 25, 1995). EPA is considering further amendments to address the issues remaining from the partial remand as well as other issues. EPA most recently amended part 503 to make a number of technical amendments, provide some regulatory flexibility, and make the sewage sludge incinerator standards self-implementing. (64 FR 42552, Aug. 4, 1999).

For a detailed discussion of the Part 503 Rule, see A Plain English Guide to the EPA Part 503 Biosolids Rule, which is available as stated in the **ADDRESSES** section of this preamble.

IV. Proposed Round Two Sewage Sludge Regulation

A. Selection of Dioxins for Round Two

Chlorinated dioxins are unintentional byproducts of certain manufacturing processes and incomplete combustion of organic waste. Dioxins are not created in the sewage treatment process; rather, treatment works concentrate those dioxins that enter the sewage treatment system from other sources. Dioxins present in the influent to a wastewater treatment works are partially concentrated in sewage sludge and partially discharged in the effluent. The few sewage treatment works that incinerate sewage sludge may generate small amounts of dioxins and coplanar PCBs during the process of combustion. Dioxins are biologically active organic compounds that cause a variety of health impacts on mammalian species, including humans, at very low and chronic doses. They are found in extremely small quantities in air, water and soil; however, they are persistent in the environment and bioaccumulate in the foodchain. (USEPA, 1994)

As described in Section III.B above, when EPA undertook the 40 Cities Study, we identified one group of pollutants, for which we lacked sufficient data. That group included polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans.

In the subsequent National Sewage Sludge Survey (NSSS) (EPA 1990), we obtained additional data, which we used to perform an initial statistical screening of 412 additional toxic pollutants detected in sewage sludge. We then reviewed the scientific literature for toxicity, fate, effect, and transport information for the pollutants identified in the initial screening. We decided what pollutants to consider for possible regulation by comparing the calculated levels associated with adverse effects to the actual level and occurrence data from the NSSS.

The screening yielded a list of 31 pollutants or pollutant groups to be considered for the future regulation. We then conducted a Comprehensive Hazard Identification Study (USEPA, 1996), a screening type analysis that included dose-response evaluation, exposure assessment, and risk characterization. Our goal for the study was to identify pollutants that, based on very conservative or worst case assumptions, might pose human health risks for a hypothetical individual with the greatest possible exposure through any of ten pathways. Based on this evaluation, we considered further assessment and possible regulation for dioxins/dibenzofurans and coplanar PCBs only.

B. Proposed Requirements for Sewage Sludge That Is Land Applied

1. Overview of Proposed Requirements

Today's action proposes to amend 40 CFR 503.8, 503.9, 503.10, 503.13, and 503.16 to prohibit land application of sewage sludge that contains greater than 300 parts per trillion (ppt) toxic equivalents (TEQ) of dioxins. This proposed numeric standard would be expressed as 0.0003 milligrams TEQ per kilogram dry sewage sludge in § 503.13(b)(1) and (b)(3), Tables 1 and 3. See Section V.B. below, for an explanation of the risk assessment and how EPA determined that a limit of 300 ppt TEQ dioxins in sewage sludge that is land applied is protective of public health and the environment.

We are proposing to define ''dioxins'' to mean 29 specific congeners of polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, and coplanar PCBs. Today's proposed rule also requires monitoring, record keeping, and reporting to ensure that this numeric limit (300 ppt TEQ) is met. The proposal specifies two analytical methods that would be used to analyze sewage sludge to determine the level of dioxins/dibenzofurans and coplanar PCBs in sewage sludge. The Agency is proposing two alternative monitoring schedules based on the level of dioxins measured in sewage sludge. EPA is also proposing to exclude from compliance with the standards for dioxins and the monitoring requirement, treatment works that treat domestic sewage and

that have a flow rate of one million gallons per day or less and certain small entities that derive material from sewage sludge received from sewage treatment works (''sludge-only entities''). These proposed provisions are discussed in detail in the following sections.

2. Definition of Dioxins

The proposal includes a definition of ''dioxins'' to specify the seven 2,3,7,8,-substituted congeners of polychlorinated dibenzo-p-dioxins (PCDDs), the ten 2,3,7,8-substituted congeners of polychlorinated dibenzofurans (PCDFs), and the twelve coplanar PCB congeners to which the numeric standard applies. The vast majority of information on the toxicity of dioxins relates to the congener 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). Animals exposed to 2,3,7,8–TCDD exhibit a variety of biological responses and adverse effects. These include both carcinogenic and non-carcinogenic effects. These effects are primarily classified as chronic effects and consequently they are generally associated with long term exposure over years and decades. Relatively speaking, these exposures and effects are observable at very low levels in the laboratory and in the environment when compared with other environmental toxicants (USEPA, 1994).

Studies to elucidate the mechanism of toxicity for 2,3,7,8–TCDD in mammalian species have indicated that the overall shape and chlorine substitution of this congener are keys to its biological potency. The fact that all of the lateral positions (the 2,3,7,8 positions) on the multi-ring system are substituted with chlorine and that the overall molecule assumes a flat or planar configuration apparently are essential factors that make this congener biologically active. Other congeners with a similar structure and chlorine substitution pattern are assumed to exhibit similar biological properties. These include the other six 2,3,7,8-chlorinated substituted dibenzo-p-dioxin congeners, the ten 2,3,7,8-chlorinated substituted dibenzofuran congeners and the 12 coplanar PCB congeners. Coplanar PCB congeners are those congeners with no more than one ortho position and both para positions substituted with chlorine in the biphenyl ring system and the molecule assumes a relatively planar (i.e. flat) configuration.

The 300 ppt TEQ numeric limit would apply to these 29 congeners in ppt TEQ or nanograms TEQ per kilogram of dry sewage sludge. The TEQ concentration is calculated by multiplying the concentration of each congener in the sewage sludge by its corresponding ''toxicity equivalent factor,'' or TEF, and then summing the resulting products from this calculation for all 29 congeners. The TEF schemes to be used are the International scheme described in USEPA, 1989, for the 17 2,3,7,8-substituted polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans and the World Health Organization's TEF scheme (Van den Berg, 1998) for the 12 coplanar PCBs. We invite comment on the this proposed definition of dioxins.

3. Analytical Methods

EPA is proposing two methods for analyzing dioxins in sewage sludge to be land applied. One method, EPA Method No. 1613, Revision B (1613B) would be required for monitoring for the seven dioxin and ten dibenzofuran congeners. EPA Method No. 1668 would be required for the 12 coplanar PCB congeners.

EPA proposes to use Method 1613, Revision B, ''Tetra-Through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS.'' Method 1613B is an approved test method (40 CFR part 136) for use in EPA's wastewater program for determining dioxins and furans. This test method is applicable to both aqueous and solid samples, but was fully validated through an interlaboratory study prior to its promulgation only for use in wastewater. Method 1613B has not been approved in part 136 for sewage sludge (62 FR 48394, Sept. 15, 1997).

EPA proposes to use Method 1668, ''Chlorinated Biphenyl Congeners in Water, Soil, Sediment, and Tissue by HRGC/HRMS.'' Method 1668 was developed by EPA to analyze coplaner PCBs in a variety of matrices, including sewage sludge. Method 1668 was validated in a single laboratory and tested in a second laboratory. These data were published in the draft method ''Toxic Poly-Chlorinated Biphenyls by Isotope Dilution High Resolution Gas Chromatography/High Resolution Mass Spectrometry,'' EPA–821–R–97–001, March 1997. EPA revised the original version of this method to address additional PCB congeners. Method 1668A is the state-of-the-art test method for the measurement of PCB congeners, including coplanar PCBs; however it is still in draft. Method 1668A was validated in a single laboratory and peer reviewed by 21 laboratories, including EPA's laboratory in Bay St. Louis, Mississippi. Although Method 1668A has not gone through a full interlaboratory validation study yet, EPA has used this test method in monitoring surveys. Both Method 1668 and 1668A are in the docket for this rulemaking. If EPA finalizes Method 1668A before EPA takes final action on this proposed rulemaking, then the final rule would require use of Method 1668A. However, because Method 1668A is not final at this time, EPA is proposing the original version of Method 1668 to be used to analyze coplanar PCBs in sewage sludge.

EPA requests public comment on the use of these two test methods for compliance with monitoring requirements for sewage sludge. EPA also specifically requests comment on the use of Method 1668A for coplanar PCBs.

4. Frequency of Monitoring Requirements

As stated above, EPA is proposing two alternative monitoring schedules based on the level of dioxins in sewage sludge to be land applied. According to existing information on the amounts of dioxins present in sewage sludge, levels can vary considerably from one source to another. However, we believe that the level of dioxins in sewage sludge, both nationally and from specific sources, is relatively constant over time and may possibly be decreasing (U.S. Conference of Mayors, 1999). This observation is derived from comparisons of dioxin concentrations found in the 1988 NSSS (USEPA, 1990) and the more recent Association of Metropolitan Sewerage Agencies (AMSA) survey (Green, et. al., 1995), together with anecdotal information from several locations.

We therefore believe it is appropriate to establish two monitoring schedules for dioxins in § 503.16, depending upon the level of dioxins found in the initial two years of testing of the sewage sludge. Treatment works and other sewage sludge preparers (defined in § 503.9(r)) that find the level of dioxin in their sewage sludge to be between 300 ppt TEQ and 30 ppt TEQ would be required to monitor annually. Treatment works and sludge preparers that measure dioxin levels of 30 ppt TEQ or less for two consecutive years would be required to monitor every five years thereafter.

We selected 30 ppt TEQ as the level to allow less frequent monitoring since it is a full order of magnitude less than the proposed numeric standard of 300 ppt TEQ (*i.e.*, one-tenth). Given the observed trends described above, we believe it is unlikely that sewage sludge with 30 ppt TEQ or less will exceed the 300 ppt TEQ limit. This observation is consistent with: (1) our assumption that dioxins primarily enter sewage treatment facilities from diffuse background sources which inherently are less subject to short-term spikes in

pollutant levels than point sources, and (2) a significant measured reduction in air emissions of dioxins, which are the principal contributors to these diffuse sources, according the Agency's United States Dioxin Inventory (USEPA, 1998). Furthermore, any health risks associated with dioxin exposure from land application of sewage sludge would not be significantly affected over a short period of time such as five years, but rather would require long-term exposure at these levels to potentially present unreasonable health risks. For these reasons we believe a five-year monitoring frequency is appropriate for sewage sludge which was last measured at or below 30 ppt TEQ. We are specifically requesting comments and additional data on the validity of our assumptions concerning rates and degree of changes in levels of dioxins in sewage sludge and the reasonableness of the proposed monitoring schedule.

A treatment works or other person who prepares sewage sludge for land application would be able to switch to the reduced monitoring schedule if tests show that its sewage sludge contained 30 ppt TEQ or less in two consecutive annual tests. We believe that two consecutive annual tests are reasonable in order to ensure that the level of dioxins in the sewage sludge is consistently at or below the 30 ppt TEQ level. This is consistent with the existing provision in § 503.16(a)(2), which allows the permitting authority to reduce the frequency of monitoring after sewage sludge has been monitored for two years. We are proposing these frequency of monitoring requirements for dioxins to be in a new paragraph (a)(3) in § 503.16. We also specifically request comments on whether two consecutive years of monitoring results under 30 ppt TEQ should be required before allowing a reduced monitoring schedule.

We are also proposing to amend § 503.16(a) to clarify, but not alter, existing frequency of monitoring requirements. We propose to separate the existing requirements contained in § 503.16(a)(1) into two paragraphs, (a)(1) and (a)(2). Paragraph (a)(1) would contain the requirements for monitoring concentrations of pollutants except dioxins, and paragraph (a)(2) would contain the requirements for monitoring compliance with pathogen reduction and vector attraction reduction requirements. Existing § 503.16(a)(2) would be renumbered as § 503.16(a)(4), but would be otherwise unchanged. These amendments are solely for the purpose of clarity and for expressing existing regulatory requirements in plain language, and they are not intended to reopen these requirements for comment. We invite comment on whether these proposed amendments unintentionally change the substance of the frequency of monitoring provisions currently in § 503.16(a)(1).

Finally, we are proposing to amend footnote 1 to Table 1 in § 503.16. Currently this footnote states that a person who prepares material derived from sewage sludge received from another preparer must determine the frequency of monitoring based on the quantity of sewage sludge received. Sewage sludge is often mixed with other materials to produce the material derived from sewage sludge that is ultimately applied to the land. We believe that the frequency of monitoring should be based on the quantity of product that is actually applied to the land. We therefore propose to amend the footnote to Table 1 to require the monitoring schedule to be based on the amount of sewage sludge or material derived from sewage sludge to be land applied.

5. Small Preparer Exclusion

We are proposing in today's action to exclude from the proposed requirements relating to dioxins, sewage treatment works with a wastewater flow of one million gallons per day (MGD) or less and sludge-only entities which prepare 290 dry metric tons or less of sewage sludge annually for land application. We estimate that a one MGD treatment works produces approximately 290 dry metric tons of sewage sludge annually. Sewage sludge from these small preparers would be excluded from the limitation on dioxins in sewage sludge; thus these small preparers would not be required to monitor for dioxins. Such preparers could continue to land apply their sewage sludge with no further restriction due to the sludge's dioxin content. Septage pumpers and haulers would also not be required to comply with the limitation on dioxins and the associated monitoring requirements. (See 58 FR 9362 for a discussion of requirements applicable to septage haulers and under part 503.)

We believe that this exclusion is appropriate for several reasons. First, the vast majority of land-applied sewage sludge is produced by sewage treatment works with flow rates higher than one MGD. According to the 1988 NSSS, treatment works with flow rates of one MGD or less produce only 135,911 dry metric tons of sewage sludge annually for land application, or less than eight percent of the total sewage sludge that is land applied on an annual basis. Of the amount of land applied sewage sludge produced by those small treatment works, we estimate approximately 6800 dry metric tons (5%) contained in excess of the 254 ppt TEQ PCDD and PCDF. This estimate is based on PCDD and PCDF only since the NSSS did not measure coplanar PCBs. Our data indicates that sewage sludge containing 300 ppt TEQ dioxins typically would have 254 ppt TEQ PCDD and PCDF (USEPA, 1990; Green, *et al.,* 1995). Second, the probability that this small amount of sewage sludge (*i.e.,* 42 dry metric tons per facility annually) could unreasonably increase health risks for any individual is extremely small. As further explained in Section V.B. of this preamble, the risk assessment assumes a much greater amount of sewage sludge is applied to the same piece of land over a long period of time. At this much higher application rate, the risk assessment estimates unacceptable increase in cancer risk only to ''high-end'' receptors. We have, therefore, concluded that the amounts of land-applied sewage sludge with dioxins in excess of 300 ppt TEQ produced by a treatment works with a flow rate of one MGD or less or by small sludge-only entities does not pose an unreasonable risk. We request comment on our proposal to exclude small preparers from the limit for dioxins in sewage sludge to be land applied. We specifically invite comment on our proposal to exclude small entities which receive and further process sewage sludge prior to land application. We also specifically invite comment on how we propose to define such small entities.

We are, however, reserving the option of requiring initial monitoring and applying the limit for dioxins for small preparers (treatment works and sludge-only entities) which land apply sewage sludge. We are requesting information on the dioxin content and land application practices (e.g., annual application rates, numbers and sizes of sites and the number of applications per site) for sewage sludge from treatment works with a flow rate of one MGD or less. We specifically invite public comment on whether the Agency should promulgate such a requirement.

We are also proposing to exempt septage pumpers and haulers from the proposed limit for dioxins. Septage pumpers and haulers are generally small businesses. A typical septage pumper and hauler removes between 500 and 1,000 gallons of septage from a residential septic or holding tank once every three to five years. The typical maximum capacity of a septic tanker that is hauling septage for land application is between 2,000 and 4,000

gallons. The solids content of septage is less than five percent. Using the same reasoning as that for sewage treatment works with flows of one MGD or less, the maximum amount of septage solids that could be land applied on any given area of land on an annual basis would be small. Even if this septage contained in excess of 300 ppt TEQ dioxins on a dry matter basis, the quantity of dioxins being land applied would be insignificant.

C. Proposal for Sewage Sludge That Is Placed in a Surface Disposal Unit or Incinerated in a Sewage Sludge Incinerator

EPA is proposing to take no action to regulate current surface disposal or incineration practices for dioxins. As explained below in Sections V.C. and D., we do not predict an unreasonable risk of adverse effects to human health from cancer as a consequence of either placement in a surface disposal unit or incineration in a sewage sludge incinerator. Therefore, no additional numeric limit or operational standard or monitoring is being proposed for part 503, subparts C and E. We invite comment on proposing no action to regulate dioxins in sewage sludge that is placed in a surface disposal unit or incinerated in a sewage sludge incinerator.

D. Estimate of Costs

The increased costs which would be imposed by this proposed regulation are the costs for initially monitoring for dioxins by all land applying treatment works greater than one MGD, annual monitoring at those facilities with dioxin levels between 30 ppt TEQ and 300 ppt TEQ, and switching to co-disposal with municipal solid waste for current land appliers whose sewage sludge contains over 300 ppt TEQ of dioxins. We assume that the cost of measuring dioxins in sewage sludge is $2000 per sample and the cost to switch to co-disposal with municipal solid waste is $189 per dry metric ton in 1998 dollars. We estimate that the annualized cost of this regulation nationwide would be approximately $18 million. Of this amount, 13 percent is for monitoring, and the balance is for switching use or disposal practices.

The permitting authority, whether Federal or State, should not accrue any significant permitting burden as a result of these proposed part 503 amendments. The part 503 standards were designed to be self implementing and independently enforceable in the absence of a Federal permit. These proposed amendments merely add an additional numerical standard to the original part 503 rule which was promulgated in 1993.

V. Risk Assessment Methodologies and Results

A. Approach and Assumptions in EPA's Risk Assessments for Exposure to Dioxins Resulting from Sewage Sludge Use or Disposal Practices

The four steps of the risk assessment process include hazard identification, dose-response assessment, exposure assessment, and risk characterization. We conducted risk assessments for land application of sewage sludge, surface disposal of sewage sludge, and incineration of sewage sludge in a sewage sludge incinerator. All three risk assessments used the same hazard identification and dose-response data and assumptions. However, the risk assessments examined different exposure pathways and have different risk characterizations. The following presents an overview of the approach used for these risk analyses and a general description of the assumptions common to all three risk assessments.

Today's proposal is based on assessments of the risks to human health posed by dioxins that might be in sewage sludge or sewage sludge incinerator emissions using a deterministic risk analysis. A deterministic risk analysis produces a point estimate of risk or hazard for each person based on using a single value for each parameter in the analysis. A parameter is any one of a number of inputs or variables, such as soil to plant dioxin uptake coefficients, required for the fate and transport and exposure models and equations that EPA uses to assess risk. In some cases EPA selects a single set of multiple parameters for the purpose of conducting our analyses. We do this to prevent inadvertently combining parameters in our analyses in ways that are unrealistic. For example, EPA treats environmental setting (location) parameters such as climate, depth to groundwater, and aquifer type as a single set of parameters. We believe that, for example, allowing the climate from one location to be paired with the depth to groundwater for another location could result in a scenario that would not occur in nature.

EPA conducts both ''central tendency'' and ''high end'' deterministic risk assessments to attempt to quantify the potential cancer risk for the ''average'' person in the population (the central tendency risk) and the risk or hazard for individuals in small, but definable ''high end'' segments of the population (the high end risk). For central tendency deterministic risk analyses, we set all parameters at their central tendency values. For the sewage sludge risk assessments, the central tendency values generally are either mean (average) or 50th percentile (median) values.

We use high end deterministic risk analysis to estimate potential risks and hazards for those individuals exposed at the upper range of the distribution of exposures. EPA's Guidance For Risk Characterization (USEPA, 1995) advises that ''conceptually, high end exposure means exposure above about the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest exposure,'' and recommends that ''the assessor should approach estimating high end by identifying the most sensitive variables and using high end values for a subset of these variables, leaving others at their central values.'' For the sewage sludge high end deterministic risk analyses, EPA used exposure pathways that we consider to represent how people may encounter the most potential exposure to dioxin; chose the 95th percentile concentration (USEPA, 1999e) of dioxins in sewage sludge and the highest dioxin emitting incinerators; and used one other high end exposure factor from the Agency's Exposure Factors Handbook (USEPA, 1997) to perform a conservative public health analysis.

The hazard identified for these risk assessments is cancer as a human health endpoint from the compounds assessed. We took into account the impacts on human cancer risk nationwide. We examined the cancer toxicity of 2,3,7,8-TCDD and estimated several dose-response relationships for this congener (USEPA, 1994). The toxicity of the other congeners included in the current risk assessment are expressed in relation to the cancer toxicity of 2,3,7,8-TCDD using guidance we published (USEPA, 1989) and from information published in the scientific literature (Van den Berg, *et. al.,* 1998).

Regarding exposure pathways, our evaluation of land application considered, among other things, risks of human exposure to dioxins through (a) inhaling or ingesting soil fertilized with sewage sludge, (b) eating crops grown on this soil or animal products from livestock grazed on this soil, and (c) ingesting ground or surface water or edible aquatic organisms contaminated as a result of applying sewage sludge to land. For surface disposal of sewage sludge, we evaluated the human health risks associated with drinking ground water contaminated by dioxins or breathing air affected by volatilized dioxins. For incineration in a sewage

sludge incinerator, we evaluated human exposure to dioxins directly through inhalation of gases and particles in the emissions from sewage sludge incinerators and indirectly by consumption of crops and animal products produced on agricultural lands and home gardens affected by the deposition of particles from sewage sludge incinerator emissions. We were unable to assess the ecological effects for any of the practices due to the scarcity of relevant information and evaluation methods.

As indicated above, we attempted to assess the risk both for average exposed individuals (AEI) in the population and high end exposed individuals (HEI) in the population. In these analyses for the hypothetical AEI, average values were used for all parameters to capture average risk. For the hypothetical HEI, no more than two high end values for exposure variables, such as ingestion rates and inhalation rates, were used in the assessment to estimate high end risk. These values were obtained in large part from EPA's Exposure Factors Handbook (USEPA, 1997).

You will find below descriptions of routes of exposure (called the exposure pathways) through land application, surface disposal, and incineration of sewage sludge that we assessed. We then calculated risks associated with these pathways by comparing exposures with dose-response information for the pollutants. The Technical Support Documents for this rule making (USEPA, 1999b; USEPA, 1999c; USEPA, 1999d) contain more details on the final comprehensive exposure pathway analyses, including the modeling algorithms and default parameters as well as descriptions of major uncertainties and variability.

Agency experts reviewed the risk assessments used for land application and surface disposal. EPA will submit these risk assessments to an external peer review panel in accordance with the Agency's Peer Review Guidelines during the public comment period for this proposed rule. The risk assessment used for incineration was submitted to an external peer review panel in accordance with the Agency's Peer Review Guidelines. We will consider and address peer review comments and public comments on these risk assessments.

B. Description of Land Application Risk Assessment

We evaluated both agricultural and non-agricultural application sites associated with the land application pathways. Agricultural sites, which include rangeland and pasture, are land on which a food, feed, or fiber crop is grown. Non-agricultural sites include reclamation, public contact, and forest sites. The term ''reclamation sites,'' defined in 40 CFR 503.11(n), refers to drastically-disturbed land that is reclaimed using sewage sludge, including strip mines and construction sites. ''Public contact sites'' are those that people frequent where contact is likely. Examples of public contact sites are parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses (40 CFR 503.11(l)).

1. Land Application Exposure Pathways

We considered 15 exposure pathways for land application of sewage sludge. Five of these pathways were not evaluated since there was insufficient data. The pathways that were not evaluated included exposure and subsequent toxicity risks from ingestion of feedstuffs grown on sewage sludge-amended soils and fed to domesticated farm animals (animals commercially produced for human consumption), exposure and subsequent toxicity risks from incidental ingestion of sewage sludge-amended soils by domesticated farm animals during pasturing and grazing, phytotoxicity effects from dioxins in sewage sludge-amended soils, and exposure of soil macro organisms and their animal predators to dioxins from sewage sludge-amended soils. We invite public comment and any information regarding the exposure pathways not evaluated in the land application risk assessment.

Exposure pathways that we fully evaluated for exposure to dioxins from land application of sewage sludge include:

- Consumption of commercially grown crops by the general population
- Consumption of home-grown crops by home gardeners
- Incidental ingestion of sewage sludge-amended soil by children
- Consumption of locally produced meat and dairy products by families living outside urban areas (taking into account both forage fed to the animals and incidental ingestion of soil by the animals)
- Inhalation of dust from sewage sludge-amended soils by farm workers
- Consumption of groundwater, surface water, and aquatic organisms affected by leachate and runoff from sewage sludge-amended soil
- Inhalation of volatilized pollutants from sewage-sludge amended soil
- And ingestion of breast milk by infants in families living outside of urban areas

2. Key Assumptions for the Land Application Risk Assessment

As stated above, we evaluated pathways which represent ways in which people can be most exposed to dioxin, in combination with a concentration of 300 ppt TEQ of dioxins in sewage sludge and one other conservative exposure factor, to ensure a true high-end deterministic risk assessment. Some of the exposure factors for land application were more conservative than those used for similar incineration pathways. We did this because nationwide there are 145 known sewage treatment works with sewage sludge incinerators compared to an estimated 4,250 land application operations. We estimated the highest concentrations of dioxins for land applied sewage sludge from a statistically valid sampling of sewage sludge nationwide, while we were able to identify and directly monitor the highest dioxin emitting incinerators for this risk assessment.

For land application, we assumed that the highly exposed individual lives on the same site for 58 consecutive years. We also assumed that sewage sludge at the 95th percentile of concentration of dioxins of 300 ppt TEQ as estimated in the NSSS and in a data base from a survey conducted by the Association of Metropolitan Sewerage Agencies (AMSA) (Green, et. al., 1995) is applied to the land every other year for 100 years at the rate of 10 metric tons per hectare. We note that the AMSA survey analyzed for only four of the 12 twelve coplanar PCB congeners. However, three of these congeners typically dominate the coplanar PCB TEQ values in most environmental samples and are considered adequate for generalizing dioxin-like coplanar PCB risk in support of this proposed rule. For assessing risks from individual facilities and for complying with the provisions of this proposed rule, a full 12 congener coplanar PCB analysis is required.

The risk assessment also assumes that land-applied sewage sludge is incorporated into the soil to a depth of 15 centimeters. Our assumption is that incorporation into the soil occurs either mechanically at the time of application or ''naturally'' over time due primarily to the effects of weather and the activity of soil organisms such as worms and grubs. The pathways which are based on direct ingestion by grazing animals or humans assume that a sludge-soil mixture is ingested. The existing part 503 regulation requires a 30-day waiting period prior grazing animals after sludge application. We are requesting comment on whether we should require

mechanical incorporation of sewage sludge into the soil, whether 30 days is a sufficient waiting period to assure adequate natural incorporation into the soil, or whether the rule should require a longer waiting period.

Other key assumptions include the following:

- Crops grown on sewage sludge-amended soil are 2.5% of the lifetime diet for the general population.
- For a family living in a rural area, 10% of their beef diet, 10% of their beef liver diet, 10% of their lamb diet, and 3% of their dairy diet comes from local farms that raise animals on sewage sludge amended soils.
- Produce grown on sewage sludge-amended soil are 43% to 59% of a home gardener's diet.
- Children from ages 1–6 incidentally ingest 0.4 gram of sewage sludge-amended soil daily.
- People consume two liters of water and 39 grams of aquatic organisms daily from the same source over their lifetimes.
- The nursing period for infants is six months.

All of the assumptions for the land application risk assessment and the basis for these assumptions are described in the land application Technical Support Document (TSD) (USEPA, 1999b).

3. Land Application Risk Characterization

The risk assessment for the exposure pathways described above estimates high end risks. Given these conservative assumptions, the highest exposure pathways for the hypothetical highly exposed individuals for land application are rural families which consume products made from locally raised livestock that incidentally ingest sewage sludge-amended soil and nursing infants having breast milk from hypothetically highly exposed rural family mothers. The resulting high end estimate of cancer risk for any such person is 1.7 per 100,000 (1.7×10^{-5}), which is well within the Agency's range of acceptable risk of one in one million to one in ten thousand (1×10^{-6} to 1×10^{-4}). However, we estimate that a very small percentage of the sewage sludge produced nationwide may exceed 300 ppt TEQ dioxin. In order to ensure that any risks associated with land application of sewage sludge remain negligible, we propose to place a numeric limit of 300 ppt TEQ on the concentration of dioxins in sewage sludge which is land applied.

C. Description of Surface Disposal Risk Assessment

Sewage sludge surface disposal facilities are of two types: (1) monofill and (2) surface impoundment. The monofill is a sewage sludge-only trench fill receiving dewatered sludge with a solids content greater than 20%. The surface impoundment receives a continuous inflow of sewage sludge with a low solids content of between 2% and 5%. Both of these types of surface disposal facilities were subjected to the risk assessment for dioxins. The surface impoundment clearly offered the greater potential to emit dioxins to the environment and subsequently expose an individual to these pollutants. The results of the risk assessment with estimated incremental risks to the highly exposed individual are based, therefore, on the surface impoundment.

1. Surface Disposal Exposure Pathways

The only two possible exposure pathways to an HEI are volatilization of dioxins from the facility with subsequent inhalation of these pollutants and the leaching of dioxins to groundwater with subsequent consumption of this groundwater. Based on the required management practices of these facilities, there is an insignificant chance that dioxins would be released to surface waters even during extreme wet weather conditions. Food chain pathways which are critical in the land application risk assessment are not relevant.

2. Key Assumptions for the Surface Disposal Risk Assessment

The HEI for exposure to surface disposal facilities is a person who resides in immediate proximity (within 150 meters) to the site. We assumed that this person spends his/her entire life at this site. We also assumed that this person inhales outdoor air from this site 16 hours per day and indoor air from within his/her residence adjacent to this site for eight hours per day. We set water consumption at two liters per day of groundwater obtained within 150 meters from the edge of this site at an assumed depth to groundwater of one meter. We assumed moderately porous soils for the surface impoundment with no synthetic liner to retain leachate (USEPA, 1999a).

3. Surface Disposal Risk Characterization

The maximum incremental cancer risk to the HEI did not exceed one in ten million (1×10^{-7}) for either exposure pathway (USEPA, 1999b). Dioxins have extremely low volatility and would not be expected to offer significant exposure to the HEI through inhalation. Also, dioxins do not dissolve readily in water. Even in the absence of a liner, combined with high porosity soil and a short distance to ground waters as assumed in the risk assessment, only insignificant amounts of dioxins could ever reach the groundwater. For these reasons, we are proposing no action to regulate dioxins for sewage sludge surface disposal.

D. Description of Incineration Risk Assessment

We used four steps to estimate risks from firing sewage sludge in sewage sludge incinerators. First, we estimated the rate at which pollutants are emitted from incinerator stacks. Next, we estimated the movement of pollutants in air near incinerators, including how much pollutant plumes overlap. We then overlaid maps of expected ground-level concentrations of pollutants and human populations. Finally, we determined the extent and nature of resulting health risks of human exposure to emitted dioxins.

The last step was a multi-pathway risk assessment for exposure to dioxins that result from the firing of sewage sludge in a sewage sludge incinerator. The risk assessment estimated hypothetical average and high end risks to the highly exposed sub-populations of farmers and home gardeners. We evaluated the risk to the hypothetical highly-exposed individual who is exposed by both a direct route like inhalation and other routes through eating contaminated food. In addition, we conducted a probabilistic analysis of uncertainty for the home gardener and for the farmer to quantify uncertainty and estimate the range of calculated risks possible for the facilities modeled.

We considered multiple hearth units without afterburners to be the worst case technology for sewage sludge incineration and likely the highest emitters of dioxins and coplanar PCBs. To provide a high end to estimate of the risk from sewage sludge incineration, the analysis focused on the six highest emitting incinerators for dioxins/dibenzofurans and coplanar PCBs in the United States from an initial screen of 135 incinerators.

1. Incineration Exposure Pathways

The assessment considered, but did not evaluate, all 15 exposure pathways considered in the land application risk assessment. We evaluated those pathways expected to result in the highest risk estimates for which data were available. We selected two exposure scenarios to represent highly exposed sub-populations that reside

near sewage sludge incinerators: (1) beef and dairy farmers consuming, at recreational fisher levels, fish caught near sewage sludge incinerators, and (2) home gardeners consuming as a portion of their diet home-grown produce grown near a sewage sludge incinerator. For both scenarios, we estimated average and high end exposures for children and adults at locations where they are expected to reside. We used a geographical information system to identify land uses and terrain around facilities, to identify watershed and water body parameters to estimate fish and drinking water ingestion risks, and to provide census information about farmers and residents exposed to incinerator emissions. We estimated numbers of individuals exposed and the associated risks for six population age groups.

2. Key Assumptions for the Incineration Risk Assessment

Many important factors in estimating exposure vary from one facility to the next, and as a result, the highest emitting facility will not always produce the highest risk. We therefore selected the six highest emitting incinerators that also resulted in the highest potential inhalation exposures from the initial screening assessment of 135 incinerators. The variables that are important for exposure assessment and considered in the screen include, for example, distance to exposed population, activities of the exposed population, effective release height of pollutants, and meteorological conditions. We also considered emission rates, emission release characteristics, and actual populations near the facilities in the initial screening assessment.

To address high end risk, plausible ranges of values for key exposure and model variables were modeled via Monte Carlo procedures to estimate the range of possible risk values and their probability of occurring. The variables considered for the Monte Carlo modeling were identified by sensitivity analyses. The variables were exposure duration, beef and dairy consumption, beef and dairy biotransfer factors, air to plant transfer, dry sludge throughput, adult inhalation rate, and fraction of time an adult is indoors and outdoors.

The large number of exposure values used in the risk assessment are shown in Appendix B of the TSD for incineration (USEPA, 1999c). The following is a summary of a few key values:

- Adult body weight of 71.8 kilograms (kg)
- Body weight of a 3–5 year old is 17.5 kg
- Exposure duration for farmer is 17.3 years
- Exposure duration for home gardener is 12 years
- Adult inhalation rate of 13.3 cubic meters each day
- Child 3–5 years old inhalation rate is 8.3 cubic meters each day
- Child daily soil ingestion rate of 0.1 grams each day
- Adult daily soil ingestion rate of 0.05 grams each day
- Adult daily fish ingestion rate of 0.162 grams per kg. body weight per day

For the farmer exposure pathway, we evaluated the inhalation of vapor and particle-bound pollutants released from the incinerator stack(s), soil ingestion, ingestion of homegrown fruits and vegetables, ingestion of home-produced beef and dairy products, ingestion of drinking water from nearby surface water bodies, and ingestion of fish at recreational fisher levels from those water bodies. The home gardener pathway included inhalation of vapor and particle-bound pollutants, soil ingestion, ingestion of homegrown fruits and vegetables, and ingestion of drinking water from surface water bodies. For infants in both pathways, breast milk ingestion from an adult's exposure to the above pathways is included. Dermal exposure to soil and water and consumption of other animal products were not quantified since exposures from these pathways are expected to be significantly less than the pathways evaluated.

3. Incineration Risk Characterization

We found that average and high-end risks were higher for the farmer than for the home gardener. Estimated risks were higher for individuals closer to the facility than farther away. The most significant pathway for the farmer was ingestion of home-grown beef and dairy products and for the home gardener ingestion of home-grown produce. For infants of farmers, the breast milk ingestion pathway is often the most significant. For the six facilities, at locations where farmers and home gardeners are likely to reside, none of the estimated risk exceeded 1×10^{-6}, including the estimated risk for infants. Based on census data, only extremely small numbers of farm families are predicted to be exposed to risk levels near the upper end of the predicted range.

Additionally, the concentration of dioxins in sewage sludge being fed into sewage sludge incinerators does not influence the amounts of dioxins being emitted from the incinerator. The key factors influencing the amount of dioxins being emitted are the combustion conditions in the incinerator, incinerator design, and the efficiency and operational conditions of any air pollution control devices used on the incinerator. The Agency's most recent publicly available Dioxin Source Inventory associated with the Draft Dioxin Reassessment (USEPA, 1998) estimated that total dioxins (chlorinated dioxins and chlorinated dibenzofurans only) being emitted from all of the Nation's sewage sludge incinerators was approximately 14.6 grams TEQ per year, a very minor fraction of the total North American dioxin inventory. These amounts are expected to be further reduced over the next several years as the requirement for all sewage sludge incinerators to comply with either 100 parts per million (ppm) total hydrocarbons (THC) or 100 ppm carbon monoxide (CO) in their emissions is implemented.

We investigated plans for any future changes for the six multiple hearth incinerators (MHI) used in the risk assessment to determine if any significant reductions in emissions of dioxin and dioxin-like compounds might be expected in the future. Three of the six incineration facilities indicated that no changes that might reduce emissions were planned in the foreseeable future. They are currently meeting the total hydrocarbon emission limitation of 100 ppm.

Two of the six incineration facilities indicated replacement of the existing multiple hearth incinerators is taking place. One of these facilities is bringing a fluidized bed incinerator (FBI) on line in the first quarter of 2000, which will operate as the primary incinerator. The currently operating MHI will be shut down and will remain as a backup incinerator, with only occasional use. Tests of FBIs has demonstrated more complete destruction of organic compounds than in MHI. The other facility expects to shut down its incineration operation completely in 2001 and start drying sewage sludge instead. Drying involves lower temperatures and no combustion of the sewage sludge, so this facility will significantly reduce or eliminate emissions of organic pollutants.

The largest and highest emitting of the incineration facilities plans to start to eliminate incineration of sewage sludge in their multiple hearth incinerators over the next four to five years. The facility is working to evaluate a new high temperature process that will convert sludge to a glass-like aggregate. The facility expects to submit a permit application within three years to build

the first aggregate unit. If this initial unit is successful, they will submit another permit application to build additional units to replace the entire multiple hearth incineration facility. However, if the new aggregate process does not prove to be feasible, then this facility will continue to use the existing multiple hearth incinerators. The facility may consider building FBIs to start replacing aging MHIs.

On August 4, 1999, we promulgated amendments to the incineration subpart of the part 503 standards, 64 FR 42552. The amendments included a provision making all sewage sludge incineration requirements self-implementing. All incinerator owners/operators must now continuously monitor for either THC or CO emissions and operate their incinerators to limit either THC or CO emissions to 100 ppm or less (40 CFR 503.40(c), 503.44, 503.45(a)). We will continue to inspect the operations and records of these incinerators to assure attainment of THC or CO limits.

Based on the results of the risk assessment for dioxins in sewage sludge fired in sewage sludge incinerators and the information we have regarding actual and projected incineration of sewage sludge in sewage sludge incinerators, we are proposing no national standard for incineration of sewage sludge in sewage sludge incinerators. We seek comment on this proposal.

VI. Other Options that EPA Considered

A. Numeric Standards for All Use or Disposal Practices

Under this option, we would propose comprehensive risk-based regulations setting numeric standards for dioxins, as well as monitoring requirements, reporting, and record keeping provisions for all sewage sludge use or disposal practices. We are not proposing this option for surface disposal or incineration in a sewage sludge incinerator. As previously explained, the risk assessments for surface disposal and incineration did not show that the risk from placing sewage sludge on a surface disposal site or firing sewage sludge in a sewage sludge incinerator, including the highest emitting type of sewage sludge incinerator, posed an unreasonable risk to human health. We invite public comment on whether EPA should establish numeric limits for dioxins in sewage sludge for all use or disposal methods.

B. Require all Sewage Sludge to be Landfilled or Surface Impounded

Under this option, we would propose a rule under part 503 that would require all sewage sludge to be placed in a landfill or surface impoundment. The rule would be based on total containment of dioxins in sewage sludge and would virtually eliminate all exposure to dioxins from sewage sludge. The risk assessments performed did not indicate unreasonable risk from exposure to land applied sewage sludge with dioxins content of 300 ppt TEQ or less or from exposure to emissions from sewage sludge incinerators with any level of dioxins in the incinerated sewage sludge. Therefore, we are not proposing this option.

C. No Further Regulation of Sewage Sludge for Any Use or Disposal Practice

We considered this option for land application, as well as for surface disposal and incineration. As discussed above, the risk assessment shows that sewage sludge with 300 ppt TEQ dioxins that is land-applied poses a human cancer risk in excess of one in one hundred thousand (1×10^{-5}) cancer risk only for highly exposed subpopulations using conservative assumptions. The estimated risk of 1.7×10^{-5} is approximately one-fifth of the background risk posed by dioxins from all other sources (USEPA, 1994). However, data from the NSSS (USEPA, 1990) show that some treatment works produced sewage sludge containing dioxin/dibenzofurans (not including coplanar PCBs) as high as 1700 ppt TEQ. Although we have not done a detailed risk assessment of the potential impacts of this highest concentration, we believe that the incremental cancer risk would likely be on the order of one in ten thousand (1×10^{-4}) for highly exposed subpopulations using conservative assumptions. This level of risk would be within the Agency's acceptable range of 1×10^{-6} to 1×10^{-4}. Nevertheless, we believe the better course of action is to propose a numeric limit for dioxins in sewage sludge that is applied to the land at a level which limits the incremental risk to approximately 1×10^{-5} to 2×10^{-5}. This approach limits incremental risks for dioxins to levels well below background, because of concern with multiple sources and possible cumulative exposures. The Agency recognizes that its use of ''highly exposed individuals'' and other conservative assumptions also builds in some margin of safety. Therefore, we request comment on taking no action with respect to regulating dioxins for land application of sewage sludge.

VII. Request for Public Comments

While we are requesting comments on all aspects of this proposed rule, we hope that public comments will also focus specifically on the following aspects of this proposal:

(1) Establishing of a cap of 300 ppt TEQ dioxins for land applied sewage sludge that will protect a highly exposed individual from an incremental cancer risk of not greater than 1.7×10^{-5} (IV.B.1).

(2) Using EPA Analytical Method 1613B for the chlorinated dioxin and dibenzofuran congeners and EPA Analytical Method 1668 or 1668A for co-planar PCB congeners (IV.B.3).

(3) Requiring two consecutive years of monitoring results under 30 ppt TEQ before allowing a reduced monitoring schedule (IV.B.4).

(4) Our assumption that the level of dioxins in sewage sludge is relatively constant over time and may possibly be decreasing (IV.B.4).

(5) Whether we have clarified existing monitoring requirements by separating § 503.16(a) into two paragraphs or if our proposed change unintentionally changes the substance of the frequency of monitoring provisions currently in § 503.16(a)(1) (IV.B.4).

(6) Requesting information on the dioxin content, annual application rates, numbers and sizes of sites, and applications per site for sewage sludge from treatment works with a flow rate of one MGD or less and whether to exempt small treatment works from both the initial monitoring requirements and the dioxin limit for land application.

(7) Our proposed designation of small treatment works as one with a flow rate of one MGD or less, and our proposed designation of other small sludge preparers that are not treatment works as those preparing sewage sludge for land application in an amount of 290 dry metric tons or less annually (IV.B.5).

(8) Requesting information on exposure pathways not evaluated, including direct risks to livestock, soil organisms, wildlife, and plants, resulting from dioxins in sewage sludge that is land applied or incinerated (V.B.1, V.D.1).

(9) Proposing no action in regulating dioxins in sewage sludge that is placed in a surface disposal unit or incinerated in a sewage sludge incinerator (V.C.3, V.D.3).

(10) Whether EPA should establish numeric limits for dioxins in sewage sludge for all use or disposal methods (VI.A).

(11) Proposing no action for dioxins in sewage sludge that is land-applied (VI.C).

(12) Whether there are any privately-owned treatment works with flows greater than one MGD that also have revenues less than $6 million. If such facilities are operating, we request information on flow, revenues, and sludge disposal methods (VIII.B).

(13) Data on the cost to switch from land application to alternative use or disposal practices (compared to our assumption of $189 per dry metric ton

to switch to co-disposal with municipal solid waste) (VIII.B).

(14) Potential impacts of the proposed rule on small entities and on issue related to such impacts (VIII.B).

(15) The use of the proposed alternative definition of small entity—both for this proposed rule and for subsequent rulemakings (VIII.B).

(16) Consensus methods that are suitable for compliance monitoring for determining concentrations of dioxins, furans, and coplanar PCBs in sewage sludge (VIII.H).

VIII. Regulatory Assessment Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, 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 organizations, and small governmental jurisdictions.

Today's proposal affects two categories of entities: (1) publicly-owned treatment works (POTWs) owned by local governmental jurisdictions, and (2) privately-owned treatment works and sludge-only preparers, which are businesses. For this proposal, EPA first assessed the effects on small entities using the small entity definition for each category as defined in the RFA. EPA also assessed the effects of the proposal using the alternative definition for each category of small entity that EPA is proposing to establish for this rule. (See the discussion under ''Use of Alternative Definition'' later in this section.)

For purposes of assessing the impact of today's proposal on small entities, small entities are defined as (1) a small business that meets RFA default definitions based on SBA size standards found in 13 CFR 121.201 (i.e., small refuse systems that have less than $6 million in annual revenues); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

To evaluate the economic impact on small governmental jurisdictions subject to today's rule, EPA looked at the effect on municipalities owning a POTW that services a population of 50,000 or fewer with complete jurisdiction over all indirect discharges to and discharges from a treatment works. EPA considers this an appropriate surrogate for small governmental jurisdictions. (EPA recognizes that, to the extent a governmental jurisdiction may own more than one POTW serving a population of 50,000, this evaluation may overstate the number of small governmental jurisdictions.)

Based upon average domestic sewage loadings, a POTW serving a population of 50,000 or fewer would correspond to one processing approximately five million gallons per day (five MGD) of wastewater. EPA's data, however, do not permit it to accurately estimate the number of POTWs in a one to five MGD range because EPA collected information for the flow range of one MGD to ten MGD. Therefore, in order to determine the impact on small governmental jurisdictions, EPA first looked at the economic impact of today's proposal on those POTWs with one to ten MGD flows who land apply their sewage sludge because the proposed dioxin limit would apply only to those POTWs that land apply their sewage sludge. EPA estimates that there are approximately 890 POTWs in the one to ten MGD flow range who land applied their sewage sludge. EPA estimated costs for these facilities to comply with the proposed monitoring requirements, as described in Section IV.D. EPA estimates annual monitoring costs of $2,000 to test for the parameters included in today's proposal. The frequency of this monitoring varies, depending on the outcome of the test, as explained in Section IV.B.4. EPA also estimated incremental disposal costs for between 40 and 50 facilities in the one to ten MGD flow range with sewage sludge that might exceed the proposed 300 ppt TEQ numeric limit for dioxins in sewage sludge. EPA estimates that the costs of the proposal would not exceed $6 million for the group of POTWs in the one to ten MGD flow range.

For purposes of evaluating the economic impact of this rule on small governmental jurisdictions, EPA compared costs with average annual revenues for small governmental jurisdictions obtained from the 1992 Census of Governments. The Census data are reported at a level of detail that allow EPA to focus on the small governmental jurisdictions, as defined in the RFA. The data further allow EPA to limit the revenue information to populations between 10,000 and 50,000, which correspond to the small POTWs covered by the proposed rule. (POTWs with flows at or below one MGD are exempt from this rule.) The revenues for the governmental jurisdictions in the 10,000 to 50,000 population group are approximately $57 billion. The costs of the proposed rule represent less than 0.01 percent of the entities' revenues. In other words, when EPA divided the total compliance costs for the group of POTWs (i.e., costs of $6 million) by the revenues for the group of small governmental jurisdictions (i.e., revenues of $57 billion), those costs are only one, one-hundredth of the revenues. EPA concludes that the rule will not have a significant impact on a substantial number of small governmental jurisdictions owning these POTWs.

For privately-owned treatment works, the RFA definition of small entity is a small business as defined in U.S. Small Business Administration (SBA) regulations at 13 CFR 121.201. Those regulations define small refuse systems (Standard Industrial Classification 4953) as having less than $6 million in annual revenues. In the Regulatory Impact Analysis for the previous Part 503 regulations (EPA 821–R–93–006, March 1993), EPA concluded that the universe of privately-owned treatment works is limited to facilities with wastewater

flows below one MGD. Today's proposed regulation excludes treatment works with flows at or below one MGD; thus, EPA concludes that the proposed rule imposes no requirements on small, privately-owned treatment works. Although EPA estimates that a privately-owned treatment works with annual revenues near $6 million (if one exists) corresponds to flows much greater than one MGD, EPA has not identified any such treatment works. Theoretically, any privately-owned treatment works with flows greater than one MGD and also having revenues less than $6 million would be small entities, as defined by the RFA. EPA solicits comment on whether such treatment works are operating, and if so, requests information on flow, revenues, and sludge disposal methods.

For sludge-only preparers, under the RFA definition cited above, a small entity is a preparer with annual revenues of less than $6 million. EPA data suggest that there are substantially fewer than 100 sludge-only preparers that are small entities. EPA first considered the potential impacts to a subset of small preparers—those with annual revenues less than $80,000, which corresponds to production of approximately 290 dry metric tons of sewage sludge. EPA equates a production level of 290 dry metric tons of sewage sludge to a wastewater flow of one MGD. Today's proposed rule excludes this subset of very small sludge-only preparers (see section IV.B.5.). Thus, this analysis suggests for sludge-only preparers with annual revenues less than $80,000, today's proposed rule imposes no requirements. For the remaining sludge-only preparers that are also small businesses (by RFA definition), i.e., those with annual revenues between $80,000 and $6 million, EPA estimated the potential impacts as additional monitoring costs (see section IV.D.). For the small preparers with revenues between $80,000 and $6 million, the estimated impacts will range from 0.03 to 2.5 percent of revenues. Thus, EPA estimates that there is not a significant economic impact on a substantial number of small sludge-only preparers.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impacts on a substantial number of small entities. EPA nonetheless has tried to reduce the impacts of this rule on small entities. For example, the proposed rule imposes no requirements on treatment works (public or private) with flows less than or equal to one MGD. This regulatory exclusion markedly limits the number of treatment works with monitoring requirements. These smallest POTWs and privately-owned treatment works will face no changes in their sludge disposal operations. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

Use of Alternative Definition. As noted, EPA is certifying that the proposed rule will not have a significant economic impact on a substantial number of small entities, using the RFA definitions for small entities. However, the RFA authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative definition for small business, agencies must consult with SBA's Chief Counsel for Advocacy.

In today's rule, EPA is proposing to define ''small entity'' for purposes of its regulatory flexibility assessments under the RFA as follows: EPA is proposing to define ''small governmental jurisdiction'' as any municipality or special district operating a POTW with a capacity of one MGD or less. Generally flows in this size range correspond to service populations of 10,000 or less. EPA also is proposing to define ''small business'' as a privately-owned treatment works with a capacity of one MGD or less and sludge-sonly preparers with finished product amounts of 290 dry metric tons or less of sewage sludge. EPA will initiate consultation with the SBA on the alternative definition for ''small business'' shortly.

EPA is proposing these alternative definitions for the purpose of consistency within the sewage sludge use or disposal program. When EPA published the Standards for the Use and Disposal of Sewage Sludge in 1993, the Agency used the one MGD definition for its regulatory flexibility assessment. At that time (and in the 1990 Notice of Data Availability, 55 FR 47210 (Nov. 9, 1990) (USEPA, 1990)), EPA noted the well-accepted and frequent use of this definition for small POTWs. The existing part 503 land application rule differentiates between treatment works with flow rates of one MGD or less and larger treatment works. Treatment works with flow rates of one MGD or less are required to monitor less frequently and they are excluded from reporting requirements.

In addition to proposing to establish these alternative definitions for this rule, EPA also is proposing to establish and use these alternative definitions of ''small entity'' for purposes of its regulatory flexibility assessments under the RFA for any subsequent rulemakings pursuant to section 405 of the Clean Water Act, 33 U.S.C. 1345 and amendments to 40 CFR 503.

The Agency is interested in receiving comments on the use of this alternative definition of small entity—both for this proposed rule and for subsequent rulemakings.

If EPA had used the alternative definitions in its RFA assessment of the impact of today's proposed rule on small entities that would be subject to the requirements of the rule, the analysis would have supported the same conclusions; i.e., EPA would certify that there is no significant economic impact on a substantial number of small entities. The proposed rule would not impose any requirements on POTWs and privately-owned treatment works with wastewater flows at or below one MGD. Consequently, the proposed rule would not have any economic impact on small governmental jurisdictions and small businesses that are treatment works under the alternative definitions. Similarly, for sludge-only preparers, with a small entity definition based on 290 dry metric tons of sewage sludge, the proposed rule would not have any economic impact on small businesses that are sludge preparers.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements for existing 40 CFR part 503 under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) and assigned OMB Control No. 2040–0004.

The information collection requirements in this proposed rule have been submitted for approval to OMB under the PRA. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 0229.14) and a copy may be obtained from Sandy Farmer by mail at OP Collection Strategies Division; U.S. Environmental Protection Agency (2822); 401 M St., SW., Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. For technical information contact Arleen Plunkett by calling (202) 260–3418. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*.

This proposed rule will require certain sewage treatment plants which produce sewage sludge that is applied to the land and other preparers of sewage sludge for application to the land to monitor their sewage sludge for dioxins

and keep records of the analytical results. Entities which monitor for dioxin in their sewage sludge will be required to submit these records to the permitting authority. This information is needed by the permitting authority to ensure compliance with the proposed numerical standard for dioxins, thereby assuring that the acceptable incremental risk to the highly exposed individual from exposure to dioxins from land application of sewage sludge is not exceeded. The responses to the collection of information will be mandatory pursuant to section 405(d) of the CWA, 33 U.S.C. 1345(d).

The Agency has estimated the total respondent burden hours and costs for these requirements of the proposed rule. 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.

The Agency estimates that each respondent, when required to monitor for dioxins, will expend a total of one hour to sample their sewage sludge, submit this sample to a laboratory for dioxins analysis, receive the analytical result from the laboratory, record the result, and for certain size entities, report this result to the permitting authority. EPA estimates that in the first year that this rule is in effect, 1154 facilities will perform dioxin monitoring. The total national burden is, therefore, estimated to be 1154 hours. During the second year that this rule is in effect, 1096 facilities will be performing monitoring for a total burden of 1096 hours. From the third year on, the Agency estimates that annually 754 facilities will be monitoring for dioxins for a total burden of 754 hours per year.

Analytical costs per sample are estimated to be $2,000. Therefore in year one, total analytical costs to the 1154 respondents are estimated to be $2,308,000. Total analytical costs for the 1096 respondents in year two are estimated to be $2,192,000. Total analytical costs for the 754 respondents in year three and beyond are estimated to be $1,508,000 annually.

For the permitting authorities, whether they are the EPA Regional Offices or the three States that have received authority to administer the part 503 regulatory program (i.e., Utah, Oklahoma, and Texas), the Agency estimates that each will be required to spend one hour to review the analytical information submitted by the respondents. Therefore, the three States identified above and the 10 EPA Regions will expend a total of 13 hours annually due to these dioxin monitoring, recordkeeping, and reporting requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

D. Unfunded Mandate Reform Act

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

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The highest estimated total costs in any one year (1998 dollars) of today's proposed rule are $18 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

As indicated in the Regulatory Flexibility Act discussion (see section VIII. B.), we have determined that this rule will not have a significant impact on a substantial number of small governments. Additionally, this rule will not uniquely impact small governments because it applies to both large and small entities. Today's proposed rule exempts wastewater treatment works with flows of less than one MGD from the provisions of this proposed rule including monitoring requirements. This exemption for these low flow wastewater treatment works, therefore, will not create any costs for the small size municipalities or small private sector firms that own and operate these facilities. Thus, today's proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the

process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It 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, as specified in Executive Order 13132. This proposal would add a regulated pollutant to one part of the existing regulatory program, however it would not change the existing relationship between federal, State, and local officials. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

This proposed rule will preempt State and or local law that is less stringent or inconsistent with these provisions, consistent with CWA section 510, 33 U.S.C. 1370. By publishing and inviting comment on this proposed rule, EPA hereby is providing State and local officials notice and an opportunity for appropriate participation. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

F. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal governments 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 proposed rule does not significantly or uniquely affect the community of Indian tribal governments nor does it impose substantial direct compliance costs on them. As indicated in the Regulatory Flexibility Act discussion (see section VIII. B.), we have determined that this rule will not have a significant impact on a substantial number of small governments. The impact on Tribal governments would similar to that on small governments. We, therefore, don't expect this rule to have a significant impact on tribal governments. Neither do we expect this rule will impose substantial direct compliance costs on them. Additionally, this rule will not uniquely impact the communities of Indian tribal governments because it applies to all entities which land apply sewage sludge. Today's proposed rule exempts small wastewater treatment works with flows of less than one MGD from the provisions of this proposed rule including monitoring requirements. This exemption for these low flow wastewater treatment works, therefore, will not create any costs for the small size tribal governments that own and operate these facilities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not ''economically significant'' as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. Nevertheless, under EPA policy (EPA Policy on Evaluating Health Risks to Children), the risk assessment for this rule has addressed potential risk to breast-feeding infants and toddlers and the effects of exposure to dioxins. Two pathways of exposure are most important in addressing the risk potential for children. In the pathway which assumes incidental ingestion, we assumed that the toddler from ages one to six eats 0.4 gram of soil mixed with sewage sludge every day for five years. In the breast-feeding infant pathway, the hypothetical highly exposed individual is the nursing infant (the nursing period is six months) of the rural family mother who eats, on a yearly basis, 10% of her beef, 10% of her beef liver, 10% of her lamb and 3% of her dairy products from animals raised on the farm and fed forage grown on sewage sludge-amended soils. Moreover, the animals are exposed through ingestion of sewage sludge and soils through grazing on pasture. The breast-feeding infant pathway was one of the pathways used for setting the proposed numeric limit.

Our assessment of these pathways does not reveal a disproportionate environmental health or safety risks to children. Incremental dioxins exposure and subsequent cancer risks from sewage sludge use or disposal practices are within the risks that would normally be expected and within EPA's range of acceptable risk.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to dioxins.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no consensus methods for determination of dioxins, furans or PCBs in solid matrices such as sewage sludge. Therefore, EPA proposes to use Method 1613B and Method 1668. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards for determination of dioxins in sewage sludge and to explain why such standards should be used in this regulation.

IX. List of References

Green, *et al.* 1995. Comments on Estimating Exposure to Dioxin-Like Compounds: Review Draft and Addendum.

US Conference of Mayors 1999. The United States Conference of Mayors/ Urban Water Council Biosolids Land Application-The Dioxin Situation.

USEPA 1989. Interim Procedures for Estimating Risks Associated with Exposure to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update. Washington, DC Risk Assessment Forum. EPA/625/3–89.016.

USEPA 1990. National Sewage Sludge Survey; Availability of Information and Data, and Anticipated Impacts on Proposed Regulations; Proposed Rule. **Federal Register** 55 (218): 47210–47283.

USEPA 1994. Health Assessment for 2,3,7,8–TCDD and Related Compounds. External Review Draft. EPA/600/BP–92/001a–c, and, Estimating Exposure to Dioxin-Like Compounds. Volume I. Executive Summary. Volume II. Properties, Sources, Occurrence, and Background Exposures. Volume III. Site-Specific Assessment Procedures. External Review Draft. EPA/600/6–88/005Ca–c. National Center for Environmental Assessment. Washington, DC.

USEPA 1995. Policy for Risk Characterization. Memorandum of Carol M. Browner, Administrator, March 21, 1995, Washington, DC.

USEPA 1996. Technical Support Document for the Round Two Sewage Sludge Pollutants. Office of Science and Technology. Washington, DC. EPA–822–R–96–003.

USEPA 1997. Exposure Factors Handbook. National Center for Environmental Assessment. Washington, DC. EPA/600/P–95/002F(a–c).

USEPA 1998. The Inventory of Sources of Dioxin in the United States. National Center for Environmental Assessment. External Review Draft. Washington, DC. EPA/600/P–98/002Aa.

USEPA 1999a. Incremental Costs Associated with Regulating Dioxins and PCBs in Biosolids. Office of Science and Technology. Washington, DC.

USEPA 1999b. Risk Analysis for the Round Two Biosolids Pollutants. Office of Science and Technology. Washington, DC.

USEPA 1999c. Sewage Sludge Incinerators' Dioxin-Like Compound Risk Analysis-Draft Technical Documentation. Office of Air Quality Planning and Standards. Research Triangle Park, N.C.

USEPA 1999d. Sewage Sludge Incinerators' Dioxin-Like Compound Risk Analysis-Draft Addendum with PCB Emissions. Office of Air Quality Planning and Standards. Research Triangle Park, N.C.

USEPA 1999e. Pollutant Concentration Percentile Estimates to Support Phase II Regulations for Biosolids Use or Disposal. Office of Science and Technology. Washington, D.C.

Van den Berg M, *et al.* 1998. Toxic Equivalent Factors (TEFs) for PCBs, PCDDs, and PCDFs for Humans and Wildlife. Environ. Health Perspect. 106, 775–792.

List of Subjects in 40 CFR Part 503

Environmental protection, Frequency of monitoring, Incineration, Intergovernmental relations, Land application, Management practices, Pathogens, Pollutants, Reporting and recordkeeping requirements, Surface disposal, Vector attraction reduction.

Dated: December 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 503—STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

1. The authority citation for part 503 continues to read as follows:

Authority: Sections 405(d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, Sec 54(d), 91 Stat. 1591 (33 U.S.C. 1345(d) and (e)); and Pub. L. 100–4 Title IV, Sec. 406(a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 *et seq.*).

2. Add new paragraph (b)(8) to § 503.8 as follows:

§ 503.8 Sampling and analysis.

* * * * *

(b) * * *

(8) *Dioxins.* EPA Method No. 1613B for the seven dioxin and ten dibenzofuran congeners. EPA Method No.1668 for the 12 coplanar polychlorinated biphenyl congeners. You can purchase a copy of EPA Method No. 1613B from the National Technical Information Service (NTIS) by requesting NTIS publication number NTIS#: PB93–236024 at 1–800–553–NTIS (or online at http://www.ntis.gov/). You can also obtain this document through the Educational Resources Information Center by requesting ERIC publication number W–105 at 1–800–443–ERIC (or online at http://www.accesseric.org/). EPA Method Number 1668 (EPA No.821/C–97–005821/C–97–005) is available on the Office of Water Methods and Guidance Diskette 2#. You can request a copy from the EPA Office of Water Resource Center at (202) 260–7786 or by sending an e-mail to: center.water-resource@epa.gov.

3. Redesignate paragraphs (f) through (bb) as (g) through (cc) in and add a new paragraph (f) as follows:

§ 503.9 General definitions.

* * * * *

(f) *Dioxins* means all of the seven 2,3,7,8 chlorinated dibenzo-p-dioxin congeners, ten 2,3,7,8 chlorinated dibenzofuran congeners, and 12 coplanar polychlorinated biphenyl congeners as follows:

CAS No.	Congener
1746–01–6	2,3,7,8-Tetrachlorodibenzo-p-dioxin
40321–76–4	1,2,3,7,8-Pentachlorodibenzo-p-dioxin
39227–28–6	1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin
57653–85–7	1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin
19408–74–3	1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin
35822–46–9	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin
3268–87–9	1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin

CAS No.	Congener
51207–31–9	2,3,7,8-Tetrachlorodibenzofuran
57117–41–6	1,2,3,7,8-Pentachlorodibenzofuran
57117–31–4	2,3,4,7,8-Pentachlorodibenzofuran
70648–26–9	1,2,3,4,7,8-Hexachlorodibenzofuran
57117–44–9	1,2,3,6,7,8-Hexachlorodibenzofuran
72918'21–9	1,2,3,7,8,9-Hexachlorodibenzofuran
60851–34–5	2,3,4,6,7,8-Hexachlorodibenzofuran
67562–39–4	1,2,3,4,6,7,8-Heptachlorodibenzofuran
55673–89–7	1,2,3,4,7,8,9-Heptachlorodibenzofuran
39001–02–0	1,2,3,4,6,7,8,9-Octachlorodibenzofuran
32598–13–3	3,3',4,4'-Tetrachlorobiphenyl
70362–50–4	3,4,4',5-Tetrachlorobiphenyl
57465–28–8	3,3',4,4',5-Pentachlorobiphenyl
32598–14–4	2,3,3',4,4'-Pentachlorobiphenyl
31508–00–6	2,3',4,4',5-Pentachlorobiphenyl
65510–44–3	2',3,4,4',5-Pentachlorobiphenyl
74472–37–0	2,3,4,4',5-Pentachlorobiphenyl
32774–16–6	3,3',4,4',5,5'-Hexachlorobiphenyl
38380–08–4	2,3,3',4,4',5-Hexachlorobiphenyl
69782–90–7	2,3,3',4,4',5'-Hexachlorobiphenyl
52663–72–6	2,3',4,4',5,5'-Hexachlorobiphenyl
39635–31–9	2,3,3',4,4',5,5'-Heptachlorobiphenyl

* * * * *

4. Amend § 503.10 by redesignating paragraph (a) as (a)(1) and adding a title to paragraph (a) before (a) (1); and adding paragraph (a)(2) as follows:

§ 503.10 Applicability.

(a) General applicability of Subpart B—Land Application.

* * * * *

(2) The pollutant limits in § 503.13(a)(1), (a)(2)(ii), (a)(3), and (a)(4)(i) do not apply to sewage sludge prepared by, and the monitoring requirements in § 503.16(a)(3) do not apply to:

(i) A treatment works that treats domestic sewage with a flow rate equal to or less than one million gallons per day or;

(ii) A person who prepares sewage sludge or who derives a material from sewage sludge in an amount equal to or less than 290 dry metric tons per year.

* * * * *

§ 503.13 [Amended]

5. Amend § 503.13 by adding a sentence after the header to paragraph (a) and adding an entry for ''Dioxins'' in alphabetical order in paragraph (b)(1) and adding an entry for ''Dioxins'' in alphabetical order in paragraph (b)(3) as follows:

§ 503.13 Pollutant limits.

(a) Sewage sludge. Except as provided in § 503.10(a)(2), the following pollutant limits apply to sewage sludge that is applied to the land.

* * * * *

(b) * * *

(1) * * *

TABLE 1 OF § 503.13—CEILING CONCENTRATIONS

Pollutant	Ceiling concentration (milligrams per kilogram) [1]
* * * * *	
Dioxins (defined in § 503.9(f)	0.003 TEQ
* * * * *	

[1] Dry weight basis.

* * * * *

(3) * * *

TABLE 3 OF § 503.13—POLLUTANT CONCENTRATIONS

Pollutant	Monthly average concentration (milligrams per kilogram) [1]
* * * * *	
Dioxins (defined in § 503.9(f))	0.0003 TEQ
* * * * *	

[1] 1 Dry weight basis.

* * * * *

6. Revise (a) of § 503.16 as follows:

§ 503.16 Frequency of monitoring.

(a) *Sewage sludge.* You must monitor for pollutants in sewage sludge, pathogen density and vector attraction reduction according to the following schedule:

(1) For all pollutants except dioxins listed in § 503.13(b)(1) Table 1 and (b)(3) Table 3 and all pollutants listed in § 503.13(b)(2) Table 2 and (b)(4) Table 4, you must monitor as provided in Table 1 of this section.

(2) For pathogen density requirements in § 503.32(b)(2) through (b)(4) and the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8), you must monitor as provided in Table 1 of this section.

Table 1 of § 503.16

Amount of sewage sludge [1] (metric tons per 365 day period)	Frequency
Greater than zero but less than 290	Once per year.
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year).
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year).
Equal to or greater than 15,000	Once per month (12 times per year).

[1] Either the amount of bulk sewage sludge applied to the land (dry weight basis), or the amount of sewage sludge or material derived from sewage sludge sold or given away in a bag or other container prepared by a person who prepares sewage sludge for application to the land (dry weight basis).

(3) Except as provided in § 503.10(a)(2), for dioxins listed in § 503.13(b)(1) and (3), you must monitor your sewage sludge annually, as of [one year after effective date of final rule].

(i) If the level of dioxins in your sewage sludge is above 30 ppt TEQ but below 300 ppt TEQ, then you must monitor for dioxins annually.

(ii) If the level of dioxins in your sewage sludge is at or below 30 ppt TEQ for any two consecutive years, then you may reduce the frequency of monitoring to once every five years.

(iii) If you have reduced the frequency of monitoring under paragraph (a)(3)(ii) of this section and the level of dioxins in your sewage sludge exceeds 30 ppt TEQ, you must resume monitoring your sewage sludge annually.

(4) After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the permitting authority may reduce the frequency of monitoring for the pollutant concentrations and for the pathogen density requirements in § 503.32(a)(5)(ii) and (a)(5)(iii).

* * * * *

[FR Doc. 99–33033 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–U

Notices

Federal Register
Vol. 64, No. 246
Thursday, December 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–00–01]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: January 20, 2000.

Time: 9 a.m.

Place: United States Department of Agriculture, (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To consider recommendations on the inspection certificate, discuss the bale experiment for the upcoming marketing season, and other related matters for the 2000 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by January 12, 2000, and inform us of your needs.

Dated: December 16, 1999.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 99–33349 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 2000

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii, as authorized by the William F. Goodling Child Nutrition Reauthorization Act of 1998.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa A. Rothstein, Section Chief, Summer Food Service Program and Child and Adult Care Food Program, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

In accordance with section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP in 2000. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 1998 through November 1999.

Section 104(a) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105–336) amended section 12(f) of the NSLA (42 U.S.C. 1760(f)) to allow adjustments to SFSP reimbursement rates to reflect the higher cost of providing meals in the SFSP in Alaska and Hawaii. Therefore, this notice contains adjusted rates for Alaska and Hawaii. This change was made in an effort to be consistent with other Child Nutrition Programs, such as the National School Lunch Program and the School Breakfast Program, which already had the authority to provide higher reimbursement rates for programs in Alaska and Hawaii.

The 2000 reimbursement rates, in dollars, for all states, excluding Alaska and Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALL STATES (BUT ALASKA OR HAWAII)

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.25	$.1250	$.0975
Lunch or Supper	2.18	.2275	.1900
Supplement	.50	.0625	.0500

The 2000 reimbursement rates, in dollars, for Alaska:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR ALASKA ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$2.02	$.2000	$.1600
Lunch or Supper	3.53	.3700	.3075
Supplement	.82	.1000	.0800

The 2000 reimbursement rates in dollars, for Hawaii:

MAXIMUM PER MEAL REIMBURSEMENT RATES FOR HAWAII ONLY

	Operating costs	Administrative costs	
		Rural or self-preparation sites	Other types of sites
Breakfast	$1.46	$.1450	$.1150
Lunch or Supper	2.55	.2675	.2225
Supplement	.59	.0725	.0575

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, for both operating and administrative reimbursement rates, represent a 2.4 percent increase during 1999 (from 162.6 in November 1998 to 166.5 in November 1999) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The Department would like to point out that the SFSP administrative reimbursement rates continue to be adjusted up or down to the nearest quarter-cent, as has previously been the case. Additionally, operating reimbursement rates have been rounded down to the nearest whole cent, as required by Section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759(a)(3)(B)).

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

Dated: December 15, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33099 Filed 12–18–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of the comment period for the Proposed Revised Land and Resource Management Plan for the White River National Forest and Draft Environmental Impact Statement.

SUMMARY: The comment period has been extended for the proposed revised Land and Resource Management Plan (Forest Plan), the Draft Environmental Impact Statement (DEIS), and associated documents. The original Notice of Availability was published in the **Federal Register**, Vol. 64, No. 151 on August 6, 1999 (64 FR 42900) as FR Doc. 99–19922. The first extension of the comment period was published in the **Federal Register**, Volume 64, No. 210 on November 1, 1999 (64 FR 58807) as FR Doc. 99–28461.

DATES: Public comment began on August 6, 1999, and will end May 9, 2000.

ADDRESSES: Interested parties are invited to send written comments regarding the proposed revised Forest Plan and Draft EIS to the address below: Forest Supervisor, Forest Plan Revision Comments, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602.

FOR FURTHER INFORMATION CONTACT: Questions about this action or requests for the documents listed above should be addressed to: Carolyn Upton, Team Leader, White River National Forest, P.O. Box 948, Glenwood Springs, CO 81602, Telephone Number: (970) 945–3226.

SUPPLEMENTARY INFORMATION: The public comment period originally began

on August 6, 1999 and ended on November 4, 1999. The first extension to the comment period extended it to February 9, 2000. The FY 2000 Appropriations Bill (Public Law 106–113, passed on November 29, 1999) contains an amendment specific to the White River National Forest. The amendment reads: The Forest Service shall extend the public comment period on the White River National Forest plan revision for 90 days beyond February 9, 2000. To comply with that direction, the comment period has been extended.

Dated: December 10, 1999.

Martha Ketelle,

Forest Supervisor.

[FR Doc. 99–33368 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–BW–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deep Vegetation Management Project, Ochoco National Forest, Crook and Wheeler Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposed Action to complete silvicultural treatments, including commercial harvest, pre-commercial thinning, and prescribed fire, to improve the health and diversity of forest stands in the Deep Creek Watershed. The Deep Creek Watershed is located approximately 60 miles northeast of Prineville, Oregon and covers approximately 55,400 acres. Approximately 97 percent of the watershed is National Forest System land. The project is proposed for fiscal years 2000 through 2004. The Ochoco National Forest invites written comment on this proposal and the scope of analysis. The agency will give notice of the full environmental analysis and decision making process for the proposal so interested and affected people may participate and contribute to the final decision.

DATES: Send written comments and concerns on the issues and management of this area by February 15, 2000.

ADDRESSES: Send written comments to Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754, or Eugene Skrine, District Ranger, Paulina Ranger District, 7803 Beaver Creek Road, Paulina, Oregon 97751.

FOR FURTHER INFORMATION CONTACT: Tom Mafera, Deep Project Leader, Paulina, Ranger District, 7803 Beaver Creek Road, Paulina, OR 97751, phone (541) 477–6910.

SUPPLEMENTARY INFORMATION: The Forest Service Proposed Action will conduct management activities, including commercial timber harvest, pre-commercial thinning, and prescribed fire, in the Deep Creek Watershed. Based on an analysis of existing vegetation conditions in the Deep Creek Watershed, opportunities were identified to conduct silvicultural treatments to improve the health and diversity of forested stands. Silvicultural treatments include approximately 8,000 acres of thinning/selection harvest and approximately 25,000 acres of low intensity prescribed burning. This Proposed Action will to develop opportunities for post/pole/chip/firewood products from small-sized trees. The proposal will develop habitat improvement projects for a variety of wildlife, fish, and sensitive plant species. There will be road development and/or repair to access the treatment areas. Approximately 10 miles of currently existing roads will be decommissioned or obliterated. Roads currently closed will be re-assessed.

The purpose and need for action is to provide landscape-level health and diversity within the project area. Also to provide multiple use benefits: such as wildlife and fish habitat restoration; riparian and watershed restoration; visual quality; and timber products.

All activities will be consistent with the 1989 Ochoco National Forest Land and Resource Management Plan as amended by the 1995 Inland Native Fish Strategy and the Regional Foresters Forest Plan Amendment #2. This project will also be guided by the recommendations in the Deep Creek Watershed Analysis.

The decision-to-be-made will include whether, where, and/or how much of each proposed vegetation activity should occur, and/or how much road and where decommissioning, repair, obliteration, or construction should occur.

The northern edge of the project area follows the ridgeline north of Forest Road (FR) 2630 east from the western district boundary through Buck Point, and Camp Weston Point. The eastern edge follows the ridgeline from Camp Weston Point southeasterly to Alder Springs. From Alder Springs it goes south and follows FR 1200 to the junction of FR 1200/1250, southeasterly to Bear Mountain and south to FR 42. FR 42 bounds the southern edge west to Dry Reservoir, southwest through Twin Springs to the North Fork Crooked River. The western boundary is from the North Fork Crooked River north along the Paulina/Big Summit Ranger District boundary to just north of FR 2630. The project area includes portions of the following streams: Deep Creek, Little Summit Creek, Happy Camp Creek, Jackson Creek, Double Corral Creek, Chamberlin Creek, Toggle Creek, Buck Hollow Creek, Derr Creek, Haypress Creek, Big Spring Creek, and branches of Crazy and Thorton Creeks.

Preliminary issues have been identified: landscape level pattern and vegetative diversity; water quality and fish habitat; fuels and fire hazard, effects on soils, and effects on proposed endangered, threatened or sensitive species.

Alternatives to be considered will include the no action alternative, plus action alternatives that will be developed in response to key issues. The action alternatives will include various levels of commercial harvest, pre-commercial thinning, prescribed fire, road work, and fish, wildlife and riparian habitat improvement projects.

Initial scoping began in October 1999. The public is invited to offer suggestions and comments in writing. Comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available to public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d); any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS expected to be completed in April 2000. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court ruling related to public participation in the environmental review process. First,

reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in June 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Deep Vegetation Management Project.

The Forest Service is the lead agency. Thomas A. Schmidt, Forest Supervisor, is the Responsible Official. The Responsible Official will determine which alternative best meets the purpose and need of this project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. The decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: December 7, 1999.

Thomas A. Schmidt,

Forest Supervisor.

[FR Doc. 99–32830 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

State Road Use Permit To Access Damfino Section 16, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, Carbon County, WY

AGENCY: USDA, Forest Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forests, Brush Creek/Hayden Ranger District, will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of issuing a Road Use Permit to the State of Wyoming to access its lands in Section 16, T. 12 N., R. 83 W., 6th P.M.; across National Forest System lands. The State of Wyoming has completed application for a Forest Road Special Use Permit to exercise its right under the *Alaska National Interest Lands Conservation Act* of December 2, 1980. The permit would allow the State of Wyoming to transport logs from a commercial timber sale on its land across National Forest System lands over existing Forest Development Roads. The analysis area is southeast of Encampment, Wyoming. All roads across National Forest System lands needed to access the State of Wyoming lands in School Section 16 already exist as Forest Development Roads, which are in suitable condition and capable of supporting the proposed use. No new road construction or reconstruction on National Forest System lands would be needed for the state to access its lands.

This Notice of Intent is being issued under the authority of the Medicine Bow National Forest Land and Resource Management Plan and Final EIS of October 1985. The Medicine Bow National Forest formally initiated plan revision on October 7, 1999 with a Notice of Intent published in the **Federal Register**. It is anticipated that the 1985 Forest Plan will still be in effect when the Record of Decision for this EIS is issued.

DATES: Public scoping for a Road Use Permit to Louisiana Pacific, an agent of the State of Wyoming, was initiated on January 28, 1999. A total of 83 comment letters were received. Additional scoping was initiated on August 10, 1999 for a Road Use Permit to the State of Wyoming. A total of 53 comment letters were received. All comments received from these previous scoping efforts related to the issuance of a Road Use Permit to access State of Wyoming lands in Damfino Section 16 will be combined with comments received as a result of this Notice of Intent and reviewed to identify potential issues for this analysis. Since these previously received comments will be incorporated into this analysis, individuals who responded to either the January 28, 1999 or August 10, 1999 scoping requests need provide comment at this time only if they wish to provide additional information to what they previously submitted. Written comments and suggestions should be postmarked by January 21, 2000 to receive consideration. The estimated time for filing the draft EIS is March 2000 followed by the final decision in May 2000.

ADDRESSES: The Responsible Official is Don Carroll, District Ranger; Brush Creek/Hayden Ranger District; Medicine Bow-Routt National Forests; PO Box 249; South HWY 130/230; Saratoga, WY 82331. Written comments and suggestions concerning the scope of the analysis may be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: John Baumchen, Interdisciplinary Team Leader. Phone: 307–326–5258.

SUPPLEMENTARY INFORMATION:

Background: Under authorities provided for in 36 CFR 261.12 and 36 CFR 261.54, Forest Supervisor Jerry Schmidt issued Supervisor's Order 98–10 on July 8, 1998. This order requires written authorization for commercial use of any Forest Development Road on the Medicine Bow-Routt National Forest. In response to this requirement, the State of Wyoming, has applied for a Forest Road Special Use Permit for commercial haul related to a timber sale on State lands over Forest Development Roads (FDR's) 409, 416, 416.1D and 416.2D. The Wyoming lands are located adjacent to the Wyoming border with Colorado in Section 16, T.12N., R.83W., 6th P.M. The State of Wyoming would thus exercise its right under the *Alaska National Interest Lands Conservation Act* of December 2, 1980 (ANILCA) to access these lands. The Forest Road Special Use Permit is not a general authorization. The permit would provide specific authority to the permittee for the activities listed, subject to stipulations included in the permit.

Forest Development Roads suitable for commercial haul already exist to a termination point within School Section 16. The National Forest roads to be used include both roads that are open system roads as well as roads originally constructed as part of the Coon Creek Pilot Project, which are normally closed.

Scoping process: All comments received from previous scoping efforts related to the issuance of a Road Use Permit to access State of Wyoming lands in Damfino Section 16 will be combined with comments received as a result of this Notice of Intent and reviewed to identify potential issues for this analysis. Since previously received comments will be incorporated into this analysis, individuals who responded to either the January 28, 1999 or August 10, 1999 scoping requests need to provide comment at this time only if they wish to provide information additional to what they previously submitted.

Proposed Action: The proposed action is to issue a Road Use Permit to the State of Wyoming for commercial haul over National Forest Roads from State of Wyoming land in Section 16 in T.12N., R.83W.

Potential alternatives: The Interdisciplinary Team will review scoping comments from all three scoping processes to identify key issues and will develop a recommendation concerning alternatives to the Proposed Action warranting analysis in the Environmental Impact Statement. As a minimum, the alternatives to be analyzed in the EIS would include the No Action Alternative (do not issue a Road Use Permit); and the Proposed Action (issue a road use permit to the State of Wyoming over the requested route).

Preliminary Issues: The following preliminary issues have been identified through past scoping of projects in the area:

What are the FS authorities and Wyoming's rights under ANILCA concerning the issuance of a Road Use Permit to Section 16?

Under what conditions would a Road Use Permit needed for commercial haul for a commercial timber sale be issued to the State of Wyoming?

What would be the effects of a timber sale on lands owned by the State of Wyoming to adjacent National Forest System resources, particularly, what are the effects to recreation, wildlife, soil and water?

What are appropriate alternatives for the analysis?

What interpretations and positions concerning effects to resources, roadless character, fragmentation and environmental laws should be used to analyze activities on lands not under the jurisdiction of the U.S. Forest Service?

Decision to be made: The Responsible Official will decide which alternative of those considered in the draft Environmental Impact Statement to select. Based on the decision that is made, he will also decide what mitigation measures and permit stipulations will be required. The issues and alternatives developed from public comment and Interdisciplinary Team analysis will be clearly disclosed in the Environmental Impact Statement. From the project record, the Responsible Official and others who may review the decision will be able to fully understand the consequences of implementing the selected alternative.

Reviewer Obligations: The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Release of Names: Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Responsible Official: Don Carroll, District Ranger; Brush Creek/Hayden Ranger District; Medicine Bow-Routt National Forests; P.O. Box 249; Saratoga, WY 82331.

As the Responsible Official, I will decide which, if any of the alternatives to be described in the draft Environmental Impact Statement will be implemented. I will document the decision and reasons for my selection of the decision in the Record of Decision.

Dated: December 16, 1999.

Don G. Carroll,

District Ranger.

[FR Doc. 99–33284 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–GM–M

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction: Hawthorne Army Depot New Bomb Project Interchange, Toiyabe National Forest, Nevada

AGENCY: Forest Service, USDA.

ACTION: Notice of land interchange.

SUMMARY: On September 15, 1999, and November 4, 1999, the Secretary of the Army and the Secretary of Agriculture, respectively, signed a joint interchange order authorizing the transfer of administrative jurisdiction of 3,183.418 acres, more or less, lying within the Toiyabe National Forest, Mineral County, Nevada, from the Department of Agriculture to the Department of the Army. Furthermore, the order transfers from the Department of the Army to the Department of Agriculture 487.96 acres, more or less, lying adjacent to the exterior boundaries of the Los Padres National Forest, Monterey County, California, for inclusion in the Los Padres National Forest. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b) has been met. A copy of the Joint Order, as signed, and Exhibits A–1 and B–1, which describe the lands and interests therein being conveyed, are set out at the end of this notice.

EFFECTIVE DATE: The order is effective December 23, 1999.

FOR FURTHER INFORMATION CONTACT: David M. Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, Telephone: (202) 205–1362.

Dated: December 2, 1999.

James R. Furnish,

Deputy Chief.

Ft. Hunter Liggett Lands To Be Transferred from the Department of the Army to the Forest Service

That portion of the Fort Hunter Liggett Military Reservation situated within Sections 33, 34, and 35; Township 24 South, Range 7 East, Mount Diablo Base Meridian, Monterey County, California, being more particularly described as follows:

Beginning at the northwest corner of Section 34; thence easterly along said section line to the westerly edge of the Salmon Creek Road; thence southeasterly along the westerly edge of said road to the Monterey County Line; thence westerly along said County Line to the westerly boundary of the Fort Hunter Liggett Military Reservation; thence; northwesterly along said boundary to the north line of Section 33; thence, along said line to the point of beginning.

Containing 487.96 acres more or less.

Hawthorne Army Depot—Lands to be Transferred From the Forest Service to the Department of the Army

A parcel of land situated in portions of Sections 26, 27, 28, 29, 32, 33, 34, and 35, Township 5 North, Range 30 East, Mount Diablo Base and Meridian, and Sections 3, 4, and 5 Township 4 North, Range 30 East, Mount Diablo Base and Meridian, County of Mineral, State of Nevada, according to the attached Record of Survey, and more particularly described as follows:

COMMENCING for reference at the southeast corner of said Section 34;
Thence, N 26°38′29″ W, a distance of 1333.26 feet, to the TRUE POINT OF BEGINNING;
Thence, from said TRUE POINT OF BEGINNING, N 26°53′09″ E, a distance of 530.03 feet;
Thence, N 08°52′56″ W, a distance of 26.77 feet;
Thence, N 31°49′19″ E, a distance of 523.98 feet;
Thence, N 28°44′15″ E, a distance of 1670.81 feet;
Thence, N 28°04′37″ E, a distance of 432.97 feet;
Thence, N 22°59′00″ E, a distance of 1006.98 feet;
Thence, N 17°04′17″ W, a distance of 803.47 feet;
Thence, N 07°00′03″ W, a distance of 1135.47 feet;
Thence, N 29°34′33″ E, a distance of 574.20 feet;
Thence, N 47°40′04″ W, a distance of 865.29 feet;
Thence, N 86°54′23″ W, a distance of 9686.49 feet;
Thence, S 39°46′28″ W, a distance of 5303.45 feet;
Thence, S 00°59′45″ W, a distance of 6514.70 feet;
Thence, S 57°01′14″ E, a distance of 3911.76 feet;
Thence, S 73°00′55″ E, a distance of 117.69 feet;
Thence, N 86°37′18″ E, a distance of 1461.68 feet;
Thence, S 89°20′52″ E, a distance of 2208.65 feet;
Thence, N 76°48′58″ E, a distance of 1251.50 feet;
Thence, N 72°39′18″ E, a distance of 1151.81 feet;
Thence, N 28°43′31″ E, a distance of 5448.58 feet, more or less, to the TRUE POINT OF BEGINNING.

CONTAINING, 3183.42 Acres, more or less.

The Basis of Bearing for this legal description is the line between Monuments MIV 011 and MIV 012 taken from NDOT record information ASP 116 State Route 31, N 46°25′24″ E, a distance of 10415.66 feet.

END OF DESCRIPTION

[FR Doc. 99–33304 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, January 12, 2000, at the North State Blood Center, 1880 Park Marina Drive, Redding, California. The meeting will start at 9 a.m. and adjourn at 4 p.m. Topics for the meeting are: (1) Discussion of a fuels reduction project; (2) Clear Creek Watershed implementation; (3) discussion of the draft policy letter to CALFED regarding upper watershed restoration; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 11263 N. Highway 3, Fort Jones, California 96032; telephone 530–468–1281; TDD (530) 468–2783; email: chendryx/r5__klamath@fs.fed.us.

Dated: December 10, 1999.

Constance J. Hendryx,

PAC Support Staff.

[FR Doc. 99–33369 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on February 3, 2000, at the Catholic Charities, Conference Room, 467 Bloomfield Avenue, Bloomfield, Connecticut 06002. The Committee will review its report, ''Civil Rights Issues in Connecticut: A Summary Report of the 1997 Civil Rights Conference'', and plan a community forum in Spring 2000 in Bridgeport, Connecticut.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Neil Macy, 860–242–7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting

and require the service of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–33370 Filed 12–22–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on January 28, 2000, at the Double Tree Hotel, the Opal Room, 29th and Chinden, Boise, Idaho 83714. The purpose of the meeting is to review civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–33371 Filed 12–22–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5 p.m. on February 11, 2000, at the Double Tree Inn-Columbia River, 1401 North Haden Island Drive, Portland, Oregon 92717. The purpose of the meeting is to review civil rights developments in the State and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–33372 Filed 12–22–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121799D]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Individual Fishing Quota Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of effectiveness of data collection.

SUMMARY: NMFS is announcing that the information collection requirement contained in § 679.5(l)(2)(vi) of 50 CFR part 679 was approved by the Office of Management and Budget.

DATES: Effective November 26, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Hale, 907-586-7228.

Dated: December 17, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33353 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121499E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings for its Groundfish Advisory Panel and Groundfish Committee in January, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will held Thursday, January 13, 2000, and Friday, January 14, 2000. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meetings will be held at the Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535–4600.

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950–2866.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, January 13, 2000, at 10 a.m.—Groundfish Advisory Panel Meeting

The Advisory Panel will review options and analyses for the groundfish annual adjustment (Framework 33) and develop preferred alternatives to recommend to the Groundfish Committee. The options for the annual adjustment include: management measures to achieve fishery management plan (FMP) objectives for Gulf of Maine and Georges Bank cod stocks, including area closures, trip limits, increase in the minimum fish size and adjustments to the days-at-sea (DAS) system; adjustment of the Georges Bank haddock trip limit; decreasing the minimum mesh size for otter trawl vessels in the Large Mesh Permit Category and allowing for exit from the

program after one month; revision of the definition of exempted midwater trawl gear; an exemption for raised footrope trawl gear in part of the Gulf of Maine closed areas and for small scallop dredges in the Western Gulf of Maine Closed Area; a program to allow limited scallop dredge vessel access to Closed Areas I and II and the Nantucket Lightship Closed Area, including an exemption for General Category vessels to fish for scallops in Closed Areas I and II; and a requirement that multispecies party/charter vessels obtain an exemption certificate to fish in any or all of the Gulf of Maine closed areas. The Advisory Panel will also elect a chairman to serve for 2000–01.

Friday, January 14, 2000, at 9:30 a.m.—Groundfish Committee Meeting

The Groundfish Committee will review options, Plan Development Team analyses, and Advisory Panel recommendations for the groundfish annual adjustment (Framework 33) and develop preferred alternatives to recommend to the Council. The options for the annual adjustment include: management measures to achieve FMP objectives for Gulf of Maine and Georges Bank cod stocks, including area closures, trip limits, increase in the minimum fish size and adjustments to the DAS system; adjustment of the Georges Bank haddock trip limit; decreasing the minimum mesh size for otter trawl vessels in the Large Mesh Permit Category and allowing for exit from the program after one month; revision of the definition of exempted midwater trawl gear; an exemption for raised footrope trawl gear in part of the Gulf of Maine closed areas and for small scallop dredges in the Western Gulf of Maine Closed Area; a program to allow limited scallop dredge vessel access to Closed Areas I and II and the Nantucket Lightship Closed Area, including an exemption for General Category vessels to fish for scallops in Closed Areas I and II; and a requirement that multispecies party/charter vessels obtain an exemption certificate to fish in any or all of the Gulf of Maine closed areas.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notie that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard at the Council (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 17, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33355 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 666–P is being increased for special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 22, 1999, you are directed to increase the current limit for Category 666–P to 1,019,333 kilograms [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–33475 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot,

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998; Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 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 Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Description

The 2000 Application Guidelines for AmeriCorps National, State, and Indian Tribes and U.S. Territories provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for funds to operate AmeriCorps programs.

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page all AmeriCorps National, State, and Indian Tribes and U.S. Territories can use. The budget form and title page have been revised so that information is asked for one place and does not need to be copied to some other part of the form as in the past. Form instructions are clearer and are written in plain language.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for AmeriCorps National, State and Indian Tribes and U.S. Territories.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 2000.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 20,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 20, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33334 Filed 12–22–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, (202) 606–5000, extension 470. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Terry O'Malley, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 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 Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Description

AmeriCorps Education Awards Program 2000 Application Guidelines provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for education awards for community service programs that can support most or all of the AmeriCorps member and program costs from sources other than the Corporation. The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Education Awards Program.2000 Application Guidelines.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 300.

Frequency: Once per year.

Average Time Per Response: Eight (8) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 20, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–33335 Filed 12–22–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for National Providers of Training and Technical Assistance to Corporation for National and Community Service Programs; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds; correction.

SUMMARY: The Corporation for National and Community Service published a notice in the **Federal Register** of December 3, 1999, concerning the availability of funds for organizations to provide training and technical assistance to grantees and subgrantees supported by the Corporation funds. The part of the notice concerning the provision of assistance to increase participation of persons with disabilities in national service contained extraneous information and omitted information about a matching funds requirement.

FOR FURTHER INFORMATION CONTACT: Jim Ekstrom or Margie Legowski at the Corporation for National and Community Service, telephone (202) 606–5000, ext. 414, T.D.D. (202) 565–2799. This Notice is available on the Corporation's web site, *http://www.nationalservice.org/research*.

Correction

In the **Federal Register** of December 3, 1999, in 64 FR 67889, in the first column, correct the first paragraph to read: ''The funds that the Corporation provides may not exceed 75 percent of the cost of carrying out activities under the cooperative agreement. The provider may provide for the remaining share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services. The provider may use State sources, local sources, or other Federal sources (other than those funds made available under the national service laws) for this purpose.''

Dated: December 20, 1999.

William Bentley,

Director, Department of Evaluation and Effective Practices, Corporation for National and Community Service.

[FR Doc. 99–33340 Filed 12–22–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Joint Military Intelligence College Board of Visitors

ACTION: Notice.

SUMMARY: The Joint Military Intelligence College (JMIC) Board of Visitors was renewed effective November 27, 1999, in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, the ''Federal Advisory Committee Act.''

The JMIC Board of Visitors will continue to provide the Director, Defense Intelligence Agency, and the President, JMIC with advice on matters related to mission, policy, accreditation, faculty, students, facilities, curricula, educational methods, research and administration. The Board will continue to be composed of 11 members who are experts in the national intelligence community and who are former high ranking military officers and civilian government officials, and distinguished representatives from academia. Efforts will be made to ensure that there is a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

For further information regarding the JMIC Board of Visitors, please contact Mr. Ronald Garst, (202) 231–3322.

Dated: December 16, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33243 Filed 12–23–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend Record System.

SUMMARY: On August 24, 1999, at 64 FR 46185, the Air Force amended the system of records notice F044 AF DP B, entitled Substance Abuse Reorientation and Treatment Case Files. Two of the changes made to the system of records notice at that time were to the system identifier and the system name. They were changed to 'F044 AF SG B', entitled 'Alcohol and Drug Abuse Prevention and Treatment Program', respectively.

It has come to the attention of the Air Force that the new system identifier (F044 AF SG B) already existed. Therefore, the system of records notice published on August 24, 1999, should carry the system identifier of 'F044 AF SG S', while retaining the system name of 'Alcohol and Drug Abuse Prevention and Treatment Program'.

DATES: The amendment will be effective on December 23, 1999.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

On August 24, 1999, at 64 FR 46185, the Air Force amended the system of records notice F044 AF DP B, entitled 'Substance Abuse Reorientation and Treatment Case Files'. Two of the changes made to the system of records notice were to the system identifier and the system name. They were changed to 'F044 AF SG B', entitled 'Alcohol and Drug Abuse Prevention and Treatment Program', respectively.

It has come to the attention of the Air Force that the new system identifier (F044 AF SG B) already existed. Therefore, the system of records notice published on August 24, 1999, should carry the system identifier of 'F044 AF SG S', entitled 'Alcohol and Drug Abuse Prevention and Treatment Program'.

Dated: December 16, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33245 Filed 12–22–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 13–14 January 2000.

Time of Meeting: 0800–1700.

Place: IDA Building, 1801 Beauregard, Alexandria, VA.

Agenda: The Army Science Board's (ASB) membership will receive briefings on ongoing studies, plan forthcoming studies and will receive presentations regarding major Army initiatives and issues. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Wayne Joyner at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 99–33377 Filed 12–22–99; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting Pursuant to the Provision of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), Notice is Hereby Given of the Defense Nuclear Facilities Safety Board's (Board) Meeting Described Below

TIME AND DATE OF MEETING: 9:00 a.m., January 20, 2000.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board (''Board'') will convene the twelfth quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plan for the Board's Recommendations 95–2, Integrated Safety Management (''ISM''). Specific ISM status matters will include recent and planned site verification reviews, actions needed to achieve full implementation by September 2000, and progress on developing performance indicators. Presentations on site implementation status will be made by the DOE Albuquerque and Idaho Operations Offices. DOE will also present the status of implementing Recommendation 98–1, Integrated Safety Management (Response to Issues Identified by the Office of Internal Oversight). Specific matters related to Recommendation 98–1 will include the status of the corrective action plans, the corrective action tracking system, and the implementation verification process.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: December 21, 1999

John T. Conway,

Chairman.

[FR Doc. 99–33459 Filed 12–21–99; 12:01 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 17, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Technology Innovation Challenge Grant Program Online Annual Performance Reporting System.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 96;

Burden Hours: 2,400.

Abstract: The proposed interactive, on-line database provides the U.S. Department of Education and funded Technology Innovation Challenge Grant projects with up-to-date information on a number of key issues that include: basic characteristics of the project and key contact information; project partners; project participants; the project focus; project goals and activities; professional development activities; dissemination of project products; lessons learned from the project; and the project's budget.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33258 Filed 12–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 17, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: Revision.

Title: 2000 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52,500 Burden Hours: 506,250.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is a biennial survey which collects data from schools and school districts on issues, including emerging issues, of interest to the Office for Civil Rights, U.S. Department of Education. Data from the Compliance Report is used by OCR to aid in identifying sites for compliance reviews and tracking trends and issues related to civil rights compliance. The Compliance Report collects data related to Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin), Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex) and Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap). For the 2000 Compliance Report, data will be collected from all districts and schools.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33259 Filed 12–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–255–005]

Columbia Gas Transmission Corporation; Notice of Status of Compliance Report

December 17, 1999.

Take notice that on December 10, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following status of compliance filing.

Columbia states that this filing is being made regarding compliance with Section 284.10(c)(2)(i) of the Commission's Regulations, as required by the Commission's order ''Compliance with OBA Requirements,'' issued October 13, 1999 in Docket No. RP98–255–004.

By the instant filing, Columbia reports that it has executed an Operational Balancing Agreement with Transcontinental Gas Pipe Line Corporation effective as of December 1, 1999. Thus Columbia is now in full compliance with the provisions of Section 284.10(c)(2)(i) of the Commission's Regulations.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said 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 on or before December 27, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 99–33264 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–139–000]

KN Marketing, LP v. El Paso Natural Gas Company; Notice of Complaint

December 17, 1999.

Take notice that on December 16, 1999, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), KN Marketing, LP (KNMLP) filed a Section 5 complaint against El Paso Natural Gas Company (El Paso), requesting the Commission to require El Paso to change the manner in which it allocates firm mainline capacity on its system.

Specifically, KNMLP requests the Commission to order El Paso to cease and desist the overselling of firm mainline capacity from the San Juan Basin to Texas (East End), which results in firm shippers' volumes being constantly allocated. KNMLP requests that this complaint be given Fast Track processing, pursuant to Rule 206(h).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 385.214). All such motions or protests must be filed on or before January 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before January 6, 2000.

David P. Boergers,

Secretary.

[FR Doc. 99–33268 Filed 12–22–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–137–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1999.

Take notice that on December 15, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to be effective January 15, 2000.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to modify certain of Panhandle's pro forma service agreements so that discount agreements may provide for adjustments to rate components upward or downward to achieve an agreed upon overall rate so long as all rate components remain within the applicable minimum and maximum rates specified in the tariff.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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. 99–33266 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–006]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 17, 1999.

Take notice that on December 10, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Original Sheet No. 8A. PG&E GT–NW requests that the above-referenced tariff sheet become effective December 2, 1999.

PG&E GT–NW states that this sheet is being filed to correct a typographical error contained on Original Sheet No. 8A as filed on December 2, 1999.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested 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 Sections 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. 99–33265 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–138–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 17, 1999.

Take notice that on December 15, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised

Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing to be effective January 15, 2000.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to modify certain of Trunkline's pro forma service agreements so that discount agreements may provide for adjustments to rate components upward or downward to achieve an agreed upon overall rate so long as all rate components remain within the applicable minimum and maximum rates specified in the tariff.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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. 99–33267 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Comments, Final Terms and Conditions, Recommendations and Prescriptions

December 17, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Original major License.

b. Project No.: 11588–001.

c. Date filed: October 29, 1999.

d. Applicant: Alaska Power and Telephone Co.

e. Name of Project: Otter Creek Hydroelectric Project.

f. Location: On Kasidaya Creek, about 3 miles from the City of Skagway, on Taiya Inlet, in the First Judicial District of the State of Alaska. The project would use about 6.0 acres of Federal land within the Tongass National Forest.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Alaska Power & Telephone Company, Glen D. Martin, Project Manager, 191 Otto Street, P.O. Box 3222, Port Townsend, WA 98368, (360) 385–1733.

i. FERC Contact: Gaylord W. Hoisington, gaylord.hoisington@ferc.fed.us, or (202) 219–2756.

j. Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions: 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 project would consist of the following new facilities: (1) An 80-foot-long, 10-foot-high impoundment structure at approximately 550 feet above mean sea level; (2) an 0.18-acre reservoir with a total storage capacity of 0.92 acre feet; (3) an intake at the impoundment structure; (4) an orifice to continuously release 5 cubic feet per second at the impoundment structure; (5) a 3,500-foot-long, 40-inch-diameter penstock; (6) a 60-foot-long, 80-foot-wide metal powerhouse structure to house a 3.0-megawatt Turgo turbine; (7) a 200-foot by 100-foot staging area around the powerhouse; (8) a 50-foot-long to 75-foot-long tailrace; (9) a pad-mounted step-up transformer; (10) a 200-foot-long underground cable; (11) 3 helicopter pads; and (12) other appurtenances.

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, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed 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.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

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, a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Comments, Protest, 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 Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protest 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, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Response Documents—The Commission is requesting final comments, final reply comments, final recommendations, terms and conditions and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–33263 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 17, 1999.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. Project No. 4515–014—12–1–99—Elliott Sutto.

2. CP98–150–000 and CP98–151–000—12–3–99—Christopher Pryslopski.

3. CP98–150–000 and CP98–151–000—12–3–99—Steve C. Resler.

4. CP99–163–000—11–8–99—L.J. Sauter, Jr.

5. Project No. 1981–000—11–11–99—Thomas F. Thuemler.

6. Project No. 2741–000—11–10–99—Brian D. Conway.

7. Project No. 2609–013—11–19–99—Judith M. Stolfo.

8. Project No. 2566–010 and Project No. 11616–000—11–29–99—Chris Freiburger.

9. CP99–94–000—12–8–99—Wayne E. Daltry.

10. Project No. 10942–000—12–6–99—Don Beyer.

11. CP98–150–000 and CP98–151–000—12–9–99—Gordon P. Buckley.

12. Project No. 2659–000—12–10–99—Bob Easton.

13. CP98–150–000 and CP98–151–000—12–14–99—Matthew J. Brower.

14. CP00–36–000—12–17–99—Stanley Hlaban.

David P. Boergers,

Secretary.

[FR Doc. 99–33333 Filed 12–22–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 6, 1999 through December 10, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7176.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J60020–00 Rating EC2, Yellowstone Pipeline Missoula to Thompson Falls Reroute, Construction and Operation, Special-Use-Permit and Right-of-Way Easement, Missoula, Sanders and Mineral Counties, MT and Shoshone County, ID.

Summary: EPA supports the preferred alternative, however EPA expressed environmental concerns regarding potential surface and ground water quality impacts from potential pipeline spills and recommended using an industry state-of-the-art pipeline leak detection system. EPA recommends including protective measures for the existing pipeline west of Thompson Falls.

ERP No. D–FHW–C40149–NY Rating EC2, Albany Shaker Road and Watervliet Shakey Road Improvement Project, Construction and Reconstruction, Funding and COE Section 404 Permit, Town of Colonie, Albany County, NY.

Summary: EPA expressed environmental concerns regarding potential impacts to wetlands and air quality. EPA requested that additional information regarding the minimization

measures and proposed mitigation plans for wetlands, as well as a more thorough cumulative impacts evaluation for wetlands and air quality should be included in the final EIS.

ERP No. D–FRC–E03008–00 Rating EC2, Florida Gas Transmission Phase IV Expansion Project (Docket No. CP99–94–000), To Deliver Natural Gas to Electric Generator, FL and MS.

Summary: EPA expressed environmental concern regarding the impact of 297 acres of wetlands including 100 acres of forested wetlands, 72 perennial waterways and 62 residences within 50 ft of the construction ROW, and that the project would induce secondary development impacts. EPA requested additional information on certain alternatives/variations and of Environmental Justice.

ERP No. D–FTA–C40150–NY Rating EC2, Manhattan East Side Transit Alternatives Study, (MESA), Improve Transit Access Lower Manhattan, Lower East Side, East Midtown, Upper East Side and East Harlem, Major Investment Study, New York, NY.

Summary: EPA expressed environmental concerns regarding the air quality analysis and alternatives. EPA requested that this issue be clarified and be included in the next document.

ERP No. D–NPS–C61010–NJ Rating EC2, Great Egg Harbor National Scenic and Recreation River, Comprehensive Management Plan, Implementation, Atlantic Gloucester, Camden and Cape May Counties, NJ.

Summary: EPA expressed environmental concerns with the CMP recommendations to enhance and protect the River's water quality. The final EIS should include a funding plan, and a detailed plan for periodic evaluation of the implementation and success of the CMP.

ERP No. D–NPS–F39038–00 Rating EC2, Lower Saint Croix National Scenic Riverway Cooperative Management Plan, Implementation, MN and WI.

Summary: EPA expressed concerns regarding potential water quality impacts and the lack of baseline data/indicators. EPA requested that these issues be clarified in the final document.

ERP No. D–USN–C11016–NY Rating EC2, Brooklyn Naval Station Disposal and Reuse, Implementation, King County, NY.

Summary: EPA expressed environmental concerns regarding impacts to the Brooklyn/Queens Aquifer System and historic resources, and requested that additional information be presented in the final EIS to address these issues.

Final EISs

ERP No. F–AFS–K65307–CA Herger-Feinstein Quincy Library Group Forest Recovery Act, Establishing and Conducting a Pilot Project, Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA.

Summary: EPA expressed environmental objections with the designation of Alternative 3 as the ''environmentally preferable alternative,'' given Alternative 5 would provide maximum level of resource protection with the minimum level of new disturbance. EPA suggested that the ROD specify mitigation for the new road construction and provide a map of spotted owl habitat excluded from harvest.

ERP No. F–COE–L90028–WA Programmatic EIS—Puget Sound Confined Disposal Site Study, Implementation, WA.

Summary: No formal comment letter sent to the preparing agency.

ERP No. FS–AFS–L82015–ID St. Joe Noxious Weed Control Project, Implementation, St. Maries River, St. Joe River and Little North Fork Clearwater River, Benewah, Shoshone and Latah Counties, ID.

Summary: No formal comment letter sent to the preparing agency.

ERP No. F1–AFS–L61218–ID Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID.

Summary: No formal comment letter was sent the preparing agency.

Dated: December 20, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33358 Filed 12–22–99; 8:45 am]

BILLING CODE 6550–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa. Weekly receipt of Environmental Impact Statements Filed December 13, 1999 Through December 17, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990476, Draft EIS, AFS, AZ, Williams Ski Area Expansion on Bill Williams Mountain, Implementation, Special-Use-Permit, Kaibab National Forest, Williams Ranger District, Coconino County, AZ, Due: February 22, 2000, Contact: Teri Cleeland (520) 635–5620.

EIS No. 990477, Final EIS, AFS, UT, Snowbird Ski and Summer Resort Master Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit, Salt Lake and Lake Counties, Salt Lake City, UT, Due: January 21, 2000, Contact: Rob Cruz (801) 733–2685.

EIS No. 990478, Draft EIS, COE, AZ, Tres Rios Feasibility Study Project, Ecosystem Restoration, Located at the Salt, Gila and Agua Fria Rivers, City of Phoenix, Maricopa County, AZ, Due: February 07, 2000, Contact: Alex Watt (213) 452–3860.

EIS No. 990479, Draft EIS, COE, CA, Lower Mission Creek Flood Control Project, Proposed Plan for Flood Control, City of Santa Barbara, Santa Barbara County, CA, Due: February 07, 2000, Contact: Joy Jaiswal (213) 452–3871.

EIS No. 990480, Final EIS, FHW, CO, Southeast Corridor Multi-Modal Project, To Improve Travel between Central and Southeast Corridors, Light Rail Transit (LRT), Colorado Metropolitan Area, Denver, CO, Due: January 21, 2000, Contact: Vince Barone (303) 969–6730.

EIS No. 990481, Final EIS, NRC, SC, Generic EIS—License Renewal of Nuclear Plants for the Oconee Nuclear Station, Units 1, 2 and 3, Implementation, Oconee County, SC, Due: January 21, 2000, Contact: James H. Wilson (301) 415–1108.

EIS No. 990482, Final EIS, NPS, DC, The White House and President's Park Comprehensive Design Plan, Implementation of a Framework for Future Management, Washington, DC, Due: January 21, 2000, Contact: James I. McDaniel (202) 619–6344.

EIS No. 990483, Draft EIS, NRS, Programmatic EIS—Emergency Watershed Protection Program, Improvements and Expansion, To Preserve Life and Property Threatened by Disaster-Caused Erosion and Flooding, US 50 States and Territories except Coastal Area, Due: February 15, 2000, Contact: Donald Gohmert (202) 720–3534.

EIS No. 990484, Final EIS, USA, NJ, Military Ocean Terminal (MOTBY), Disposal and Reuse, Implementation, in the City of Bayonne, Bergen, Essex and Hudson Counties, NJ, Due: January 21, 2000, Contact: Theresa Persick-Arnold (703) 697–0216.

EIS No. 990485, Final EIS, USN, CA, Marine Corp Air Station (MCAS) Tustin Disposal and Reuse Plan, Cities of Tustin and Irvine, Orange County, CA, Due: January 21, 2000, Contact: Dana Ogdon (714) 573–3116.

EIS No. 990486, Draft EIS, FHW, OH, Lancaster Bypass (FAI–US 22/US 33–9.59/9.95) Construction, Funding, Greenfield, Hocking, Berne and Pleasant Townships, Fairfield County, OH, Due: February 11, 2000, Contact: Leonard E. Brown (614) 280–6869.

EIS No. 990487, Final EIS, FTA, MD, Metrorail Extension—Addison Road Station to the Largo Town Center, Transportation Improvements, Prince George's County, MD, Due: January 31, 2000, Contact: Gail McFadden-Roberts (215) 656–7100.

Amended Notices

EIS No. 990461, Draft EIS, COE, NY, Fire Island Inlet to Montauk Point, Implementation, Reach 1—Fire Island Inlet to Moriches Inlet Interim Storm Damage Protection Project, Long Island, NY, Due: January 31, 2000, Contact: Pete Weppler (212) 264–0195. Published (FR 12–17–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990462, Draft EIS, FHW, TN, Interstate 40 (I–40) Transportation Improvements from I–75 to Cherry Street in Knoxville, Funding, NPDES and COE Section 404 Permits, Knox County, TN, Due: January 31, 2000, Contact: Charles Boyd (615) 781–5770. Published (FR 12–17–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990463, Draft EIS, BOP, SC, South Carolina—Federal Correctional Institution, Construct and Operate, Possible Sites: Andrew, Bennettsville, Oliver and Salters, SC, Due: January 31, 2000, Contact: David J. Dorworth (202) 514–6470. Published (FR 12–17–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990465, Final EIS, COE, AR, Grand Prairie Area Demonstration Project, Implementation, Water Conservation, Groundwater Management and Irrigation Water Supply, Prairie, Arkansas, Monroe and Lonoke Counties, AR, Due: January 17, 2000, Contact: Edward P. Lambert (901) 544–0707. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–31–2000.

EIS No. 990467, Final EIS, FHW, IN, US 231 Transportation Project, New Construction from CR–200 N to CR–1150 S, Funding, Right-of-Way Permit and COE Section 404 Permit, Spencer and Dubois Counties, IN, Due: January 17, 2000, Contact: John R. Baxter (317) 226–7445. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990468, Regulatory Final EIS, OSM, Valid Existing Rights—Proposed Revisions to the Permanent Program Regulations Implementing Section 522(E) of the Surface Mining Control and Reclamation Act of 1977 and Proposed Rulemaking Clarifying the Applicability of Section 522(E) to Subsidence from Underground Mining, Due: January 17, 2000, Contact: Andy F. DeVito (202) 208–2701. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990469, Draft EIS, COE, TX, Programmatic EIS—Upper Trinity River Basin Feasibility Study, To Provide Flood Damage Reduction, Environmental Restoration, Water Quality Improvement and Recreational Enhancement, Trinity River, Dallas-Fort Worth Metroplex, Dallas, Denton and Tarrant Counties, TX, Due: February 7, 2000, Contact: Gene T. Rice, Jr (817) 978–2110. Published (FR 12–17–99) Correction to Telephone Number.

EIS No. 990470, Draft EIS, TVA, TN, Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Construction and Operation of Combustion Turbines (CTs), Haywood County, TN, Due: January 31, 2000, Contact: Gregory L. Askew, P.E. (865) 632–6418. Published (FR 12–23–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990471, Final EIS, FTA, WA, Everett-to-Seattle Communter Rail Project, Construction and Operation, To Link the Cities of Everett, Mukilteo, Edmonds, Shoreline, and the Seattle Waterfront, U.S. Coast Guard, COE Section 10 and 404 Permits, Snohomish County, WA, Due: January 17, 2000, Contact: David Phillip Beal (206) 684–1883. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990472, Final EIS, COE, NJ, Barnegat Inlet to Little Egg Inlet Hurricane and Storm Damage Protection, Implementation, Long Beach Island, Ocean County, NJ, Due: January 17, 2000, Contact: Randy Piersol (215) 656–6577. Published (FR 12–17–99) Correction to Comment Period from 1–24–2000 to 1–17–2000.

EIS No. 990474, Draft Supplement, NOA, Fishery Management Plan (FMP), Regulatory Impact Review, Snapper-Grouper Complex, South Atlantic Region, Due: January 31, 2000, Contact: William T. Hogarth (202) 482–5916. Published (FR 12–23–99) Correction to Comment Period from 2–7–2000 to 1–31–2000.

EIS No. 990475, Draft EIS, FHW, NC, Western Wake Freeway, Transportation Improvements from NC–55 at NC–1172 (Old Smithfield Road) to NC–55 near NC–1630 (Alston Avenue), Funding and COE 404 Permit, Wake County NC, Due: February 3, 2000, Contact: Nicholas L. Graf, P.E. (919) 856–4350. The Notice for the above DEIS should have appeared in the 12–17–99 **Federal Register**. The 45-day Comment Period is Calculated from 12–17–99.

Dated: December 20, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33359 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6514–8]

Proposed CERCLA Administrative Settlement; the Roman Catholic Archbishop of Boston

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement between the United States Environmental Protection Agency (''Agency'') and the Roman Catholic Archbishop of Boston (''Settling Party'') in connection with the Groveland Wells Nos. 1 and 2 Superfund Site located in Groveland, Massachusetts (''Site''). Pursuant to the settlement, the Settling Party will agree to allow the Agency to build, operate and maintain a groundwater treatment facility on it's property. The Settling Party will also provide Institutional Controls prohibiting the extraction of groundwater from it's property and restricting certain uses of the property that may interfere with remedial actions at the Site. Upon completion of remedial actions, ownership of the building housing the treatment facility will revert to the Settling Party. The settlement includes a determination that the Settling Party is to have *de minimis* status with respect to the Site under

section 122(g)(1)(B) of CERCLA, 42 U.S.C. 9622(g)(1)(B), and includes a covenant not to sue for the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Langley Adams Library, 185 Main Street, Groveland, Massachusetts, and U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Boston, MA 02114.

DATES: Comments must be submitted on or before January 24, 2000.

ADDRESSES: The proposed settlement is available for public inspection at U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100, Boston, MA 02114. A copy of the proposed settlement may be obtained from Derrick Golden, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBO), Boston, MA 02114, (617) 918–1448. Comments should reference the Groveland Wells Nos. 1 and 2 Superfund Site, Groveland, Massachusetts and EPA Docket No. CERCLA I–99–0070 and should be addressed to Derrick Golden, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBO), Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Derrick Golden, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBO), Boston, MA 02114, (617) 918–1448.

Dated: December 14, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration, Region 1.

[FR Doc. 99–33328 Filed 12–22–99; 8:45 am]

BILLING CODE 6560–50–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.: 203–011517–006.

Title: APL/Crowley/Lykes Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd., APL Co. PTE Ltd., Crowley American Transport, Inc., Lykes Lines Limited, LLC.

Synopsis: The proposed amendment deletes the Caribbean Service, Gulf Express Service, and Pacific South America Service from the geographic scope of the agreement; changes the name of Crowley American Transport to Hamburg-Sudamerikanische Dampfschifffahrtsgesellschaft Eggert & Amsinck d/b/a/Crowley American Transport; deletes outdated references; and makes other conforming changes based on the forgoing.

Agreement No.: 202–011528–015.

Title: Japan/United States Eastbound Freight Conference.

Parties: American President Lines, Ltd., Hapag-Lloyd Container Line GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., A.P. Moller-Maersk Sealand, Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., P&O Nedlloyd B.V., P&O Nedlloyd Limited, Wallenius Wilhelmsen Lines AS.

Synopsis: The parties are amending their conference agreement to extend the current suspension for an additional six months, through July 31, 2000.

Agreement No.: 207–011682.

Title: ATL/Signet Joint Service Agreement.

Parties: Associated Transport Line, L.L.C. (ATL), Signet SeaFreight Shipping Company (Signet), Texpress American Line, L.L.C. (Joint Service).

Synopsis: The proposed agreement authorizes ATL and Signet to establish a joint service, to be known as Texpress American Line, L.L.C., that will operate in the trade between U.S. Gulf ports and ports in Guyana, Suriname, Trinidad, and Venezuela. The parties request expedited review.

Dated: December 17, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33240 Filed 12–22–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) 46 CFR Part 540, as amended:

American Classic Voyages Company, Two North Riverside Plaza, Suite 200, Chicago, IL 60606, Vessel: PATRIOT

Cunard Line Limited (d/b/a Cunard), 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126, Vessel: CARONIA

Cunard Line Limited (d/b/a Seabourn Cruise Line), 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126, Vessel: SEABOURN SUN

Hapag-Lloyd Kreuzfahrten GmbH, Ballindamn 25, D–20079 Hamburg, Germany, Vessel: c. COLUMBUS, EUROPA and HANSEATIC

Holland America Line-Westours Inc. (d/b/a Holland America Line), Holland America Line N.V. and HAL Nederland N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: MAASDAM, ROTTERDAM RYNDAM and STATENDAM

Holland America Line-Westours Inc. (d/b/a Holland America Line), Holland America Line N.V. and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: NIEUW AMSTERDAM, NOORDAM, VOLENDAM, WESTERDAM and ZAANDAM

Holland America Line-Westours Inc. (d/b/a Holland America Line), HAL Cruises Limited and Wind Surf Limited, 300 Elliott Avenue West, Seattle, WA 98119, Vessel: VEENDAM

Holland America Line-Westours Inc. (d/b/a Windstar Cruises), Wind Spirit Limited, Windstar Sail Cruises Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessel: WIND SPIRIT

Holland America Line-Westours Inc. (d/b/a Windstar Cruises), Wind Star Limited, Windstar Sail Cruises Limited and HAL Antillen N.V., 300 Elliott Avenue, Seattle, WA 98119, Vessel: WIND STAR

Japan Cruise Line, Inc. (d/b/a Venus Cruise), 2–5–25, Umeda, Kita-ku, Osaka 530–0001, Japan, Vessels: ORIENT VENUS and PACIFIC VENUS

Dated: December 17, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33242 Filed 12–22–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Clipper Cruise Line, Inc., New World Ship Management Company, LLC and NACL, LLC, 7711 Bonhomme Avenue, St. Louis, MO 63105–1965, Vessel: NANTUCKET CLIPPER

Clipper Cruise Line, Inc., New World Ship Management Company, LLC and YOCL, LLC, 7711 Bonhomme Avenue, St. Louis, MO 63105–1965, Vessel: YORKTOWN CLIPPER

Cunard Line Limited, 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126, Vessels: CARONIA, QUEEN ELIZABETH 2 and SEABOURN SUN

Hapag-Lloyd Kreuzfahrten GmbH, Hapag-Lloyd Seetouristik (Cruises) GmbH, Hapag-Lloyd (Bahamas) Ltd. and Conti 1 Kreuzfahrt GmbH & Co. KG MS COLUMBUS, Ballindamm 25, D–20079 Hamburg, Germany, Vessel: c. COLUMBUS

Hapag-Lloyd Kreuzfahrten GmbH, Columbia Shipmanagement Ltd., Hapag-Lloyd (Bahamas) Ltd., and Kommanditgesellschaft MS ''EUROPA'' der Bremer Aktiengesellschaft & Co. KG, Ballindamm 25, D–20079 Hamburg, Germany, Vessel: EUROPA

Hapag-Lloyd Kreuzfahrten GmbH, Hapag-Lloyd Seetouristik (Cruises) GmbH, Hapag-Lloyd (Bahamas) Ltd., and Bunnys Adventure and Cruise Shipping Company Ltd., Ballindamm 25, D–20079 Hamburg, Germany, Vessel: HANSEATIC

Holland America Line-Westours Inc., Holland America Line N.V. and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: VOLENDAM and ZAANDAM

Japan Cruise Line, Inc. (d/b/a Venus Cruise), Kanko Kisen Co., Ltd., Hankyu Ferry Co. Ltd. and Shin-Nihonkai Ferry Co., Ltd., 2–5–25 Umeda, Kita-ku, Osaka 530–0001, Japan, Vessel: ORIENT VENUS

Japan Cruise Line, Inc. (d/b/a Venus Cruise), Kanko Kisen Co., Ltd., Kyowashoji Co., Ltd. and Shin Nihonkai Ferry Co., Ltd., 2–5–25 Umeda, Kita-ku, Osaka 530–0001, Japan, Vessel: PACIFIC VENUS

New Commodore Cruise Lines Limited, Crown Cruises Ltd. and Crown Dynasty Inc., 4000 Hollywood Blvd., Suite 385, South Hollywood, FL 33021, Vessel: CROWN DYNASTY

Radisson Seven Seas Cruises, Inc., Radisson Worldwide, Inc. and Finship Italy S.r.l., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334, Vessel: SEVEN SEAS NAVIGATOR

Royal Caribbean Cruises Ltd. and Voyager of the Seas Inc., 1050 Caribbean Way, Miami, FL 33132–2096, Vessel: VOYAGER OF THE SEAS

Dated: December 17, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33241 Filed 12–22–99; 8:45 am]

BILLING CODE 6730–01–M

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 January 20, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Mountain Company Profit Sharing/401k Plan, Montrose, Colorado; to acquire 40 percent of the voting shares of First Mountain Company, Montrose, Colorado, and thereby indirectly acquire voting shares of MontroseBank, Montrose, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Midland Bancshares, Inc., Midland, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Midland, Texas.

Board of Governors of the Federal Reserve System, December 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33381 Filed 12–22–99; 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. 99-32406) published on page 69765 of the issue for Tuesday, December 14, 1999.

Under the Federal Reserve Bank of Boston heading, the entry for Port Financial Corp., Cambridge, Massachusetts, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Port Financial Corp., Cambridge, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cambridgeport Bank, Cambridge, Massachusetts, and 5.3 percent of Cambridge Bancorp, Cambridge, Massachusetts, and thereby indirectly acquire control shares of Cambridge Trust Company, Cambridge, Massachusetts.

Comments on this application must be received by January 7, 2000.

Board of Governors of the Federal Reserve System, December 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33382 Filed 12–22–99; 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 January 10, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. UBS AG, Zurich, Switzerland; to acquire, through its wholly owned indirect subsidiary, North Street Finance LLC, New York, New York, the telephone and answering machine leasing business of Lucent Technologies Consumer Products L.P., Murray Hill, New Jersey, and thereby engage in certain leasing activities, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–33383 Filed 12–22–99; 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. Recordkeeping Requirements for Government Owned/Contractor Held Property and Report of Accounting Personal Property (HHS–565)—0990–0015—Extension—The recordkeeping requirements are needed to assure accountability and control for government owned/contractor held property for HHS contracts. Form 565 is used to report all accountable personal property purchased or fabricated by contractors and billed to HHS.

Respondents: State or local governments, business or other for-profit, non-profit institutions, small business;

Burden Information for Form HHS–565:

Annual Number of Respondents: 3,600;

Annual Frequency of Response: One time;

Average Burden per Response: 30 minutes;

Total Annual Burden: 1,800 hours;

Burden Information for Recordkeeping Requirements: Annual;

Number of Responses: 4,500;

Average Burden per Response: 30 minutes;

Total Annual Burden: 2250 hours;

Total Burden: 4050 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 NW, Washington, DC 20503.

Comments may also be sent to Cynthia Ages Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: December 10, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–33262 Filed 12–22–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Child Care Annual Aggregate Report.

OMB No.: 0970–0150.

Description: This legislatively mandated report collects program and participant's data on all children and families receiving direct Child Care and Development Fund services. Aggregate data is collected and will be used to determine the scope, type, and methods of child care delivery, and to provide a report to Congress. The revisions in this report are proposed to further clarify existing information upon which the report is based and to provide data for GPRA performance measures.

Respondents: State, local or tribal government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	40	2,240

Estimated Total Annual Burden Hours: 2,240.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Resource Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: Reports Clearance Officer. This information collection and an electronic comment form are also available at the following Child Care Bureau Web Site: *http://www.acf.dhhs.gov/programs/ccb/systems/index.htm.*

The Department specifically requests comments on: (a) Whether the proposed revised collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 20, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–33384 Filed 12–22–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0969]

Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals (GFI #78); Availability; Republication

Editorial Note: FR Doc. 99–32324 was originally published at page 70716 in the **Federal Register** of Friday, December 17, 1999. The companion Framework document was inadvertently not published. At the request of the agency, FR Doc. 99–32324 is republished below in its entirety together with the companion Framework document.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance document entitled ''Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (GFI #78). After the agency considered public comments on a draft of this guidance, announced in the **Federal Register** of November 18, 1998, it determined that revision of the draft guidance was necessary. GFI #78 addresses how under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) FDA intends to consider the potential human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs. For additional information regarding the subject matter dealt with in GFI #78, see the notice of availability of the document entitled ''FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' that appears elsewhere in this issue of the **Federal Register**.

DATES: Submit comments at any time.

ADDRESSES: Submit written comments on GFI #78 to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852.

FDA will also accept electronic comments. Persons who wish to submit electronic comments should go to the FDA home page at www.fda.gov and select ''Dockets'' and follow the instructions.

Submit written requests for single copies of the document entitled ''Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (GFI #78) to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See section III. Electronic Access of this document for information on electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sharon Thompson, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: sthompso@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 18, 1998 (63 FR 64094), FDA announced the availability of a draft guidance entitled ''Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (GFI #78). This draft guidance announced that FDA believed that it is necessary to evaluate the human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs. The publication of the draft of GFI #78 was the first step in the agency's consideration of the issues related to the use of antimicrobial new animal drugs in food-producing animals. The draft of GFI #78 laid out the agency's rationale for its current thinking about its authority under section 512 of the act to consider the human health impact of the microbial effects associated with the use of antimicrobial new animal drugs in food-producing animals.

In the **Federal Register** of January 6, 1999 (64 FR 887), FDA announced the availability of a discussion paper entitled ''A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (Framework Document). The Framework Document was the second step in the agency's consideration of issues related to the use of antimicrobial new animal drugs in food-producing animals. FDA made the Framework Document available to the public to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying concepts to be used to develop microbial safety policies protective of the public health. The Framework Document is related to GFI #78 in that it sets out a conceptual risk-based framework for evaluating the microbial safety (related to human health impact) of antimicrobial new animal drugs intended for use in food-producing animals.

After considering comments received by the public for both the draft of GFI #78 and the Framework Document, FDA determined that it was necessary to make some revisions to GFI #78. The revisions are intended to make GFI #78

more clearly reflect the agency's intentions regarding this issue. For example, the words ''evaluate'' and ''evaluation'' have been changed to ''consider'' and ''consideration,'' and other changes have been made to indicate that additional testing would not always be needed to determine the potential human health impact of the microbial effects associated with antimicrobial new animal drugs intended for use in food-producing animals.

GFI #78 represents the agency's current thinking on how under section 512 of the act it intends to consider the potential human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs. It does not create or confer any right for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Comments

Interested persons may, at any time, submit written or electronic comments on GFI #78 to the Dockets Management Branch (address above). Two copies of written comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document. GFI #78 and written and electronic comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain copies of ''Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (GFI #78) at http://www.fda.gov/cvm.

Dated: December 8, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

Editorial Note: FR Doc. 99–32324 was originally published at page 70716 in the **Federal Register** of Friday, December 17, 1999. The companion Framework document was inadvertently not published. At the request of the agency, FR Doc. 99–32324 is republished in its entirety together with the companion Framework document.

[FR Doc. 99–32324 Filed 12–14–99; 4:09 pm]

BILLING CODE 1505–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0969]

FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals.'' The comments were received in response to a document entitled ''Discussion Paper: 'A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals' '' (the Framework Document) that FDA made public and discussed at the Veterinary Medicine Advisory Committee (VMAC) meeting in January 1999. FDA intends to revise the Framework Document in response to the comments. Specific aspects of the Framework Document are to be discussed at two workshops scheduled for December 9 and 10, 1999, and February 22 and 23, 2000, and at later workshops currently being considered. For additional information, see the notice of availability of the guidance document entitled ''Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (GFI #78) that appears elsewhere in this issue of the **Federal Register**.

DATES: Submit comments at any time.

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

FDA will also accept electronic comments. Persons who wish to submit electronic comments should go to the FDA home page at http://www.fda.gov, select ''Dockets'', and follow the instructions for submitting electronic comments.

Submit written requests for single copies of the guidance document entitled ''FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' and other documents discussed in the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** notice to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Enclose one self-addressed adhesive label to assist that office in processing your requests. See section **III. Electronic Access** of this document for information on electronic access to the guidance document and its related documents.

FOR FURTHER INFORMATION CONTACT: Marcia R. Larkins, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0137, e-mail: mlarkins@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 18, 1998 (63 FR 64094), FDA published a notice of availability of a draft guidance document entitled ''Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' (GFI #78). The publication of this draft guidance for industry (GFI #78) was the first step in the agency's consideration of the issues related to the use of antimicrobial new animal drugs in food-producing animals. GFI #78 lays out the agency's rationale for its current thinking about its authority under the Federal Food, Drug, and Cosmetic Act to consider the human health impact of the microbial effects associated with the use of antimicrobial new animal drugs in food-producing animals. Elsewhere in this issue of the **Federal Register** is a notice of availability of the final revised guidance.

In the **Federal Register** of January 6, 1999 (64 FR 887), FDA announced the availability of a discussion paper called the Framework Document, which was the second step in the agency's consideration of issues related to the use of antimicrobial new animal drugs in food-producing animals. FDA made the Framework Document available to the public to initiate discussions with the scientific community and other interested parties on the agency's thinking about appropriate underlying

concepts to be used to develop microbial safety policies protective of the public health. The Framework Document is related to GFI #78 in that it sets out a conceptual risk-based framework for evaluating the microbial effects (related to human health impact) of antimicrobial new animal drugs intended for use in food-producing animals.

The agency invited comment on both GFI #78 and the Framework Document. FDA received more than 50 comments to these documents. These comments originated from a number of sources including individual members and committees of Congress (3); individual physicians, microbiologists, and hospitals (6); individual citizens and organizations representing consumers (16); animal drug and feed industries (3); individual veterinarians and organizations representing veterinarians (5); environmental organizations (3); individual producers and organizations representing producers (14); and another Federal agency (1).

In addition to requesting comment from the public, the agency also consulted with the VMAC on this issue. In a meeting held on January 25 and 26, 1999, the VMAC provided input on the Framework Document and addressed five specific questions from the agency regarding its contents. The goal of the meeting was ''to find the balance that protects human health and gives veterinarians the tools they need to treat animals.'' A transcript of this meeting is available on the CVM home page at the Internet address provided below in section **III. Electronic Access**.

FDA stated it would review the transcript of the VMAC meeting and any comments on GFI #78 and the Framework Document that were submitted to the agency, publish the analysis, and then appropriately revise GFI #78 and the Framework Document. This guidance document entitled ''FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals'' contains the analysis of the transcript, the comments received regarding GFI #78 and the Framework Document, and provides responses to the comments.

In the **Federal Register** of September 27, 1999 (64 FR 52099), the agency announced a general public meeting and two public workshops to discuss issues related to antimicrobial resistance in food-producing animals. The general public meeting was held on October 4, 1999. The first workshop called the ''Risk Assessment and the Establishment of Resistance Thresholds Workshop'' is scheduled for December 9 and 10, 1999. The second workshop called ''Preapproval Studies in Antimicrobial Resistance'' is scheduled for February 22 and 23, 2000. The agency intends for the document entitled ''FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals,'' along with the Framework Document, to serve as a basis for discussion at the two workshops and at future workshops.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written or electronic comments regarding this response to comments. Two copies of any written comments are to be submitted, except that individuals may submit one copy. All comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the response to comments and all received electronic and written comments may be seen in the office above between 9 a.m. and 5 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain copies of the document entitled ''FDA Response to Comments on a Proposed Framework for Evaluating and Assuring the Human Food Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals,'' the Framework Document, GFI #78, and transcripts from the VMAC meeting at http://www.fda.gov/cvm.

Dated: December 8, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33386 Filed 12–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5002]

Acupuncture Devices and Accessories; Revocation of Compliance Policy Guide 7124.11

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the Compliance Policy Guide (CPG) entitled ''Sec. 305.100 Acupuncture Devices and Accessories (CPG 7124.11)'' to eliminate obsolete compliance policy. In general, this CPG no longer reflects current agency policy because acupuncture needles have been reclassified from class III to class II (special controls).

DATES: Effective January 24, 2000.

ADDRESSES: Submit written requests for single copies of the CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411 or FAX your request to 301–827–0482. A copy of the CPG may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Governale, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued the CPG entitled ''Sec. 305.100 Acupuncture Devices and Accessories (CPG 7124.11)'' on June 15, 1976. This CPG considered acupuncture devices and accessories as investigational devices subject to the investigational device exemptions (IDE) regulations (21 CFR part 812). As such, these class III devices were permitted to be distributed only for the purpose of conducting clinical studies to establish their safety and effectiveness. In the absence of an approved premarket approval application, the sale, promotion, and commercial distribution of these acupuncture devices and accessories were prohibited.

In response to a reclassification petition that was submitted to FDA by the Acupuncture Coalition, the agency reclassified acupuncture needles from class III to class II (special controls) in the **Federal Register** of December 6, 1996 (61 FR 64616). The classification regulation (21 CFR 880.5580) for solid, stainless steel, acupuncture needles requires that these class II devices must comply with special controls for single use labeling, prescription labeling, biocompatibility, and sterility.

Currently, an acupuncture needle that is intended to pierce the skin in the practice of acupuncture may be

commercially distributed if it is the subject of a cleared premarket notification (510(k)), complies with the special controls, and meets all other applicable statutory and regulatory requirements.

Given the reclassification of acupuncture needles, FDA is revoking CPG 7124.11, in its entirety, to eliminate obsolete compliance policy.

II. Electronic Access

Prior to January 24, 2000, a copy of the CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs (ORA) Home Page includes the referenced document that may be accessed at http://www.fda.gov/ora/compliance__ref/cpg/cpgdev/cpg305–100.html.

Dated: December 7, 1999.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 99–33282 Filed 12–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1109–N]

Medicare Program; January 12, 2000, Meeting of the Competitive Pricing Advisory Committee

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

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) on January 12, 2000. The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on demonstration area designation and appropriate research designs for the project. The CPAC meetings are open to the public.

DATES: The meeting is scheduled to meet on January 12, 2000, from 1 p.m. until 5 p.m., e.s.t.

ADDRESSES: The meeting will be held at the Embassy Suites, 1250 22nd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard, C4–14–17, Baltimore, Maryland 21244–1850, (410) 786–6451.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research design for implementing the project. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, May 13, 1999, July 22, 1999, September 16, 1999, and October 29, 1999.

The CPAC consists of 15 individuals who are independent actuaries, experts in competitive pricing and the administration of the Federal Employees Health Benefit Program; and representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, HCFA; John Bertko, Actuary Principal, Humana Inc.; David Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., Healthcare Consultant; Samuel Havens, Healthcare Consultant; Margaret Jordan, Healthcare Consultant; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President and CEO, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, President, The Urban Institute; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL-CIO; and Jay Wolfson, Director, The Florida Information Center, University of South Florida. The chairperson is James Cubbin and the co-chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5)of the BBA, the CPAC will terminate on December 31, 2004.

The agenda for the January 12, 2000, meeting will include an overview and discussion of the recent legislation that affected the Medicare competitive pricing demonstration, Public Law 106–113, referred to as the Appropriations Act for FY 2000.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issue should contact the Executive Director, by 12 noon, January 7, 2000, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director, no later than 12 noon, January 10, 2000. Anyone who is not scheduled to speak, may submit written comments to the Executive Director, by 12 noon, January 10, 2000.

The meeting is open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–33260 Filed 12–22–99; 8:45 am]

BILLING CODE 4120–01–P

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 Trials for Prostate Cancer Therapy Grants.

Date: January 7, 2000.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Boulevard, 8th Floor, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Brian E. Wojcik, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(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: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33297 Filed 12–22–99; 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: Flexible System To Advance Innovative Research for Cancer Drug Discovery By Small Businesses.

Date: January 6–7, 2000.

Time: 7:30 PM 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: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33299 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel—Special Emphasis Panel.

Date: January 4, 2000.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Bldg. 31, Room 5B50, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheryl Brining, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, National Institutes of Health, Building 31, Room 5B50, Bethesda, MD 20892, 301–496–7498.

Dated: December 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33293 Filed 12–22–99; 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 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 of 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—Research Career Development Award.

Date: January 18–19, 2000.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Diane M. Reid, MD, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—Ischemic Heart Disease in Blacks

Date: January 27, 2000.

Time: 10:00 AM to 5:30 PM.

Agenda: To review and evaluate grant applications—

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: S. Charles Selden, PhD., Scientific Review Administrator, HIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel—Thalassemia (Cooley's Anemia) Clinical Research Network

Date: January 27–28, 2000

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Terry Bishop, Ph.D., Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7210, Bethesda, MD 20892–7924, (301) 435–0303.

(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 Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33294 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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: Center for Inherited Disease Research Access Committee Special Review Panel.

Date: January 11, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Grand Westin Hotel, 2350 M Street, N.W., Washington, DC 20037–1417.

Contact Person: Nancy Pearson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

(Catalog of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33300 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 10–11, 2000.

Open: January 10, 2000, 7:00 pm to 9:00 pm.

Agenda: To discuss matters of program relevance.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Closed: January 11, 2000, 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33302 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Human Genome Research Institute Special Emphasis Panel.

Date: January 14, 2000.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Conference Room B2B32/BLDG 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 99–33303 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and /Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB B J2 S

Date: January 10, 2000

Time: 3:00 PM to 4:00 PM

Agenda: To review and evaluate grant applications

Place: Natcher Building, 45 Center Drive, Room 6AS.25S, Bethesda, Maryland, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS25s, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33296 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communications Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National deafness and Other Communication Disorders Advisory Council.

Date: January 21, 2000.

Open: 9:30 a.m. to 11:30 a.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33298 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 24–25, 2000.

Open: January 24, 2000, 10:00 AM to 5:00 PM.

Agenda: The agenda includes: Report of the Director, NICHD, A presentation by the Pregnancy and Perinatology Branch, CRMC, and other business of the Council.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: January 25, 2000, 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: January 25, 2000, 1:00 PM to Adjournment.

Agenda: The meeting will reopen to discuss any policy issues that were raised.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: December 17, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33301 Filed 12–22–99; 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 Center for Scientific Review Special Emphasis Panel, December 1, 1999, 3:00 PM to December 1, 1999, 4:00 PM, NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on November 22, 1999, 64FR63824.

The meeting will be held January 6, 2000. The time will be 11:00 AM to 12:00 PM. The place remains the same.

The meeting is closed to the public.

Dated: December 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33295 Filed 12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Principles and Guidelines for Recipients of NIH Research Grants and Contracts on Obtaining and Disseminating Biomedical Research Resources: Final Notice

AGENCY: National Institutes of Health (NIH), Public Health Service, DHHS.

SUMMARY: On May 25, 1999 the National Institutes of Health (NIH) published for public comment in the **Federal Register** a proposed policy entitled SHARING BIOMEDICAL RESEARCH RESOURCES: Principles and Guideline for Recipients of NIH Research Grants and Contracts [64 FR 28205]. This policy is designed to provide recipients of NIH funding with guidance concerning appropriate terms for disseminating and acquiring unique research resources developed with federal funds and is intended to assist recipients in complying with their obligations under the Bayh-Dole Act and NIH funding policy. Comments on the Principles and Guidelines were requested by August 23, 1999. This Notice presents the final Principles and Guidelines together with NIH's response to the public comments received.

Background

The Present policy represents part of the overall implementation of recommendations made by the Advisory Committee to the Director (ACD) to Dr. Harlod Varmus, Director, NIH. Dr. Varmus requested that a Working Group of the ACD look into problems encountered in the dissemination and use of proprietary research tools, the competing interests of intellectual property owners and research users underlying these problems, and possible NIH responses. One of the recommendations in the Report was that NIH issue guidance to the recipients of NIH funding.

Purpose

The present policy is a two-part document, consisting of Principles setting forth the fundamental concepts and Guidelines providing specific information to patent and license professionals and sponsored research administrators for implementation. The purpose of these Principles and Guidelines is to assist NIH funding recipients in determining. (1) Reasonable terms and conditions for making NIH-funded research resources available to scientists in other institutions in the public and private sectors (disseminating research tools): and (2) restrictions to accept as a condition of receiving access to research tools for use in NIH-funded research (acquiring research tools). The intent is to help Recipients ensure that the conditions they impose and accept on the transfer of research tools will facilitate further biomedical research, consistent with the requirements of the Bayh-Dole Act and NIH funding agreements. It is also hoped that these Principles and Guidelines will be adopted by the wider research community so that all biomedical research and development can be synergistic and accelerated.

Comments and Agency Response

The National Institutes of Health (NIH) recognizes the importance of public involvement in the development of policy and sought widespread comment and participation by the various stakeholders in the biomedical research and development communities regarding the proposed policy. To this end, NIH sought comment not only from NIH grantees, but also from academic, not-for-profit, government, and private sector participants in biomedical research and development. In order to involve as many stakeholders as possible in the comment process, the proposed policy was advertised and comments solicited in a wide variety of venues. In addition to its publication on May 25, 1999, in the **Federal Register,** the proposed policy was made available on several different websites including the Federal Register Online, numerous NIH websites (Edison, NIH Office of Technology Transfer, NIH Office of Extramural Research and the NIH Director's Policy Forum), the Association of University Technology Managers (AUTM) website and Recombinant Capital's Signals Magazine. The proposed policy was also advertised on a variety of e-mail lists (including Techno-L) as well as in direct letters and e-mail to various stakeholders. In addition, the proposed policy was profiled in articles appearing in a variety of journals and magazines, including Science, Nature and Nature Biotechnology.

In response to the May 25 proposal, NIH received 45 letters, each of which contained one or more comments. Comments were received from academic institutions, scientific foundations, pharmaceutical companies, biotechnology companies (including providers of research instruments, biological reagents and genomic data), an industry trade association, professional societies, individual researchers and other individual commenters. Below is NIH's response to comments offered, organized by the section of the proposed policy to which they pertain.

Introduction

Several commenters suggested that sponsored research administrators be included within the target audience to which this policy is addressed. This suggestion has been adopted in the final policy.

Several commenters suggested that the policy is a de facto regulation and should either be promulgated in accordance with regulatory process or withdrawn. Several other commenters suggested that as a policy the Principles/Guidelines are not enforceable as law and that NIH should issue them as a regulation to ensure compliance. The NIH does not believe that a regulation, enforceable as law, is required at this time to facilitate sharing and access to research tools for its Recipients. Although the final policy is issued as a grants policy, to be incorporated into the NIH Grants Policy Statement, the NIH has not precluded the possibility of engaging in the regulatory process if widespread problems continue in access to NIH-funded research tools by NIH Recipients. In addition, on a case-by-case basis, the expectations set forth in the Principles and Guidelines may be imposed as specific requirements of NIH funding awards where the Recipient has failed to demonstrate sufficient progress in implementing the Principles and Guidelines.

Some commenters suggested that the policy should not be applicable to all projects that include NIH grant funds, but that NIH should set a minimum level of NIH funding that would trigger application of the policy. NIH has determined that the establishment of such a threshold would not be consistent with NIH's objective of ensuring that broad availability of research tools.

One commenter expressed concern that the proposed policy, if applied to recipients of Small Business Innovation Research (SBIR) grants, would place SBIR recipients under conflicting directives. The commenter suggests that because SBIR recipients are required, as a condition of their grant, to focus on the commercialization of technology, they would be unable to disseminate

research tools with the minimal intellectual property encumbrances advocated by the proposed policy. SBIR Recipients, like other NIH grantees, are subject to the dual obligations of disseminating unique research resources while promoting utilization, commercialization and public availability of their inventions. The NIH does not see a conflict between these obligations. The NIH invites its SBIR grantees to consult with their project officer in the event they encounter difficulty in the interpretation or implementation of this policy, either in general or with respect to particular unique research resources developed under their grant.

Principles

1. Ensure Academic Freedom and Publication

Several commenters suggested that language be added to the guidelines to prohibit recipients from making coauthorship a condition of providing research tools. There appears to be general consensus within the research community that authorship is properly based upon significant intellectual contribution to the published paper. In most cases, simply making available research materials will not, in the absence of other contributions, justify coauthorship. (See *e.g.,* Responsible Science, Volume I: Ensuring the Integrity of the Research Process, Panel on Scientific Responsibility and the Conduct of Research, National Academy Press, 1992, p. 52). The final policy has been amended to reflect this view.

Several commenters expressed concern that the definition of ''Recipient'' in the proposed policy might not include individuals or entities receiving NIH funds through ''cooperative agreements.'' The policy is applicable to cooperative agreements and this has been clarified in the Principles and Guidelines.

2. Ensure Appropriate Implementation of the Bayh-Dole Act

Virtually all commenters requested clarification on how this policy would preserve incentives for the development and production of research tools that are ultimately sold as products to the research community. The policy has been clarified to ensure that where patent protection is necessary for development of a research tool as a potential product for sale and distribution to the research community. Recipients are not discouraged from seeking such protection, but should license the intellectual property in a manner that maximizes the potential for broad distribution of the research tool. The policy is not intended to require Recipient scientists to develop of maintain tools for widespread distribution, to discourage development of research tool products, nor to set or influence the price for research tools that are commercial products.

3. Minimize Administrative Impediments to Academic Research

One commenter suggested that reach-through rights should not be discouraged because they are sometimes helpful to Recipients by allowing them to obtain materials and equipment at reduced or nominal upfront cost. NIH is aware of this rationale for a Recipient agreeing to reach-through but finds that such practices contribute not only to specific restriction of access to subsequent tools arising out of the NIH-funded work, but also to the general proliferation of multiple ties and competing interests that is the source of the current access problems. NIH does not support the coupling of procurement with intellectual property rights and restrictions and expects Recipients to ensure that NIH-funded tools are not restricted as a result of such agreements. Therefore, Recipients should engage in such interactions on an infrequent, case-by-case, and highly controlled and monitored basis.

4. Ensure Dissemination of Research Resources Developed with NIH Funds

Numerous comments were received concerning the conditions under which research tools developed by recipients of NIH funds are to be transferred to for-profit entities. The comments received reflected the wide range of opinions present within the life sciences community on this point. On the one hand, some commenters urged that transfer of research tools to for-profit entities be carried out under the same terms as transfers to nonprofits/academic institutions. These commenters argue that because of the increasingly important role research tools play in the discovery and development of new therapeutic compounds, it is critical that these tools be made available to for-profit entities free of onerous contractual provisions. They argue that by adopting a transfer policy similar to that proposed for transfers to academic laboratories, NIH will ensure that the public will reap the benefit of its investment in government research in the form of new and improved pharmaceuticals. Other commenters opposed the general idea that the terms for transferring tools to for-profit entities should be identical to those for transfers of tools to academic and non-profit organizations. They argue that the fundamental differences in mission between for-profit entities and academic institutions justify different treatment with respect to the terms under which each obtains and uses tools.

In the final policy, the NIH has left considerable discretion to Recipients in determining how to achieve the principle of ensuring appropriate distribution of NIH-funded tools. As articulated by the policy, imposing reach-through royalty terms as a condition of use of a research tool is inconsistent with this principle. When transferring an NIH-funded research tool to a for-profit entity that intends to use the tool for its own internal purposes, Recipients are entitled to capture the value of their invention. Arrangements such as execution or annual fees are an appropriate way for Recipients to do so. Royalties on the sale of a final product that does not embody the tool, or other reach-through rights directed to a final product that does not embody the tool, discourage use of tools and are not appropriate in these circumstances. Royalties on the sale of final products are more appropriate to situations where a for-profit entity seeks to commercialize the tool, *e.g.,* by developing a marketable product or service, or incorporating the tool into a marketable product or service.

Appendix A Guidelines for Implementation

The final policy has been clarified with regard to NIH intent in attaching the more specific Guidelines to the general Principles. The Principles set forth the policy that NIH is issuing to its funding Recipients to assist them in fulfilling the dual obligations imposed by NIH grants policy with respect to the dissemination of unique research resources, and the Bayh-Dole Act with respect to utilization, commercialization and public availability of government funded inventions. These dual obligations must be thoughtfully managed. The Guidelines provide further information, model language, and suggested strategies for implementing the principles. The model language and strategies provided by the Guidelines are not intended as the sole means by which Recipients may implement the articulated Principles. It is the nature of advancing science and technology to present unique factual circumstances, and NIH expects that Recipients will determine the most appropriate means to achieve the Principles for unique technologies when the Guidelines do not provide a workable strategy.

Several commenters suggested that research tools be better defined and that more examples be used to assist in determining whether the policy should be applied and if so, what licensing strategy is appropriate. For example, one commenter suggested that the policy draw a distinction between ''broad platform technologies'' and ''product-specific technologies'' when determining whether an exclusive license is appropriate. The final policy provides clarification of the criteria that Recipients might apply in determining how to handle a particular technology.

One commenter requested that the definition of research tools be expanded to include diagnostic genetic tests performed with ''home-brew'' reagents. The commenter suggested that the patenting and exclusive licensing of such tests is having a deleterious effect on clinical education, clinical research, and patient care. NIH declines to expand the definition of research tools to include diagnostic genetic tests. Where such tests are patented and licensed to for-profit entities, academic medical centers wishing to use such licensed tests in their clinical programs should negotiate terms of use with the commercial licensee.

Many commenters were of the opinion that the thirty-day time limit for disclosure of research findings was too short. The final policy has been amended to state that a delay of 30–60 days is generally viewed as reasonable. This amendment is in accord with previous NIH guidance on sponsored research agreements, Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts, 59 FR 55674.

Comments were received in favor of adopting the Simple Letter Agreement as a free-standing, one page, uniform material transfer agreement. If used by the NIH intramural program and NIH grantees, commenters believe that the majority of transfers among and between not-for-profits and government laboratories would be greatly simplified. In response to specific comments, the Simple Letter Agreement has been significantly edited and updated. Recipients are encouraged to adopt the Simple Letter Agreement as their institution's model Material Transfer Agreement (MTA), and are expected to use the terms of the Simple Letter Agreement, or no more restrictive terms, for transfers of unpatented materials developed with NIH funding to other NIH grantees.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGarey, J.D., NIH Office of Technology Transfer, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Fax: (301) 402–3257; E-mail: NIHOTT@od.nih.gov.

Dated: December 14, 1999.

Maria C. Freire,

Director, Office of Technology Transfer, National Institutes of Health.

Sharing Biomedical Research Resources: Principles and Guidelines for Recipients of NIH Research Grants and Contracts

Introduction

The National Institutes of Health is dedicated to the advancement of health through science. As a public sponsor of biomedical research, NIH has a dual interest in accelerating scientific discovery and facilitating product development. In 1997, Dr. Harold Varmus, Director, NIH requested that a Working Group of the Advisory Committee to the Director look into problems encountered in the dissemination and use of unique research resources, the competing interests of intellectual property owners and research tool users, and possible NIH responses.[1] The Working Group found that intellectual property restrictions can stifle the broad dissemination of new discoveries and limit future avenues of research and product development. At the same time, reasonable restrictions on the dissemination of research tools are sometimes necessary to protect legitimate proprietary interests and to preserve incentives for commercial development. One of the recommendations of the Working Group was that NIH issue guidance to its funding recipients to help them achieve the appropriate balance. That guidance is provided in this two-part document, consisting of Principles setting forth the fundamental concepts and Guidelines that provide specific information to patent and license professionals and sponsored research administrators for implementation. A copy of the full Report of the Working Group, with more detailed background information, is available at the NIH web site, www.nih.gov/welcome/forum, or from the NIH Office of the Director.

[1] The term ''unique research resource'' is used in its broadest sense to embrace the full range of tools that scientists use in the laboratory, including cell lines, monoclonal antibodies, reagents, animal models, growth factors, combinatorial chemistry and DNA libraries, clones and cloning tools (such as PCR), methods, laboratory equipment and machines. The terms ''research tools'' and ''materials'' are used throughout this document interchangeably with ''unique research resources.'' Databases and materials subject to copyright, such as software, are also research tools in many contexts. Although the information provided here may be applicable to such resources, the NIH recognizes that databases and software present unique questions which cannot be fully explored in this document.

Principles

1. Ensure Academic Freedom and Publication

Academic research freedom based upon collaboration, and the scrutiny of research findings within the scientific community, are at the heart of the scientific enterprise. Institutions that receive NIH research funding through grants, cooperative agreements or contracts (''Recipients'') have an obligation to preserve research freedom, safeguard appropriate authorship, and ensure timely disclosure of their scientists' research findings through, for example, publications and presentations at scientific meetings. Recipients are expected to avoid signing agreements that unduly limit the freedom of investigators to collaborate and publish, or that automatically grant co-authorship or copyright to the provider of a material.

Reasonable restrictions on collaboration by academic researchers involved in sponsored research agreements with an industrial partner that avoid conflicting obligations to other industrial partners, are understood and accepted. Similarly, brief delays in publication may be appropriate to permit the filing of patent applications and to ensure that confidential information obtained from a sponsor or the provider of a research tool is not inadvertently disclosed. However, excessive publication delays or requirements for editorial control, approval of publications, or withholding of data all undermine the credibility of research results and are unacceptable.

2. Ensure Appropriate Implementation of the Bayh-Dole Act

When a Recipient's research work is funded by NIH, the activity is subject to various laws and regulations, including the Bayh-Dole Act (35 U.S.C. 200 *et seq.*). Generally, Recipients are expected to maximize the use of their research findings by making them available to the research community and the public, and through their timely transfer to industry for commercialization.

The right of Recipients to retain title to inventions made with NIH funds comes with the corresponding obligations to promote utilization, commercialization, and public availability of these inventions. The Bayh-Dole Act encourages Recipients to patent and license subject inventions as one means of fulfilling these obligations.

However, the use of patents and exclusive licenses is not the only, nor in some cases the most appropriate, means of implementing the Act. Where the subject invention is useful primarily as a research tool, inappropriate licensing practices are likely to thwart rather than promote utilization, commercialization and public availability of the invention.

In determining an intellectual property strategy for an NIH-funded invention useful primarily as a research tool, Recipients should analyze whether further research, development and private investment are needed to realize this primary usefulness. If it is not, the goals of the Act can be met through publication, deposit in an appropriate databank or repository, widespread non-exclusive licensing or any other number of dissemination techniques. Restrictive licensing of such an invention, such as to a for-profit sponsor for exclusive internal use, is antithetical to the goals of the Bayh-Dole Act.

Where private sector involvement is desirable to assist with maintenance, reproduction, and/or distribution of the tool, or because further research and development are needed to realize the invention's usefulness as a research tool, licenses should be crafted to fit the circumstances, with the goal of ensuring widespread and appropriate distribution of the final tool product. Exclusive licensing of such an invention, such as to a distributor that will sell the tool or to a company that will invest in the development of a tool from the nascent invention, can be consistent with the goals of the Bayh-Dole Act.

3. Minimize Administrative Impediments to Academic Research

Each iteration in a negotiation over the terms of a license agreement or materials transfer agreement delays the moment when a research tool may be put to use in the laboratory. Recipients should take every reasonable step to streamline the process of transferring their own research tools freely to other academic research institutions using either no formal agreement, a cover letter, the Simple Letter Agreement of the Uniform Biological Materials Transfer Agreement (UBMTA), or the UBMTA itself. The Appendix contains an updated free-standing version of the Simple Letter Agreement that is strongly encouraged for transfers of unpatented research materials among Recipients.

Where they have not already done so, Recipients should develop and implement clear policies which articulate acceptable conditions for acquiring resources, and refuse to yield on unacceptable conditions. NIH acknowledges the concern of some for-profit organizations that the concept of purely academic research may be diluted by the close ties of some not-for-profit organizations with for-profit entities, such as research sponsors and spin-off companies in which such organizations take equity. Of concern to would-be providers is the loss of control over a proprietary research tool that, once shared with a not-for-profit Recipient for academic research, results in commercialization gains to the providers' for-profit competitors. Recipients must be sensitive to this legitimate concern if for-profit organizations are expected to share tools freely.

For-profit organizations, in turn, must minimize the encumbrances they seek to impose upon not-for-profit organizations for the academic use of their tools. Reach-through royalty or product rights, unreasonable restraints on publication and academic freedom, and improper valuation of tools impede the scientific process whether imposed by a not-for-profit or for-profit provider of research tools. While these Principles are directly applicable only to recipients of NIH funding, it is hoped that other not-for-profit and for-profit organizations will adopt similar policies and refrain from seeking unreasonable restrictions or conditions when sharing materials.

4. Ensure Dissemination of Research Resources Developed With NIH Funds

Progress in science depends upon prompt access to the unique research resources that arise from biomedical research laboratories throughout government, academia, and industry. Ideally, these new resources flow to others who advance science by conducting further research. Prompt access can be accomplished in a number of ways, depending on the type of resource that has been developed, whether it has broad or specific uses, and whether it is immediately useful or private sector investment is needed to realize its usefulness. The goal is widespread, timely distribution of tools for further discovery. When research tools are used only within one or a small number of institutions, there is a great risk that fruitful avenues of research will be neglected.

Unique research resources arising from NIH-funded research are to be made available to the scientific research community. Recipients are expected to manage interactions with third parties that have the potential to restrict Recipients' ability to disseminate research tools developed with NIH funds.[2] For example, a Recipient might use NIH funds with funds from one or more third party sponsors, or acquire a research tool from a third party provider for use in an NIH-funded research project. Either situation may result in a Recipient incurring obligations to a third party that conflict with Recipient's obligations to the NIH. To avoid inconsistent obligations, Recipients are encouraged to share these Principles with potential co-sponsors of research projects and third party providers of materials.

Recipients should also examine and, where appropriate, simplify the transfer of materials developed with NIH funds to for-profit institutions for internal use by those institutions. NIH endorses distinguishing internal use by for-profit institutions from the right to commercial development and sale or provision of services. In instances where the for-profit institution is seeking access for internal use purposes, Recipients are encouraged to transfer research tools developed with NIH funding to such institutions without seeking option rights or royalties on the final product.

Summary

Access to research tools is a prerequisite to continuing scientific advancement. Ensuring broad access while preserving opportunities for product development requires thoughtful, strategic implementation of the Bayh-Dole act. The NIH urges Recipients to develop patent, license, and material sharing policies with this goal in mind, realizing both product development as well as the continuing availability of new research tools to the scientific community.

Appendix—Guidelines for Implementation

The following Guidelines provide specific information, strategies, and model language for patent and license professionals and sponsored research administrators at Recipient institutions to assist in implementing the Principles on Obtaining and Disseminating Biomedical Resources. Recipients are encouraged to use the strategies below, other strategies developed at their own institutions, or any other appropriate means of achieving the Principles.

[2] Research tools obtained or derived from human tissues constitute a special case. Certain restrictions on the use and further dissemination of such tools may be appropriate to ensure consistency with donor consent and human subjects protection. See 45 CFR Part 46.

Guidelines for Disseminating Research Resources Arising Out of NIH-Funded Research

Definition of Research Tools

The definition of research tools is necessarily broad, and it is acknowledged that the same material can have different uses, being a research tool in some contexts and a product in others. In determining how an NIH-funded resource that falls within the definition should be handled, Recipients should determine whether: (1) The Primary usefulness of the resource is as a tool for discovery rather than an FDA-approved product or integral component of such a product; (2) the resource is a broad, enabling invention that will be useful to many scientists (or multiple companies in developing multiple products), rather than a project or product-specific resource; and (3) the resource is readily useable or distributable as a tool rather than the situation where private sector involvement is necessary or the most expedient means for developing or distributing the resource. Recipients should ensure that their intellectual property strategy for resources fitting one or more of the above criteria enhances rather than restricts the ultimate availability of the resource. If Recipient believes private sector involvement is desirable to achieve this goal, Recipient should strategically license the invention under terms commensurate with the goal.

Use of Simple Letter Agreement

Recipients are expected to ensure that unique research resources arising from NIH-funded research are made available to the scientific research community. The majority of transfers to not-for-profit entities should be implemented under terms no more restrictive than the UBMTA. In particular, Recipients are expected to use the Simple Letter Agreement provided below, or another document with no more restrictive terms, to readily transfer unpatented tools developed with NIH funds to other Recipients for use in NIH-funded projects. If the materials are patented or licensed to an exclusive provider, other arrangements may be used, but commercialization option rights, royalty reach-through, or product reach-through rights back to the provider are inappropriate.

Similarly, when for-profit entities are seeking access to NIH-funded tools for internal use purposes, Recipients should ensure that the tools are transferred with the fewest encumbrances possible. The Simple Letter Agreement may be expanded for use in transferring tools to for-profit entities, or simple internal use license agreements with execution or annual use fees may be appropriate.

Simple Letter Agreement for the Transfer of Materials

In response to RECIPIENT's request for the MATERIAL [insert description] _____ the PROVIDER asks that the RECIPIENT and the RECIPIENT SCIENTIST agree to the following before the RECIPIENT receives the MATERIAL:

1. The above MATERIAL is the property of the PROVIDER and is made available as a service to the research community.

2. THIS MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS.

3. The MATERIAL will be used for teaching or not-for-profit research purposes only.

4. The MATERIAL will not be further distributed to others without the PROVIDER's written consent. The RECIPIENT shall refer any request for the MATERIAL to the PROVIDER. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agree to make the MATERIAL available, under a separate Simple Letter Agreement to other scientists for teaching or not-for-profit research purposes only.

5. The RECIPIENT agrees to acknowledge the source of the MATERIAL in any publications reporting use of it.

6. Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Unless prohibited by law, Recipient assumes all liability for claims for damages against it by third parties which may arise from the use, storage or disposal of the Material except that, to the extent permitted by law, the Provider shall be liable to the Recipient when the damage is caused by the gross negligence or willful misconduct of the Provider.

7. The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.

8. The MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested, the amount will be indicated here: _____

The PROVIDER, RECIPIENT and RECIPIENT SCIENTIST must sign both copies of this letter and return one signed copy to the PROVIDER. The PROVIDER will then send the MATERIAL.

Provider Information and Authorized Signature

Provider Scientist: _____
Provider Organization: _____
Address: _____
Name of Authorized Official: _____
Title of Authorized Official: _____
Certification of Authorized Official: This Simple Letter Agreement ____ has ____ has not [check one] been modified. If modified, the modification are attached.

_____
(Signature of Authorized Official) (Date)

Recipient Information and Authorized Signature

Recipient Scientist: _____
Recipient Organization: _____
Address: _____
Name of Authorized Official: _____
Title of Authorized Official: _____
Signature of Authorized Official: _____
Date: _____
Certification of Recipient Scientist: I have read and understood the conditions outlined in this Agreement and I agree to abide by them in the receipt and use of the MATERIAL.

_____
(Recipient Scientist) (Date)

Ensuring Consistent Obligations

Recipients must ensure that obligations to other sources of funding of projects in which NIH funds are used are consistent with the Bayh-Dole Act and NIH funding requirements. Unique research resources generated under such projects are expected to be made available to the research community. Recipients are encouraged to share these Guidelines with potential co-sponsors. Any agreements covering projects in which NIH funds will be used along with other funds are expected to contain language to address the issue of dissemination of unique research resources. Examples of possible language follow. The paragraphs are presented in a ''mix and match'' format:

''The project covered by this agreement is supported with funding from the National Institutes of Health. Provider agrees that upon publication, unpatented unique research resources arising out of this project may be freely distributed.''

''In the event an invention is primarily useful as a research tool, any option granted shall either be limited to a non-exclusive license or the terms of any resulting exclusive license shall include provisions that ensure that the research tool will be

available to the academic research community on reasonable terms.''

''Provider agrees that Recipient shall have the right to make any materials and inventions developed by Recipient in the course of the collaboration (including materials and inventions developed jointly with Provider, but not including any Provider materials (or parts thereof) or Provider sole inventions available to other scientists at not-for-profit organizations for use in research, subject to Provider's independent intellectual property rights.''

''Subject to Recipient's obligations to the U.S. government, including 37 CFR Part 401, the NIH Grants Policy Statement, and the NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources, Recipient grants to Sponsor the following rights: * * *''

Limiting Exclusive Licenses to Appropriate Field of Use

Exclusive licenses for research tools (where no further research and development is needed to realize the invention's usefulness as a tool) should generally be avoided except in cases where the licensee undertakes to make the research tool widely available to researchers through unrestricted sale, or the licensor retains rights to make the research tool widely available. When an exclusive license is necessary to promote investment in commercial applications of a subject invention that is also a research tool, the Recipient should ordinarily limit the exclusive license to the commercial field of use, retaining rights regarding use and distribution as a research tool. Examples of possible language include:

''Research License'' means a nontransferable, nonexclusive license to make and to use the Licensed Products or Licensed Processes as defined by the Licensed Patent Rights for purposes of research and not for purposes of commercial manufacture, distribution, or provision of services, or in lieu of purchase, or for developing a directly related secondary product that can be sold. Licensor reserves the right to grant such nonexclusive Research Licenses directly or to require Licenses on reasonable terms. The purpose of this Research License is to encourage basic research, whether conducted at an academic or corporate facility. In order to safeguard the Licensed Patent Rights, however, Licensor shall consult with Licensee before granting to commercial entities a Research License or providing to them research samples of the materials.''

''Licensor reserves the right to provide the Biological Materials and to grant licenses under Patent Rights to not-for-profit and governmental institutions for their internal research and scholarly use.''

''Notwithstanding anything to the contrary in this agreement, Licensor shall retain a paid-up, nonexclusive, irrevocable license to practice, and to sublicense other not-for-profit research organizations to practice, the Patent Rights for internal research use.''

''The grant of rights provided herein is subject to the rights of the United States government pursuant to the Bayh-Dole Act and is limited by the right of the Licensor to use Patent Rights for its own research and educational purposes and to freely distribute Materials to not-for-profit entities for internal research purposes.''

''Licensor reserves the right to supply any or all of the Biological materials to academic research scientists, subject to limitation of use by such scientists for research purposes and restriction from further distribution.''

''Licensor reserves the right to practice under the Patent Rights and to use and distribute to third parties the Tangible Property for Licensor's own internal research purposes.''

Guidelines for Acquiring Research Resources for Use in NIH-Funded Research

Prompt Publication

Agreements to acquire materials for use in NIH-funded research are expected to address the timely dissemination of research results. Recipients should not agree to significant publication delays, any interference with the full disclosure of research findings, or any undue influence on the objective reporting of research results. A delay of 30–60 days to allow for patent filing or review for confidential proprietary information is generally viewed as reasonable.

Definition of Materials

Under the Bayh-Dole Act and its implementing regulations, agreements to acquire materials for use in NIH-funded projects cannot require that title to resulting inventions be assigned to the provider. For this reason, definitions of ''materials'' that include all derivatives or modifications are unacceptable. Other unacceptable variations include definitions of ''materials'' that include any improvements, or any other materials that could not have been made without the provided material. Conversely, it is important for providers of materials to be aware that a Recipient does not gain any ownership or interest in a provider's material by virtue of the Recipient using the material in an NIH-funded activity. Examples of acceptable definitions for ''materials'' include:

'' 'Materials' means the materials provided as specified in this document.''

'' 'Materials' means the materials provided as specified in this document. Materials may also include Unmodified Derivatives of the materials provided, defined as substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original materials, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.''

'' 'Materials' means the materials provided as specified in this document. Materials may also include Progeny and Unmodified Derivatives of the materials provided. Progeny is an unmodified descendant from the original material, such as virus from virus, cell from cell, or organism from organism. Unmodified Derivatives are substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.''

'' 'Materials' means the materials being transferred as specified in this document. Materials shall not include: (a) Modifications, or (b) other substances created by the recipient through the use of the Material which are not Modifications, Progeny, or Unmodified Derivatives. Progeny is an unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism. Unmodified Derivatives are substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original Material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.'' [Source: Uniform Biological Materials Transfer Agreement; terms defined therein]

Ensuring Consistent Obligations

Recipients are expected to avoid signing agreements to acquire research tools that are likely to restrict Recipients' ability to promote broad dissemination of additional tools that may arise from the research. This might occur when an agreement gives a provider an exclusive license option to any new intellectual property arising out of the project. A new transgenic mouse developed during the project could fall under this license option and become unavailable to third party scientists as a result. Examples of agreements to examine include material transfer agreements (MTAs), memoranda of understanding (MOU), research or collaboration agreements, and sponsored research agreements. Recipients should consider adopting standard language to place in such agreements to address this issue. The following are examples of possible language to include in MTAs, sponsored research agreements, and other agreements that either acquire materials from or co-mingle funds with non-government sources. The paragraphs are presented in a ''mix and match'' format:

''The project covered by this agreement is supported with funding from the National Institutes of Health. Provider agrees that after publication, unpatented unique research resources arising out of this project may be freely distributed.''

''In the event an invention is primarily useful as a research tool, any option granted shall either be limited to a non-exclusive license or the terms of any resulting exclusive license shall include provisions which insure that the research tool will be available to the academic research community on reasonable terms.''

''Provider agrees that Recipient shall have the right to make any materials and inventions developed by Recipient in the course of the collaboration (including materials and inventions developed jointly with Provider, but not including any Provider materials (or parts thereof) or Provider sole inventions available to other scientists at not-for-profit organizations for use in research, subject to Provider's independent intellectual property rights.''

''Subject to Recipient's obligations to the U.S. government, including 37 CFR Part 401, the NIH Grants Policy Statement, and the NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources, Recipient grants to Sponsor the following rights: * * *''

Grantbacks and Option Rights

• Agreements to acquire materials from for-profit entities for use in NIH-funded research may provide a grant back of non-exclusive, royalty-free rights to the provider to use improvements and new uses of the material that, if patented, would infringe any patent claims held by the provider. They may also provide an option for an exclusive or non-exclusive commercialization license to new inventions arising directly from use of the material. These should be limited to circumstances where the material sought to be acquired is unique, such as a patented proprietary material, and not reasonably available from any other source. A non-exclusive ''grant-back'' might be used, for example, to protect a for-profit entity that provides a proprietary compound from being blocked from using new uses or improvements of that compound discovered during the NIH-funded project. In providing license options, Recipients must ensure that licenses granted to providers under such options are consistent with Bayh-Dole requirements, including the preference for U.S. industry requirements and reservation of government rights under 47 CFR part 401.

• In determining the scope of license or option rights that are granted in advance to a provider of materials, Recipient should balance the relative value of the provider's contributions against the value of the rights granted, cost of the research, and importance of the research results. The rights granted to providers should be limited to inventions that have been made directly through the use of the materials provided. In addition, Recipients should reserve the right to negotiate license terms that will ensure: (1) continuing availability to the research community if the new invention is a unique research resource; (2) that the provider has the technical and financial capability and commitment to bring all potential applications to the marketplace in a timely manner; and (3) that if an exclusive license is granted, the provider will provide a commercial development plan and agree to benchmarks and milestones for any fields of use granted.

• It is expected that agreements to acquire NIH-funded materials from not-for-profit entities for use in NIH-funded research will not include commercialization option rights, royalty reach-through, or product reach-through rights back to the provider. Such materials should be acquired under the Simple Letter Agreement or UBMTA, or, if the materials are patented,a simple license agreement that does not request reach-through to either future products or royalties. If the providing not-for-profit organization is constrained in sharing the material due to a pre-existing sponsored research agreement or license, NIH expects that not-for-profit provider to negotiate a suitable resolution with the private research sponsor or licensee. The co-mingling of NIH and sponsored research funds is allowed, however, Recipient is responsible for ensuring that conditions on the use of the sponsored funds do not interfere with the open dissemination of research tools.

[FR Doc. 99–33292 Filed12–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in January 2000.

The meeting will be open. The agenda will include presentations and updates on CSAP's programs, the SAMHSA Administrator's Report, a CSAP budget update, and discussions of administrative matters and announcements. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting, a roster of committee members, and substantive program information may be obtained from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council

Meeting Dates: January 10, 2000, 9 a.m.–5 p.m. (Open)

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20841.

Contact: Yuth Nimit, Ph.D., 5600 Fishers Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Dated: December 17, 1999.

Sandra Stephens,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–33306 Filed 12–22–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–51]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled

by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) Its intention to declare the property excess to the agency's needs, or (3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: December 17, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Fedeal Register Report for 12/23/99

Suitable/Available Properties

Buildings (by State)

Texas

Formerly Naval Rsv Center
1818 N. Confederate St.
Tyler Co: Smith TX 75702–
Landholding Agency: GSA
Property Number: 54199940019
Status: Surplus
Comment: 11,370 sq. ft. bldg./.96 acres, most recent use—reserve center/office, subject to existing easements
GSA Number: 7–N–TX–984A

Land (by State)

Utah

Monticello Mill Tailings Site
Monticello Co: San Juan UT 00000–
Landholding Agency: GSA
Property Number: 54199940020
Status: Excess
Comments; 383.24 acres, listed as an EPA NPL Site—clean up in process, floodplain
GSA Number: 7–B–UT–431–M

Unsuitable Properties

Buildings (by State)

California

Bldg. Q100
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940067
Status: Excess
Reason: Extensive deterioration

Bldg. Q102
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940068
Status: Excess
Reason: Extensive deterioration

Bldg. 106
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940069
Status: Excess
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

California

Bldg. 111
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940070
Status: Excess
Reason: Extensive deterioration

Bldg. 112
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940071
Status: Excess
Reason: Extensive deterioration

Bldg. 613
NAS, North Island
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940072
Status: Excess
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

California

Bldg. 55
Naval Amphibious Base
Imperial Beach Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940073
Status: Excess
Reason: Extensive deterioration

Florida

Bldg. 3451
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199940066
Status: Unutilized
Reason: Secured Area

[FR Doc. 99–33141 Filed 12–22–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 020555

Applicant: Ohio Historical Center, Columbus, Ohio (Principal Investigators Robert Glotzhober and Dwight Moody)

The applicant requests a permit to take (collect, salvage) endangered Hine's emerald dragonfly (*Somatochlora hineana*) in the States of Ohio and Alabama. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5350); FAX: (612/713–5292).

Dated: December 17, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–33286 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–045–1610–00]

Availability of a Draft Environmental Impact Statement and General Management Plan for Zion National Park Incorporating a Land Use Plan Amendment for the Bureau of Land Management (BLM) St. George Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM, St. George Field Office, Utah announces the availability of a Draft Environmental Impact Statement and General Management Plan (DEIS/GMP) for Zion National Park, Utah. The DEIS/GMP incorporates a land use plan amendment for the BLM St. George Field Office Resource Management Plan (1999).

On February 17, 1998, the St. George Field Office published in the **Federal Register** a notice of intent to conduct a plan amendment within the Dixie Resource area (now known as St. George Field Office), Washington County, Utah. Further, the notice indicated that BLM initiated the plan amendment through a joint planning effort with Zion National Park for the purpose of conducting wild and scenic river studies of five specific tracts on BLM-managed land contiguous to the Zion National Park's boundary. The St. George Field Office and Zion National Park prepared a Memorandum of Understanding regarding this joint planning effort.

DATES: Comments on the land use plan amendment to the St. George Resource Management Plan (incorporated within the DEIS/GMP) will be accepted through March 23, 2000. Comments specific to the DEIS/GMP for Zion National Park are due by February 11, 2000 (see **Federal Register** Volume 64, Number 233, Pages 68114–68115). Public meetings concerning both the DEIS/GMP and BLM's land use plan amendment will be held at the following locations and dates:

All meetings will run from 7–10 p.m.

—January 6, 2000, Sharwan Smith Center, SUU, 351 W. Center Street, Cedar City, UT

—January 10, 2000, Town Offices, Public Assembly Hall, 118 Lion Boulevard, Springdale, UT

—January 11, 2000, Kanab City Library, 374 N. Main Street, Kanab, UT

—January 12, 2000, Interagency Offices and Information Center, 345 E. Riverside Road, St. George, UT

—January 13, 2000, Utah Department of Natural Resources, 1594 W. North Temple, Salt Lake City, UT

ADDRESSES: Comments and information regarding river values on the specific public land tracts identified in this notice should be submitted on or before March 23, 2000, and sent to, Jim Crisp, St. George Field Office Manager, 345 East Riverside Drive, St. George, Utah 84790.

Comments, including names and street addresses of respondents, will be available for public review at the BLM St. George Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Final EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, will be made available for public inspection in their entirety.

Public reading copies of the DIES/GMP will be available for review at the following locations: Office of the Superintendent, Zion National Park, Springdale, Utah 84767–1099; Telephone (435) 772–0211; Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, PO Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 or (303) 969–2377; Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, D.C. 20240, Telephone: (202) 208–6843. The DEIS/GMP is also available for review on the National Park Service's Internet site at www.nps.gov/planning.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, BLM St. George Field Office Manager, (435) 688–3201.

SUPPLEMENTARY INFORMATION: Federal land management agencies are directed by Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 to consider the potential for national wild, scenic and recreational river areas in all planning for the use and development of water and related land resources. The BLM's St. George Field Office, during their past planning effort, learned that when river segments on three, small, isolated tracts of BLM-managed public land contiguous to Zion National Park were evaluated in the early 1990's as part of the St. George planning effort, they were determined by BLM not be eligible for further study. These river segments are Willis Creek (T. 38 S., R. 11 W., Sec. 27: SWSW—40 acres affected), Beartrap Canyon (T. 39 S., R. 11 W., Sec. 3: SWNW—40 acres affected), and Goose Creek (T. 39 S., R. 10 W., Sec. 31: NESE, S2SE—120 acres affected). Additionally, contiguous river segments within the Park were not evaluated at that time. The BLM's St. George Field Office also learned that Zion National Park was preparing a General Management Plan and as part of that effort was conducting a wild and

scenic study of river segments within the Park. Consequently, BLM determined that the Park's study provided a timely, efficient way for BLM and the National Park Service to evaluate the streams throughout their reaches across contiguous Federal lands. Thus, for purposes of wild and scenic river study only, BLM through a memorandum of understanding with Zion National Park, served as a co-lead agency in the development of the General Management Plan for Zion National Park and preparation of any associated environmental document. BLM and Zion National Park will cooperate as partners and strive to reach a joint conclusion as to eligibility, tentative classification, and suitability for each river segment where public lands are involved. It is recognized that although the BLM-managed river segments identified above may not be eligible for further study when considered on their own, they may be eligible when considered in conjunction with contiguous segments in the Park.

Two additional public land parcels at the head of the Middle Fork of Taylor Creek (T. 38 S., R. 11 W., Sec. 30: SWNW—40 acres), and at the head of Kolob Creek Narrows (T. 39 S., R. 10 W., Sec. 30: portions thereof—80 acres), may also be affected should the streams (that are within the Park) be determined suitable for Congressional designation into the National Wild and Scenic River System. Thus, river values involving these parcels have been addressed in the DEIS/GMP. Wild and scenic evaluations will be made by Zion National Park, the BLM, and other experts in accordance with the interagency guidelines of July 1996 titled ''Wild and Scenic River Review in the State of Utah, Process and Criteria for Interagency Use.''

BLM will prepare its own Record of Decision regarding stream segments that cross or otherwise affect BLM-managed public lands. Such decision will constitute a plan amendment for the St. George Resource Management Plan.

Sally Wisely,

Utah State Director.

[FR Doc. 99–33287 Filed 12–22–99; 8:45 am]

BILLING CODE 1610–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 13441, AZAR 035063, AZA 13014, AZA 30075]

Public Land Order No. 7426; Revocation of Bureau of Reclamation Order dated March 17, 1952, Partial Revocation of Public Land Order No. 4172, and Partial Revocation of Secretarial Order dated July 2, 1902; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Bureau of Reclamation order in its entirety, and partially revokes a public land order and a Secretarial order insofar as they affect 1,818.20 acres of National Forest System lands withdrawn for the Orme Dam and Reservoir Project, State Highway 87 Roadside Zone, and Salt River Survey. The lands are no longer needed for the purposes for which they were withdrawn and the revocations are needed to accommodate a proposed Forest Service land exchange. Of the 1,818.20 acres being revoked, 599.28 acres are temporarily closed by the proposed exchange and 957.82 acres are included within other existing Bureau of Reclamation withdrawals. The remaining 261.10 acres will be opened to mining and to such forms of disposition as may by law be made of National Forest System lands. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Bureau of Reclamation Order dated March 17, 1952, which withdrew lands for the Bureau of Reclamation's Orme Dam and Reservoir Project, is hereby revoked in its entirety. The area involved contains 1,806.62 acres, plus the area between the meanders of the left and right bank of the Verde River, in Maricopa County, as shown on the plats of survey officially filed July 29, 1964.

2. Public Land Order No. 4172 and the Secretarial Order dated July 2, 1902, which withdrew lands for State Highway 87 Roadside Zone, and Salt River Survey respectively, are hereby revoked insofar as they affect the following described lands:

Gila and Salt River Meridian

Tonto National Forest

T. 3 N., R. 7 E.,
sec. 27, lots 2, 3, and 5;
sec. 28, lots 13 and 15.
T. 4 N., R. 7 E.,
sec. 27, lot 13.

The areas described aggregate 51.62 acres in Maricopa County.

3. The lands described in Paragraph 2, and the following described lands are hereby made available for exchange under the General Exchange Act of 1922:

Gila and Salt River Meridian

Tonto National Forest

T. 3 N., R.7 E.,
sec. 16, lots 9 to 12, inclusive;
sec. 21, lots 9 to 12, inclusive, and E½E½;
sec. 22, W½W½.

The lands made available for exchange aggregate 631.71 acres in Maricopa County.

4. At 10 a.m. on January 24, 2000, the land described below shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Gila and Salt River Meridian

Tonto National Forest

T. 3 N., R. 7 E.,
sec. 27, lot 6, and SW¼NW¼;
sec. 28, lots 10, 11, 14, and 16, SE¼NE¼, and NE¼SE¼.

The area described contains 261.10 acres in Maricopa County.

Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 14, 1999.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 99–33375 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COC–28627]

Public Land Order No. 7424; Opening of Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 42.90 acres of National Forest System lands withdrawn by a Secretarial order which established the Bureau of Land Management's Power Site Classification No. 88. This action will permit consummation of pending Forest Service land exchanges and retain the waterpower rights to the United States. The lands have been and will continue to be open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determinations of the Federal Regulatory Commission in DVCO–549–000 and DVCO-549–001, it is ordered as follows:

1. At 9 a.m. on January 24, 2000, the following described National Forest System lands withdrawn by Secretarial Order dated February 24, 1925, which established Power Site Classification No. 88, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determinations DVCO–549–000 and DVCO–549–001, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

Arapaho National Forest

T. 4 S., R. 78 W.,
sec. 26, lot 15.
T. 2 S., R. 80 W.,
sec. 13, SE¼SW¼.

The areas described aggregate 42.90 acres in Summit County.

Dated: December 7, 1999.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 99–33374 Filed 12–22–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–1430–01; UTU 42993, UTU 74299]

Public Land Order No. 7425; Partial Revocation of Secretarial Order dated April 10, 1946; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 157.68 acres of public land withdrawn for the Bureau of Land Management's Power Site Classification No. 377. The withdrawal is no longer needed, and the revocation is necessary to facilitate a land exchange. This action will open the land to surface entry subject to valid existing rights. The land has been and will remain open to mineral leasing, and to mining under the provisions of the Mining Claims Rights Restoration Act of 1955. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated April 10, 1946, which established Power Site Classification No. 377, is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 24 S., R. 23 E.,
sec. 21, SE¼SE¼;
sec. 22, NE¼SW¼ and SW¼SE¼;
sec. 27, lot 4.

The area described contains 157.68 acres in Grand County.

2. At 10 a.m. on January 24, 2000, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. January 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since this act applies only to land withdrawn for power purposes, the provisions of the act are no longer applicable.

4. The State of Utah has waived its right of selection in accordance with the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818 (1994).

Dated: December 8, 1999.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 99–33373 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–65760]

Realty Action: Lease/Purchase For Recreation and Public Purposes in White Pine County, Nevada.

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Realty Action.

SUMMARY: The following described public land in White Pine County, Nevada has been identified and examined and will be classified under Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), as suitable for lease/purchase under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The described lands are hereby classified as suitable for lease/purchase under the authority of Section 212 of the Act of October 21, 1976; 43 U.S.C. 1761.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed Conveyance for classification of the lands to the Assistant Field, Nonrenewable Resources.

ADDRESSES: Written Comments should be addressed to: Bureau of Land Management, Gene L. Drais Assistant Field Manager, Nonrenewable Resources, HC 33 Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Doris Metcalf, Land Law Examiner, at the above address or telephone (775) 289–1852.

SUPPLEMENTARY INFORMATION:

The following described parcel of land, situated in White Pine County is

being offered for lease/purchase under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*).

Mount Diablo Meridian, Nevada

T. 21 N., R. 70 E.
Sec. 21, NW¼SE¼.
Containing 40 acres, more or less.

The lands are hereby classified for public purpose use as school sites and/or other school facilities, 43 CFR 2410, 2430.4 (a) and (c). The White Pine County School District intends to use the land to construct and operate a kindergarten through twelfth grade school for residents in Pleasant Valley. A right-of-way would also be acquired to access the proposed site.

The lease and/or patent, when finalized, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

2. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

The land is not required for any federal purpose. The classification for lease/purchase is consistent with the Bureau's planning for this area. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land law except for Recreation and Public Purposes.

Dated: November 22, 1999.

For further information contact: Doris Metcalf (775) 289–1852.

Gene A. Kolkeman,

Field Manager BLM, Ely, NV.

[FR Doc. 99–32251 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts, 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, January 14, 2000.

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. 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:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—November 19, 1999
3. Reports of Officers
4. Subcommittee Report—Personal Watercraft
5. Subcommittee Report:
   Community-oriented Problem Solving
   Community Values Day—Provincetown
   Salt Pond Visitor Center
   Penniman House
   Hatches Harbor
   News from Washington
6. Old Business
7. New Business
8. Agenda for next meeting
9. Date for next meeting
10. Public comment
11. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend 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 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: December 16, 1999.

Maria Burks,

Superintendent.

[FR Doc. 99–33255 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Federal Land Managers' Air Quality Related Values Work Group (FLAG)

AGENCY: National Park Service, Interior.

ACTION: Notice of comment period extension.

SUMMARY: On November 8, 1999 (64 FR 60831) the National Park Service, in cooperation with the U.S. Fish and Wildlife Service and the U.S. Department of Agriculture Forest Service, announced the availability of, and solicited comments on, the draft *FLAG Phase I Report.* The purpose of this notice is to announce that FLAG has extended the public comment period by 30 days (until February 7, 2000).

The Federal Land Managers' Air Quality Related Values Work Group (FLAG) was formed to develop a more consistent approach for the Federal Land Managers (FLMs), *i.e.*, National Park Service, U.S. Fish and Wildlife Service, and U.S. Department of Agriculture Forest Service, to evaluate air pollution effects on their resources. The FLAG effort focuses on the effects of the air pollutants that could affect the health and status of resources in areas managed by the three agencies, primarily such pollutants as ozone, particulate matter, nitrogen dioxide, sulfur dioxide, nitrates, and sulfates. In Phase I, FLAG formed subgroups that concentrated on four issues: (1) Terrestrial effects of ozone; (2) aquatic and terrestrial effects of wet and dry pollutant deposition; (3) visibility; and (4) process and policy issues. The draft report contains issue-specific technical and policy analyses, recommendations for evaluating air quality related values, and guidelines for completing and evaluating new source review permit applications. These recommendations and guidelines are intended for use by the FLMs, permitting authorities, permit applicants, and other interested parties. The FLMs conducted a public meeting to discuss the FLAG report on December 15, 1999. FLAG presentations made at the public meeting can be downloaded from the FLAG website referenced below.

DATES: Written comments on the FLAG report must be received by February 7, 2000.

ADDRESSES: A copy of the draft *FLAG Phase I Report* can be obtained from John Bunyak or downloaded from the Intenet at: http://www.aqd.nps.gov/ard/flagfree/

Mail comments to: John Bunyak, Air Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado, 80225. Email comments can be sent to john__bunyak@nps.gov.

FOR FURTHER INFORMATION CONTACT: John Bunyak at the above address or by calling (303) 969–2818.

Dated: December 16, 1999.

Christine Shaver,

Chief, Air Resources Division.

[FR Doc. 99–33356 Filed 12–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Thursday, December 16, 1999, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide two appeals from the National Commissioners' decisions pursuant to 28 CFR Section 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Edward F. Reilly, Jr., John R. Simpson, Marie F. Ragghianti, and Janie Jeffers.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 16, 1999.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 99–33442 Filed 12–21–99; 10:46 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,769]

Arrow Automotive Industries Morrilton, Arkansas; Notice of Negative Determination on Reconsideration

On August 17, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The company presented new evidence that indicated the Department had not done a full customer survey. The notice was published in the **Federal Register** on August 31, 1998 (64 FR 47521).

The Department initially denied TAA to workers of Arrow Automotive because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of repairing, rebuilding, and remanufacturing automotive parts.

On reconsideration, the Department requested the names of additional customers. The Department conducted a survey of the additional customers, all of which reported no purchases of imported remanufactured automotive parts.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for worker adjustment assistance for workers and former workers of Arrow Automotive Industries, Morrilton, Arkansas.

Signed at Washington, D.C., this 13th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33316 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,025 et al.]

Conoco, Inc., Natural Gas and Gas Products Division, Houston, TX, and Operating at Various Locations; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) and application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Conoco, Inc., Natural Gas and Gas Products Division, Houston, Texas and operating at various locations in Louisiana (TA–W–36, 025A), New Mexico (TA–W–36,025B), Oklahoma (TA–W–36,025C), Texas (TA–W–36,025D), Virginia (TA–W–36,025E) and West Virginia (TA–W–36,025F). The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,025; Conoco, Inc., Natural Gas and Gas Products Div., Houston, TX and Operating at Various Locations in Louisiana (TA–W–36,025A), New Mexico (TA–W–36,025B), Oklahoma (TA–W–36,025C), Texas (TA–W–36,025D), Virginia (TA–W–36,025E), and West Virginia (TA–W–36,025F), (December 7, 1999)

Signed at Washington, DC this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33324 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,824]

Crouse-Hinds Division of Cooper Industries Syracuse, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 18, 1999, the International Brotherhood of Electrical Workers (IBEW), Local 2084, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Trade Adjustment Assistance (TA–W–36,824), applicable to workers of the subject firm. The denial notice was signed on

October 20, 1999, and will soon be published in the **Federal Register.**

The IBEW presents evidence that warrant examination of imports of articles competitive with the EMT electrical steel fittings produced by workers of the subject firm.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C. this 2nd day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 33326 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LAB0R

Employment and Training Administration

[TA–W–36,876]

Fred P. Saunders Company, Bridgton, Maine; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 27, 1999 in response to a worker petition which was filed on behalf of all workers at Fred P. Saunders Company, located in Bridgton, Maine (TA–W–36,876).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33308 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/22/1999]

TA–W	Subject firm (petitioners) and location	Date of petition	Product(s)
37,083	Hempfield Foundries (Wkrs)—Greensburg, PA	11/09/1999	Flanged pipe fittings
37,084	Stanley Hand Tools (IAMAW)—New Britain, CT	10/26/1999	Tape rulers
37,085	Tulon Co (Wkrs)—Irving, CA	11/10/1999	Printed circuit board drills
37,086	Garden State Tanning (UNITE)—Adrian, MI	11/05/1999	Leather seats
37,087	Gaudette Leather Goods (Co.)—No. Attleboro, MA	11/10/1999	Specialty leather goods
37,088	Master Foam, Inc (Co.)—North Hollywood, CA	11/09/1999	Foam cutting (packaging)
37,089	K2 Corporation (Co.)—Vashon, WA	11/11/1999	Downhill snow skies, snowboards
37,090	Sas'sa Ltd (Co.)—Sylvester, GA	11/04/1999	Westernwear
37,091	Morgan Adhesive Co (IBT)—Stow, OH	01/12/1999	Adhesives
37,092	Industrial Motor (Wkrs)—El Paso, TX	11/03/1999	Repair motors
37,093	Duckhead Apparel (Wkrs)—Monroe, GA	11/02/1999	Pressed pants for inventory
37,094	Lear Corp. (IBEW)—Zanesville, OH	11/04/1999	Battery die casts (wiring harnesses)
37,095	Leggett and Platt (Co.)—Springfield, MO	11/05/1999	Wood headboards, beds, nightstands
37,096	Royal Oak Enterprises (Wkrs)—Salem, MO	11/06/1999	Charcoal briquetts
37,097	Reliable Machine & Supply (Co.)—Odessa, TX	11/02/1999	Repair engine & pump crankshafts
37,098	Cedarapids (Wkrs)—Glasgow, MO	11/05/1999	Asphalt machinery
37,099	Schuylkill Haven (Wkrs)—Schuylkill Have, PA	10/31/1999	Bleached & dyed knitted, woven fabrics
37,100	Maine Yankee Atomic Power (Co.)—Wiscassett, ME	11/01/1999	Electric power
37,101	Royal Coat (Wkrs)—Clifton, NJ	10/28/1999	Ladies' coats
37,102	Fisher Price Inc (Wkrs)—East Aurora, NY	11/10/1999	Children's toys
37,103	Alaska Anvil Consulting (Wkrs)—Anchorage, AK	11/10/1999	Oilfield exploration & engineering
37,104	F.N. Burt Co., Inc (GCIU)—Buffalo, NY	11/09/1999	Paperboard packaging

[FR Doc. 99–33322 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,919]

Huffy Bicycle Company, Farmington, MO, Huffy Bicycle Company Tech Center, Springboro, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 19, 1999, applicable to workers of Huffy Bicycle Company, located in Farmington, Missouri. The notice was published in the **Federal Register** on December 2, 1999 (64 FR 67594).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur at the Huffy Bicycle Company Tech Center, Springboro, Ohio location when it closes in December, 1999. The workers at the Springboro, Ohio location provide engineering and support function services for Huffy's production facility in Farmington, Missouri which is also closing in December, 1999. The workers are engaged in the production of bicycles.

The intent of the Department's certification is to include all workers of Huffy Bicycle Company who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Huffy Bicycle Company Tech Center, Springboro, Ohio.

The amended notice applicable to TA–W–36,919 is hereby issued as follows:

All workers of Huffy Bicycle Company, Farmington, Missouri (TA–W–36,919), and Huffy Bicycle Company Tech Center, Springboro, Ohio (TA–W–36,919A) who became totally or partially separated from employment on or after September 29, 1998 through October 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33311 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,623]

Interplast Universal Industries Lodi, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

By letters of November 1 and 4, 1999, a petitioner and the Northeast District Council of the United Food and Commercial Workers (UFCW), respectively, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Trade Adjustment Assistance, applicable to workers of the subject firm (TA–W–36,623). The denial notice was signed on October 7, 1999 and published in the **Federal Register** on November 4, 1999 (64 FR 60230).

The petitioners present evidence that warrant further examination of imports of articles competitive with the expanded vinyl produced by workers of the subject firm.

Conclusion

After careful review of the application. I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 6th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33314 Filed 12–22–99; 8:45 am]

BILLING CODE 1510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,708]

Invensys Appliance Controls, New Stanton, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Invensys Appliance Controls, New Stanton, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination, Therefore, dismissal of the application was issued.

TA–W–36,708; Invensys Appliance Controls, New Stanton, Pennsylvania (December 7, 1999).

Signed at Washington, D.C. this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33323 Filed 12–22–99 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,219]

Matador Petroleum Corporation, Dallas, Texas; Notice of Negative Determination on Reconsideration

By application dated August 20, 1999, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 30, 1999, and published in the **Federal Register** on September 11, 1999 (64 FR 43723).

The June 30, 1999, denial of TAA for workers engaged in employment related to the exploration and production of crude oil and natural gas at Matador Petroleum Corporation, Dallas, Texas, was based on the finding that criteria (2) and (3) of group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, were not met. Employment levels and revenues derived from the sale of articles produced at the subject firm increased during the relevant time period.

The company provided new information regarding employment at the subject firm, showing that the number of workers did decline in January through March 1999 and that there is a threat of additional layoffs. Based on this new information criterion (1) is met.

The company explains that the revenues derived from the sale of crude oil and natural gas increased because the company found significant amounts of oil and gas. Profits of the subject firm, however, declined because they were forced to sell the products at a price lower than the associated costs of production; the low price of imported products drove the price down.

The Trade Act of 1974 does not provide for working group certification based on the cost of producing products. Price is not a criterion for worker group certification.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Matador Petroleum Corporation, Dallas, Texas.

Signed at Washington, D.C. this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33317 Filed 12–22–99 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,453; TA–W–35,453I]

Pendleton Woolen Mills; Fremont, Nebraska; and Nebraska City Facility, Nebraska City, Nebraska; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1999, applicable to workers of Pendleton Woolen Mills, Fremont, Nebraska. The notice was published in the **Federal Regiister** on April 6, 1999 (64 FR 16753).

At the request of the company, the Department reviewed the certification for workers of the subject firms. New information shows that worker separations are occurring at the Nebraska City Facility, of Pendleton Woolen Mills, Nebraska City, Nebraska. The workers are engaged in employment related to the production of women's woolen pants and skirts.

Accordingly, the Department is amending the certification to cover workers of Pendleton Woolen Mills, Nebraska City Facility, Nebraska City, Nebraska.

The intent of the Department's certification is to include all workers of Pendleton Wool Mills adversely affected by increased imports.

The amended notice applicable to TA–W–35,453 is hereby issued as follows:

''All workers of Pendleton Woolen Mills, Fremont, Nebraska (TA–W–35,453) and Nebraska City Facility, Nebraska City, Nebraska (TA–W–35,453I) who became totally or partially separated from employment on or after December 21, 1997 through March 2, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33310 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,730]

Ray-Ban Sun Optics Formerly Known as Eyewear Division of Bausch & Lomb, Rochester, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 2, 1999, applicable to workers of Ray-Ban Sun Optics, Rochester, New York. The notice was published in the **Federal Register** on December 2, 1999 (64 FR 67594).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sunglasses. Findings show that the subject firm, which was originally named the Eyewear Division of Bausch & Lomb, was sold in June, 1999 to Luxottica and was renamed Ray-Ban Sun Optics. The Department is amending the certification determination to correctly identify the new title name to read ''Ray-Ban Sun Optics, (formerly known as Eyewear Division of Bausch & Lomb)'', Rochester, New York.

The amended notice applicable to TA–W–36,730 is hereby issued as follows:

All workers of Ray-Ban Sun Optics (formerly known as Eyewear Division of Bausch & Lomb), Rochester, New York who became totally or partially separated from employment on or after August 11, 1998 through November 2, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33313 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,125]

Sensory Devices, Inc., Waukesha, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 29, 1999, in response to a worker petition which was filed on behalf of workers at Sensor Devices, Inc., Waukesha, Wisconsin.

The petitioning group of workers has requested that its petition for Trade Adjustment Assistance be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 14th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33309 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 935]

Suckle Corporation, Scranton, PA; Notice of Negative Determination on Reconsideration

On September 17, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented a list of additional customers decreasing purchases from the subject firm. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52545).

The Department initially denied TAA to workers producing computer chassis at Suckle Corporation, Scranton, Pennsylvania because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that none of the major customers were decreasing purchases from Suckle Corporation while increasing import purchases of computer chassis during the period under investigation.

The Department attempted to survey those customers identified by the petitioners as no longer buying computer chassis from the subject firm. Of those firms that were not included in the initial customer survey, the

Department found that some customers did not purchase from the subject firm in the time period relevant to the investigation, and others were no longer in business. The Department was unable to locate any information from the customers that were out of business.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for workers adjustment assistance for workers and former workers of Suckle Corporation, Scranton, Pennsylvania.

Signed at Washington, DC this 7th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33315 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,118]

Trinity Industries, Incorporated, Plant No. 102, Greenville, PA; Notice of Negative Determination on Reconsideration

By letter of August 17, 1999, United States Automobile, Aerospace, Agricultural Implement Workers of America (UAW), Local No. 1653, requested administrative reconsideration of the Department's denial of Eligibility for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm.

The Department initially denied TAA to workers of Trinity Industries, Incorporated, Plant No. 102, Greenville, Pennsylvania because the criterion (3) of the worker group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. Employment increased from 1997 to 1998. Layoffs at the plant were attributable to the company's decision to transfer production of cement cars from the Greenville plant to another domestic facility. Although the petitioners alleged that Trinity imported railcars, the investigation revealed that the railcars produced by Trinity offshore served foreign markets and were not returned to the United States for marketing to the subject firm's customers.

The UAW request for reconsideration states that worker layoffs continue at the Greenville plant; the company has built production facilities in foreign locations and those products may be coming into the U.S.

On petition reconsideration, the Department contacted Trinity officials to determine if layoffs occurred after June 30, 1999, the expiration date of the TAA certification, TA–W–33,544, covering all workers separated from Trinity Industries, Incorporated, Plant #102–Railcar Division, Greenville, Pennsylvania. The Department also asked if Trinity in importing any products like or directly competitive with those that were produced at the Greenville, Pennsylvania plant.

The company confirms that workers have been separated since June 30, 1999. Those layoffs were caused by senior employees returning to work.

The company reiterates that the gondola cars built in Mexico serve that market. Grain cars are being delivered from Mexico to a U.S. customer. Since workers at the Greenville plant no longer produce grain cars, any worker separations caused as the result of those imports would be covered by TA–W–33,544.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Trinity Industries, Inc., Greenville, Pennsylvania.

Signed at Washington, D.C., this 14th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33321 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,319]

Unger Fabrik A/K/A Michel Palini, Los Angeles, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 28, 1999, applicable to workers of Unger Fabric, Los Angeles, California. The notice was published in the **Federal Register** on July 20, 1999 (64 FR 38921).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of apparel (male and female). Findings show that correct spelling of the subject firm is ''Unger Fabrik''. Findings also show that some workers separated from employment at Unger Fabrik had their wages reported under a separate unemployment insurance (UI) tax account for Michel Palini, Los Angeles, California.

The intent of the Department's certification is to include all workers of Unger Fabrik who were adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–36,319 is hereby issued as follows:

All workers of Unger Fabrik, also known as Michel Palini, Los Angeles, California who became totally or partially separated from employment on or after May 3, 1998 through June 28, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33312 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–20–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than January 3, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, D.C. this 29th day of November, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 11/29/99]

TA–W	Subject firm (petitioners) and location	Date of petition	Product(s)
37,105	Weiser Lock (Comp)—Tucson, AZ	11/19/1999	Residential door hardware.
37,106	Oxford Automotive (Wrks)—Argos, IN	11/12/1999	Steel.
37,107	Dana Corp, Heavy Truck (USWA)—Reading, PA	11/15/1999	Heavy truck side rail.
37,108	Umetco Minerals Corp (Wrks)—Gas Hills, WY	11/01/1999	Reclamation of Uranium Mine.
37,109	DMI, Plant #4 USWA)—Ferdinand, IN	11/09/1999	Office furniture & occasional furniture.
37,110	VF Workwear, Inc (COMP)—Cookeville, TN	11/15/1999	Men's work clothing.
37,111	Crown, Cork and Seal (GMP)—Connellsville, PA	11/12/1999	Metal, paper lined closures.
37,112	Sourceone Mfg Services (UNITE)—Baltimore, MD	11/01/1999	Men's shirts, trousers & sport coats.
37,113	Alliance Machine Co. (USWA)—Alliance, OH	11/09/1999	Machinery & equipment for steel mills.
37,114	Asarco, Inc (Wrks)—Leadville, CO	11/10/1999	Lead and zinc concentrate.
37,115	Neles Automation (Comp)—Shrewsbury, MA	11/15/1999	Control valves.
37,116	Falcon Foundry Co (Comp)—Lowellville, OH	11/15/1999	Copper & bronze castings.
37,117	Irwin Manufacturing Corp (Comp)—Fitzgerald, GA	11/09/1999	Infants sleepwear & outerwear.
37,118	Hoppe Cutting, Inc (Wrks)—Allentown, PA	11/01/1999	Women's sportswear.
37,119	Slatington Fashions (UNITE)—Slatington, PA	11/15/1999	Ladies' Apparel.
37,120	Sonat Exploration Co (Wrks)—Oklahoma City, OK	11/16/1999	Oil.
37,121	Quantegy, Inc (Comp)—Opelika, AL	11/10/1999	Magnetic tape.
37,122	Williams Cutting Service (Comp)—Brownsville, TX	11/16/1999	Garments.
37,123	Midland County Housing (Wrks)—Midland, TX	11/18/1999	Public Rental Assistance Program.
37,124	Arco Permian (Comp)—White Oak, TX	11/19/1999	Oil and gas.
37,125	Sensor Devices, Inc (Wrks)—Waukeska, WI	11/18/1999	Sensor devices.
37,126	Spartan Mills (Wrks)—Spartanburg, SC	11/15/1999	Yarn.
37,127	Carter Footwear, Inc (UFCW)—Wilkes Barre, PA	11/19/1999	Casual footwear.
37,128	Nucor Fastener (Comp)—Conway, AR	11/12/1999	Screws, bolts and nuts.
37,129	Boeing Company (The) (IAMAW)—Seattle, WA	11/03/1999	Commercial aircraft.
37,130	Hamilton Sundstrand (IAMAW)—Windsor Locks, CT	11/04/1999	Controls for aircraft surfaces.

[FR Doc. 99–33326 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03609]

Moltrup Steel Products Company, Inc. Beaver Falls, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 2, 1999 in response to a petition filed on behalf of workers at Moltrup Steel Products Company, Incorporated, Beaver Falls, Pennsylvania.

The three petitioners were separated from the subject firm more than a year prior to the date of the petition (September 29, 1998). Section 223(b)(1) of the Act of 1974, as amended, specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. This requirement is applicable to NAFTA–TAA petitions. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, D.C., this 17th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33318 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03512]

Robotex, Incorporated, Lumberton, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 12, 1999, in response to a petition filed on behalf of workers at Robotex, Incorporated, Lumberton, North Carolina.

The petitioner has requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 17th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33319 Filed 12–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA 3593]

Sensory Devices, Inc. Waukesha, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 22, 1999, in response to a petition filed on behalf of workers at Sensory Devices, Inc., Waukesha, Wisconsin.

The petitioning group of workers has requested that its petition for Transitional Trade Adjustment Assistance be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 14th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–33321 Filed 12–22–99 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–164)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13: 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before February 22, 2000.

ADDRESSES: All comments should be addressed to Mr. John Yadvish, Code RW National Aeronautics and Space Administration, Washington, DC 20546. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports:

Title: NASA Small Business Innovative Research Commercial Metrics

OMB Number: 2700–0095

Type of review: Extension

Need and Uses: Collection is to assess the contribution of NASA funded SBIR Technology to the national economy in accordance with NASA's obligations under the Government Performance and Results Act of 1993 to contribute to the nation's economic well being and to measure the contribution.

Affected Public: Business or other for-profit

Number of Respondents: 897

Responses Per Respondent: 1

Annual Responses: 200

Hours Per Request: 1 hr

Annual Burden Hours: 200

Frequency of Report: Annually

Dr. David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 99–33271 Filed 12–22–99; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 5, 2000.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Music & Arts/Conferences, submitted to the Division of Research Programs at the September 1, 1999 deadline.

2. *Date:* January 7, 2000.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Social Sciences, submitted to the Division of Research Programs at the September 1, 1999 deadline.

3. *Date:* January 10, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Literature, submitted to the Division of Research Programs at the September 1, 1999 deadline.

4. *Date:* January 10, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Schools for a New Millennium, submitted to the Division of Education at the October 1, 1999 deadline.

5. *Date:* January 10, 2000.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the November 1, 1999 deadline.

6. *Date:* January 12, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Long-Term Editions, submitted to the Division of Research Programs at the September 1, 1999 deadline.

7. *Date:* January 12, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

8. *Date:* January 14, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

9. *Date:* January 14, 2000.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the November 1, 1999 deadline.

10. *Date:* January 18, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

11. *Date:* January 18–19, 2000.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Collaborative Research in Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs at the September 1, 1999 deadline.

12. *Date:* January 20, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for National Education Projects, submitted to the Division of Education at the October 15, 1999 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 99–33272 Filed 12–22–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications January 14, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas (formerly called Specially Protected Areas and Sites of Special Scientific Interest).

The application received is as follows:

1. *Applicant:* Mimi Wallace, 3564 Breckenridge, El Paso, TX 79936; Permit Application No. 2000–023.

Activity for Which Permit is Requested

Import into the U.S.A.

The applicant proposes to opportunistically collect specimens (*e.g.,* bones, feathers, beaks, *etc.*) from dead animals such as seabirds and marine mammals for educational purposes and to import these to the United States. No animals will be killed to obtain specimens. The applicant is participating in an educational outreach program (Teachers Experiencing Antarctica-TEA) that is associated with the Palmer Long Term Ecological Research Program (LTER). The collection will be used in teaching high school students about Antarctica.

Location: Antarctic Peninsula Region.
Dates: January 1 to March 31, 2000.

2. *Applicant:* Christian H. Fritzen, 2215 Raggio Parkway, Reno, Nevada 89512; Permit Application No. 2000–024.

Activity for Which Permit is Requested

Take; Enter Antarctic Specially Protected Area

The applicant proposes to enter the Canada Glacier, Lake Fryxell Antarctic Specially Protected Area (ASPA #131) to collect five samples (5 grams each) of cyanobacterial mats in ephemeral stream areas. The Cyanobacterial assemblages in ice covers on Antarctic lakes are believe to originate from terrestrial areas and ephemeral streams. The applicant proposes to exam the physiological responses and community structures that are selected by the ice-cover environment to determine if these source organisms possess the characteristics that make them suited for growth in ice covers on the lakes and the glaciers in the Taylor Valley. The samples will be autoclaved after use and destroyed.

Location: Canada Glacier, Lake Fryxell, Taylor Valley Antarctic Specially Protected Area #131.

Dates: October 15, 1999 to February 15, 2000.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 99–33269 Filed 12–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit modifications requested.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by January 14, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National

Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested:

1. The Foundation issued a permit (99–010) to Dr. Rennie S. Holt on September 25, 1998. The issued permit allows for the censuring, capture, handling and release of up to 80 adult and 1500 Antarctic fur seal *(Arctocephalus gazella)* pups. In addition, up to 40 female/pup pairs would be captured for measurements of energy expenditure, foot intake, dive depth, duration, time of day and dive frequency, swim speed and foraging location, as well as attendance-related factors of pup growth using milk extraction and gastric lavage. The permit holder requests to modify his permit to include teeth extractions for age determinations, involving up to 100 adults per annum. To minimize the number of takes, effort will be made such that the majority of tooth extractions will be from animals already captured for other permitted procedures. Also, specimens may be collected opportunistically; animals will not be killed for any collection purposes (i.e.: samples may be collected from dead animals found on the beach or washed ashore). A further modification request is for import of samples collected opportunistically from cetacean species found dead. All specimens will be imported to the United States and inventoried with the Antarctic Marine Living Resources Program in La Jolla, CA.

Location

Cape Shirreff, Livingston Island (SSSI #32), Byers Peninsula (SSSI #6), South Shetland Islands, Antarctic Peninsula.

Dates

January 10, 2000 to April 2, 2001.

Nadene G. Kennedy

Permit Officer, Office of Polar Programs.

[FR Doc. 99–33270 Filed 12–22–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 20 and 27, 1999, January 3 and 10, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 20

Wednesday, December 22
11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of December 27—Tentative

There are no meetings scheduled for the week of December 27

Week of January 3—Tentative

Wednesday, January 5
9:55 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of January 10—Tentative

Monday, January 10
10:00 a.m.—Meeting with D. C. Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

Tuesday, January 11
9:30 a.m.—Briefing on Status of Research Programs, Performance, and Plans (including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Wednesday, January 12
9:55 a.m.—Affirmation Session (Public Meeting) (if needed)
10:00 a.m.—Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1134)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 20, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–33460 Filed 12–21–99 2:39 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Rule 204–3, SEC File No. 270–42, OMB Control No. 3235–0047

Extension:

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 204–3 requires investment advisers to deliver, or offer to deliver, to their clients a written disclosure statement, or ''brochure,'' of specified information concerning the background and business practices of the adviser. Investors use this information to determine whether to retain or continue to employ the investment adviser. There are currently approximately 8,300 investment advisers subject to this rule; the estimated burden resulting from the rule is 203,350 total annual hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 13, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33347 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24204; File No. 812–11814]

Aetna Life Insurance and Annuity Company, et al.

December 16, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940, as amended (''Act'') granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of bonuses applied to purchase payments made under certain deferred variable annuity contracts.

APPLICANTS: Aetna Life Insurance and Annuity Company (''ALIAC'') and its Variable Annuity Account B (''VA B''), Aetna Insurance Company of America (''AICA'' together with ALIAC, ''Aetna''), and any other separate accounts of ALIAC or AICA (''Future Accounts'') that support in the future deferred variable annuity and certificates that are substantially similar in all material respects to the VA B contracts described herein (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of bonuses applied to purchase payments made under: (i) deferred variable annuity contracts and certificates that ALIAC will issue through VA B (the contracts and certificates, including certificate data pages and endorsements, are collectively referred to herein as the ''VA B Contracts''), and (ii) deferred variable annuity contracts and certificates, that Aetna may issue in the future through VA B or any Future Account (collectively, the ''Accounts''), that are substantially similar to the VA B Contracts in all material respects (the ''Future Contracts'' together with the VA B Contracts, ''Contracts''). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Aetna, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively ''Aetna Broker-Dealers'').

FILING DATE: The application was filed on October 15, 1999, and amended and restated on December 14, 1999 (''Application'').

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 2000 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156, Attn: J. Neil McMurdie, Esq.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. ALIAC is a stock life insurance company organized under the laws of the State of Connecticut. ALIAC serves as depositor for VA B, which was established in 1976 pursuant to authority granted under a resolution of ALIAC's Board of Directors. ALIAC also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. ALIAC may establish one or more additional Future Accounts for which it will serve as depositor.

2. AIAC is a stock life insurance company organized under the laws of the State of Connecticut. AIAC serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. AIAC may establish one or more additional Future Accounts for which it will serve as depositor.

3. ALIAC is the principal underwriter of VA B. ALIAC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (the ''1934 Act'') and is a member of the NASD. ALIAC will enter into arrangements with one or more registered broker-dealers, which may be affiliated with ALIAC, to offer and sell VA B Contracts. ALIAC also may enter into these arrangements with banks that may be acting as broker-dealers without separate registration under the 1934 Act pursuant to legal and regulatory exceptions. Further, ALIAC may distribute VA B Contracts directly. ALIAC may enter into similar arrangements for Future Contracts. ALIAC may act as principal underwriter for Future Accounts and distributor for Future Contracts. A successor entity also may act as principal underwriter for any of the Accounts and distributor for any of the Contracts.

4. VA B is a segregated asset account of ALIAC. VA B is registered with the Commission as a unit investment trust under the Act. VA B will fund the variable benefits available under the VA B Contracts. Units of interest in VA B will be registered under the Securities Act of 1933 (the ''1933 Act''). ALIAC may issue Future Contracts through VA B. ALIAC and AICA also may issue Future Contracts through Future Accounts. The assets of VA B that are equal to the reserves and VA B Contract liabilities are not chargeable with liabilities arising out of any other business of ALIAC. Any income, gains or losses, realized or unrealized, from assets allocated to VA B are, in accordance with the VA B's Contracts, credited to or changed against VA B, without regard to other income, gains or losses of ALIAC. The same will be true of any Future Account of ALIAC or AICA.

5. The following is a discussion of the VA B Contracts. Future Contracts funded by VA B or any Future Account of ALIAC or AICA will be substantially

similar in all material respects to the VA B Contracts. Certain anticipated differences between VA B Contracts and Future Contracts are noted below. VA B Contracts will be sold by registered representatives of ALIAC and affiliated or unaffiliated broker-dealers with which ALIAC enters into selling agreements, as indicated above. ALIAC may issue VA B Contracts as individual or group flexible premium tax deferred variable annuity contracts. ALIAC may issue VA B Contracts in connection with retirement plans that qualify for favorable federal income tax treatment under Section 403 as a tax sheltered annuity or Section 408 of the Internal Revenue Code as an individual retirement plan (''Qualified Contract''). ALIAC also may issue VA B Contracts on a non-tax qualified basis (''Non-Qualified Contract''). VA B Contracts may be used for other purposes in the future, or offered only as Qualified Contracts or Non-Qualified Contracts.

6. A Non-Qualified Contract may be purchased with an initial payment of at least $15,000. The minimum initial purchase payment for a Qualified Contract is $1,500. Subsequent purchase payments must be at least $50. ALIAC may impose maximum limitations on purchase payments. The maximum age of any annuitant as of the issue date is 85 (Death Benefit Option I) or 75 (Death Benefit Option II). ALIAC does not accept subsequent purchase payments after the annuity date.

7. An owner can allocate purchase payments or account value to one or more sub-accounts of VA B, each of which will invest in a corresponding portfolio of a mutual fund. In addition, VA B Contracts will permit purchase payments to be allocated to fixed interest options funded through the ALIAC Guaranteed Account (the ''Guaranteed Account'') and the fixed account (the ''Fixed Account'') which provide a guarantee of the purchase payment allocated thereto and interest for specified periods. A positive or negative adjustment, or ''market value adjustment'' (''MVA''), will be made to the account value in the Guaranteed Account upon a withdrawal, surrender or transfer from the Guaranteed Account prior to the end of the guaranteed term. When a death benefit is paid under a VA B Contract within six months of the date of death, only a positive aggregate MVA amount, if any, is applied to the account value attributable to amounts withdrawn from the Guaranteed Account. Because of the MVA feature, fixed interest option interests are registered under the 1933 Act pursuant to a Form S–2 Registration Statement. Contract owners may receive annuity payments after annuitization on a fixed or variable basis.

8. VA B currently consists of 65 sub-accounts, 29 of which will be available under the VA B Contracts. Each sub-account will invest in shares of a corresponding portfolio (''Portfolio'') of an open-end, diversified series management investment company registered under the Act (each a ''Fund,'' collectively, the ''Funds''). The Funds currently available are managed by various entities affiliated and unaffiliated with Aetna.

9. ALIAC, at a later date, may determine to create additional sub-accounts to invest in additional Portfolios. In addition, sub-accounts of VA B may be combined or eliminated from time to time. Future Contracts may offer Funds managed by the same or other investment advisers.

10. VA B Contracts provide for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Options, dollar cost averaging, death benefit and other features. VA B Contracts have the following charges: (i) a withdrawal charge as a percentage of purchase payments declining from 8% in years one, two, and three to 0% in year nine and thereafter, with a 10% ''free withdrawal'' amount; (ii) asset-based mortality and expense risks charges at the annual rates of 1.25% for Death Benefit Option I and 1.45% for Death Benefit Option II (1.25% during the income phase) assessed against the net assets of each sub-account; and (iii) an asset-based administrative expense charge at an annual rate of 0.15% for administration expenses (0.25% during the income phase, but currently not deducted) assessed against the net assets of each sub-account. Also, each year during the accumulation phase, a $30 annual maintenance fee is deducted proportionately from each Investment Option. The annual maintenance fee will be waived if the Contract owner's account value is $50,000 or greater on the date this fee is due. The underlying Funds impose investment management fees and charges for other expenses.

11. ALIAC will credit a premium bonus (''Bonus'') under VA B Contracts to an owner's account whenever the owner makes an eligible purchase payment. The amount of the Bonus is a percentage of the eligible purchase payment. Withdrawals reduce on a dollar-for-dollar basis the eligibility of subsequent purchase payments to receive the Bonus. The Bonus percentage is based upon the sum of all purchase payments made, less withdrawals (''net cumulative purchase payments''), as follows:

Net cumulative purchase payments	Bonus percentage
$1,500 to $14,999	2.00
$15,000 to $2,499,999	4.00
$2,500,000 or more	5.00

An owner's initial purchase payment will be eligible for the Bonus at the rates shown above. The amount of a subsequent purchase payment eligible for a Bonus is the amount of net cumulative purchase payments minus the sum of purchase payments upon which a Bonus has previously been paid. No Bonus will be credited on amounts reinvested following a full withdrawal. In the future, ALIAC (or AICA) may credit Bonuses of up to 5% of eligible purchase payments under Future Contracts according to different purchase payment breakpoint schedules. ALIAC will allocate Bonuses among the Investment Options (defined below) in the same proportion as the corresponding purchase payments are allocated by the owner. ALIAC will fund Bonuses from its general account assets. The Bonuses are vested when applied, except under the following circumstances: (i) ALIAC will recapture all Bonuses if the owner returns a VA B Contract to ALIAC for a refund during the 10-day (or longer, if required) ''free look'' period; (ii) any Bonus credited to an owner's account within 24 months of electing an income phase payment option will be forfeited and not included in an owner's account value when calculating the payment amount; and (iii) the amount of any death benefit will not include any Bonus credited to an owner's account after or within 12 months of the date of death.

12. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Aetna to issue Contracts that permit Aetna to recapture (i) all Bonuses if the owner returns the Contract to Aetna for a refund during the 10-day (or longer, if required) ''free look'' period; (ii) any Bonus credited to an owner's account within 24 months of electing an income phase payment option so that such Bonuses will be forfeited and not included in an owner's account value when calculating the payment amount; and (iii) any Bonus credited to an owner's account after or within 12 months of the date of death so that the amount of any death benefit will not include such Bonuses.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such 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 Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the VA B Contracts and any Future Contracts funded by VA B or Future Accounts, that are issued by Aetna and underwritten or distributed by ALIAC or any Aetna Broker-Dealers. Applicants undertake that Future Contracts funded by VA B or any Future Account, in the future, will be substantially similar in all material respects to the VA B Contracts. Applicants believe 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 Act.

2. Applicants represent that it is not administratively feasible to track the Bonus amount in the Accounts after the Bonus is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the Accounts, including the Bonus amount, during the period when the owner's interest in the Bonus is not completely vested. Therefore, during such periods, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Bonus.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Bonus recapture provisions summarized herein would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Bonus allocated to his or her annuity account upon receipt of an initial purchase payment is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the amount of any Bonus allocated upon receipt of eligible purchase payments during the two years before the owner annuities or during the 12 months prior to the date of death also is not vested. Until or unless the amount of any Bonus is vested, Applicants submit that Aetna retains the right and interest in the Bonus amount, although not in any earnings attributable to that amount. Thus, Applicants argue that, when Aetna recaptures any Bonus, it is simply retrieving its own assets and, because an owner's interest in the Bonus is not vested, the owner has not been deprived of a proportionate share of the applicable Account's assets, *i.e.,* a share of the applicable Account's assets proportionate to the owner's annuity account value (including the Bonus).

5. In addition, with respect to Bonus recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Bonus amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that, if Aetna could not recapture the Bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of a Bonus relating to purchase payments made within two years of annuitization or within twelve months of death is designed to provide Aetna with a measure of protection against ''anti-selection.'' Applicants state that the risk here is that, rather than spreading purchase payments over a number of years, an owner will make very large payments shortly before annuitizing, or death, thereby leaving Aetna less time to recover the cost of Bonus, to its financial detriment. Aetna intends to recover the cost of the Bonus through a portion of the early withdrawal charge and the mortality and expense risks charge imposed under the Contracts. Aetna may use any excess to recover distribution costs relating to the Contracts and as a source of profit. The amounts recaptured equal the Bonuses provided by Aetna from its own general account assets, buy any gain would remain part of the Contract's value.

7. Applicants represent that the Bonus will be attractive to and in the interest of investors because it will permit owners to put an amount greater than their purchase payments (depending on the net cumulative purchase payments) of work for them in the selected Investment Options. Also, owners will retain any earnings attributable to the Bonus and, unless any of the contingencies summarized above apply, the principal amount of the Bonus.

8. Applicants submit that the provisions for recapture of any applicable Bonus under the VA B Contracts do not, and any such Future Contract provisions will not, violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Bonus under the circumstances described herein with respect to the Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computer after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Arguably, Aetna's recapture of the Bonus might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Bonus is not violative

of Section 22(c) and Rule 22c–1. Applicants argue that the recapture of the Bonus does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. See Adoption of Rule 22c–1 under the Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Bonus, Aetna will redeem interest in an owner's annuity account at a price determined on the basis of the current net asset value of the respective Accounts. The amount recaptured will equal the amount of the Bonus that Aetna paid out of its general account assets. Alhough owners will be entitled to retain any investment gain attributable to the Bonus, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Thus, no dilution will occur upon the recapture of the Bonus. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Bonus. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Bonus under the Contracts.

Conclusion:

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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 Act, and that, therefore, the Commission should grant the requested order

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33348 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24205; File No. 812–11708]

Hartford Life and Annuity Insurance Company, et al.; Notice of Application

December 17, 1999.

AGENCY: The Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to section 26(b) and 17(b) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts to substitute shares of Evergreen Variable Annuity Trust's (''Evergreen Trust'') Evergreen VA Capital Growth Fund for shares of Mentor Variable Investment Portfolios' (''Mentor Trust'') Mentor VIP Capital Growth Portfolio, shares of Evergreen Trust's Evergreen VA Growth Fund for shares of Mentor Trust's Mentor VIP Growth Portfolio, shares of Evergreen Trust's Evergreen VA High Income Fund for shares of Mentor Trust's Mentor VIP High Income Portfolio and shares of Evergreen Trust's Evergreen VA Perpetual International Fund for shares of Mentor Trust's Mentor VIP Perpetual International Portfolio currently held by those unit investment trusts to support certain deferred premium variable annuity contracts (''Contracts''). Applicants also request an order exempting them from Section 17(a) of the Act to the extent necessary to permit certain in-kind redemption and purchase transactions in connection with the substitutions.

APPLICANTS: Hartford Life and Annuity Insurance Company (''Hartford Life and Annuity''), Hartford Life and Annuity Insurance Company Separate Account One (''Hartford Life and Annuity Account''), Hartford Life Insurance Company (''Hartford Life''), Hartford Life Insurance Company Separate Account Two (''Hartford Life Account''), PFL Life Insurance Company (''PPL'') and PFL Retirement Builder Variable Annuity Account (''PFL Account'', and together with Hartford Life and Annuity Account and Hartford Life Account, the ''Accounts''), Mentor Variable Investment Portfolios and Evergreen Variable Annuity Trust.

FILING DATE: The application was filed on July 23, 1999 and amended on December 9, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Marianne O'Doherty, Counsel, Hartford Life and Annuity Insurance Company, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, Connecticut 06089; Frank A. Camp, PFL Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499; Michael H. Koonce, Mentor Variable Investment Portfolios, Evergreen Variable Annuity Trust, 200 Berkeley Street, Boston, Massachusetts 02116. Copies to Robert N. Hickey, Sullivan & Worcester LL, 1025 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20542–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Hartford Life and Annuity is a stock life insurance company incorporated in Connecticut. Hartford Life and Annuity is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states except New York. Hartford Life and Annuity is the depositor and sponsor of the Hartford Life and Annuity Account. Hartford Life and Annuity is ultimately controlled by Hartford Financial Services Group, Inc.

2. Hartford Life is a stock life insurance company incorporated in Connecticut. Hartford Life is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states. Hartford Life is the depositor

and sponsor of the Hartford Life Account. Hartford Life is ultimately controlled by Hartford Financial Services Group, Inc.

3. PFL is a stock life insurance company incorporated in Iowa. PFL is principally engaged in the sale of life insurance and annuity policies in the District of Columbia, Guam, and all states except New York. PFL is the depositor and sponsor of the PFL Account. PFL is a wholly-owned indirect subsidiary of AEGON USA, Inc., which in turn is indirectly owned by AEGON, N.V.

4. The Hartford Life and Annuity Account is registered under the Act as a unit investment trust (File No. 811–7426). The assets of the Hartford Life and Annuity Account support certain Contracts, and interests in the Hartford Life and Annuity Account offered through such Contracts have been registered under the Securities Act of 1933 (''1933 Act'') on Form N–4 (File No. 333–69487). The Hartford Life and Annuity Account currently has eighteen subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio (''Fund'') of one of two series-type management investment companies (''Management Companies'') and twelve separate management investment companies. One of these Management Companies is Mentor Trust.

5. The Hartford Life Account is registered under the Act as a unit investment trust (File No. 811–4732). The assets of the Hartford Life Account support certain Contracts, and interests in the Hartford Life Account offered through such Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–69485). The Hartford Life Account currently has eighteen sub-accounts. Each sub-account invests exclusively in shares of a corresponding Fund of one of two Management Companies and twelve separate investment management companies. One of the Management Companies is Mentor Trust.

6. The PFL Account is registered under the Act as a unit investment trust (File No. 811–7689). The assets of the PFL Account support certain Contracts, and interests in the PFL Account offered through such policies have been registered under the 1933 Act on Form N–4 (File No. 333–7509). The PFL Account currently has sixty-two sub-accounts. Each sub-account invests exclusively in shares of a corresponding Fund of one of thirteen Management Companies. Two of these Management Companies are Mentor Trust and Evergreen Trust.

7. Mentor Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company (File No. 811–8153). Mentor Trust comprises five Funds, four of which currently offer shares to the Hartford Life and Annuity Account and the Hartford Life Account and three of which currently offer shares to the PFL Account. Such Funds would be involved in the proposed substitutions. Mentor Trust issues a separate series of shares of beneficial interest in connection with each Fund. Those shares are registered under the 1993 Act on Form N–1A (File No. 333–23939). Mentor Investment Advisors, LLC (''Mentor Advisors'') serves as the investment adviser to Mentor VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio and Mentor VIP High Income Portfolio. Mentor Perpetual Advisors, LLC (''Mentor Perpetual'') serves as the investment adviser to the Mentor VIP Perpetual International Portfolio.

8. Mentor Advisors is an indirect wholly-owned subsidiary of First Union Capital Markets Corp. First Union Capital Markets Corp. is a wholly-owned subsidiary of First Union Corporation (''First Union'').

9. Mentor Perpetual is owned equally by Perpetual PLC and Mentor Advisors.

10. Mentor VIP Capital Growth Portfolio seeks capital growth and current income. Mentor VIP Growth Portfolio seeks long-term capital growth. Mentor VIP High Income Portfolio seeks high current income; capital growth is a secondary objective when consistent with the objective of seeking high current income. Mentor VIP Perpetual International Portfolio seeks long-term capital appreciation.

11. Evergreen Trust, a Delaware business trust, is registered under the Act as a diversified, open-end management investment company (File No. 811–8716). Evergreen Trust currently comprises fifteen Funds. Evergreen Trust issues a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A (File No. 33–83100). Investment advisory affiliates of First Union serve as investment advisers to Evergreen Trust.

12. As part of the process of combining the Mentor fund family with the Evergreen fund family, Evergreen Trust has filed a post-effective amendment to its registration statement to register the shares of four new series: Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund. The investment objective(s) and policies of each of these new series are substantially identical to those of the corresponding series of Mentor Trust. Mentor Advisors or Mentor Perpetual, as the case may be, is the investment adviser of each new Evergreen Trust series.

13. Mentor Advisors and Mentor Perpetual, as affiliates of First Union, have received an order from the Commission (the ''Multi-Manager Order'') that permits each investment adviser, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the Act) with Mentor Advisors or Mentor Perpetual, subject to certain conditions, including approval of the Board of Trustees of Evergreen Trust, and without the approval of shareholders to: (a) Employ a new sub-adviser or adviser for any portfolio pursuant to the terms of a new subadvisory agreement, in each case either as a replacement for an existing sub-adviser or as an additional sub-adviser; (b) change the terms of any sub-advisory agreement; and (c) continue the employment of an existing sub-adviser on the same contract terms where a contract has been assigned because of a change of control to the sub-advisers.[1] In such circumstances, contract owners would receive notice of any such action, including information concerning any new-subadviser that normally is provided in proxy materials.

14. The Contracts are flexible premium individual and group flexible premium deferred variable annuity contracts. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide for settlement or annuity payment options on a variable basis, fixed basis, or both. Under the Contracts issued by Hartford Life and Annuity and Hartford Life, a Contract owner or certificate owner (together, ''Contract owner'') may make

[1] See Evergreen Equity Trust, et al., Investment Company Act Rel. No. 23636 (January 8, 1999) (order) and Investment Company Act Rel. No. 23605 (December 16, 1998) (notice). Before any of the new Evergreen Trust Funds may rely on the Multi-Manager Order, the operation of such Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved following the substitutions proposed in this application, by a majority of that Fund's outstanding voting securities in a manner consistent with an order received from the Commission granting exemptions from the Act to permit shares of Evergreen Trust to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts. *See* Evergreen Variable Annuity Trust, et al., Investment Company Act Rel. No. 21806 (March 5, 1996) (order) and Investment Company Act Rel. No. 21734 (February 5, 1996) (notice.)

unlimited transfers of at least $500 between the sub-accounts available under the Contract or the relevant insurance company's general account. Although there is no charge for transfers, Hartford Life and Annuity and Hartford Life each reserves the right to limit the number of such transfers to twelve per Contract year. Under the PFL Contracts, an unlimited amount of transfers of cash value can be made between the sub-accounts available under the Contracts without the imposition of a transfer charge. Transfers are subject to a minimum amount of the lesser of $500 or the entire sub-account value. All of the PFL Contracts reserve to PFL the right to restrict transfers, or to charge up to $10 for any transfer in excess of twelve per Contract year.

15. Except with respect to Mentor Perpetual, the investment advisers to the Funds comprising the Evergreen Trust and Mentor Trust are, or are in the process of becoming, wholly-owned subsidiaries of First Union. Mentor Perpetual is owned 50% by an unaffiliated person and 50% by a subsidiary of First Union. First Union has determined to consolidate the fund operations of Mentor Advisors and Mentor Perpetual with those of its other affiliates. In connection with this consolidation, it has been determined that the First Union mutual fund organization needs only one Management Company as an investment vehicle for variable life insurance and variable annuity contracts and that Evergreen Trust, rather than Mentor Trust, should be that vehicle. As a result, Mentor Trust will be terminated and will therefore be unable to continue to offer its shares to the Accounts.

16. Under the Contracts, Hartford Life and Annuity, Hartford Life and PFL reserve the right to substitute shares of one Fund for shares of another, including a Fund of a different Management Company. The prospectuses for the Contracts issued through Hartford Life and Annuity and Hartford Life, and the Statement of Additional Information for the Contracts issued through PFL, disclose this right.

17. Hartford Life and Annuity, Hartford Life and PFL propose, as applicable, to substitute shares of Evergreen Trust's Evergreen VA Capital Growth Fund for shares of Mentor Trust's Mentor VIP Capital Growth Portfolio, shares of Evergreen Trust's Evergreen VA Growth Fund for shares of Mentor Trust's Mentor VIP Growth Portfolio, shares of Evergreen Trust's Evergreen VA High Income Fund for shares of Mentor Trust's VIP High Income Portfolio and shares of Evergreen Trust's Evergreen Perpetual International Fund for shares of Mentor Trust's Mentor VIP Perpetual International Portfolio. Hartford Life and Annuity, Hartford Life and PFL propose to carry out the substitutions by redeeming shares issued by the Mentor Trust Funds in kind and using the redemption proceeds to purchase shares issued by the counterpart Evergreen Trust Funds.

18. With respect to the proposed substitutions, Applicants assert that in anticipation of Mentor Trust's termination, Evergreen Trust has established four new investment portfolios, the Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund. Each of these Funds has been designated as a replacement for its Mentor Trust counterpart. As such, each has an investment objective (or objectives) that is virtually or substantially identical to that of its Mentor Trust counterpart and pursues such objective(s) using substantially identical investment policies. The effect of the foregoing four proposed substitutions would be to ''transfer'' these Mentor Trust Funds intact to the Evergreen Trust. Each of the new Evergreen Trust Funds will be advised by the same investment adviser which provided investment advisory services to the former Funds comprising Mentor Trust. Mentor Advisors and Mentor Perpetual have informed the Applicants that the contractual advisory fees for each of the new Evergreen Trust Funds will be the same percentage of assets as that for its Mentor Trust Fund counterpart.

19. For the fiscal year ended December 31, 1998, the total operating expenses of each of the Mentor Trust Funds, after waivers and reimbursements, were as follows: Mentor VIP Capital Growth Portfolio, 1.05%; Mentor VIP Growth Portfolio, .97%; Mentor VIP Perpetual International Portfolio, 1.60%. Mentor VIP High Income Portfolio commenced operations on June 30, 1999 and its expenses for the fiscal year ended December 31, 1999, after waivers and reimbursements are estimated to be 1.00%. Without waivers and reimbursements, for the fiscal year ended December 31, 1998, the total operating expenses of each of the Mentor Trust Funds were as follows: Mentor VIP Capital Growth, 1.36%; Mentor VIP Growth Portfolio, 1.77%; mentor VIP Perpetual International Portfolio, 2.79%. Without waivers and reimbursements, the total annual operating expenses of Mentor VIP High Income Portfolio are estimated to be 1.77% for the fiscal year ended December 31, 1999.

20. Without waivers and reimbursements, for the fiscal year ended December 31, 2000, the total operating expenses of each of the Evergreen Trust Funds are anticipated to be as follows: Evergreen VA Capital Growth Fund, 1.14%; Evergreen VA Growth Fund, 1.04%; Evergreen VA Perpetual International Fund, 1.45%; and Evergreen VA High Income Fund, 1.31%.

21. Applicants state that each investment adviser has undertaken to waive its management fee and/or reimburse expenses for the counterpart Evergreen Trust Fund during the Fund's first year of operations to the extent necessary to limit the Fund's total expenses for the fiscal year ended December 31, 2000, to the amounts set forth above (after waivers and reimbursements) for the fiscal year ended December 1998 for the Mentor VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio and Mentor VIP Perpetual International Portfolio and, in the case of the counterpart to the Mentor VIP High Income Portfolio, 1.00%.

22. By supplements to the various prospectuses for the Contracts and the Accounts, Hartford Life and Annuity, Hartford Life and PFL will each notify all owners of the Contracts of its intention to take the necessary actions, including seeking the order requested by the application, to substitute shares of the Funds as described herein. The prospectus supplements for the Accounts will advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected sub-accounts to another sub-account available under a Contract other than one of the other affected sub-accounts without that transfer counting as a ''free'' transfer permitted under a Contract. The supplements will also inform Contract owners that Hartford Life and Annuity, Hartford Life and PFL will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitution.

23. Before the date of the proposed substitutions, affected Contract owners will also be provided with a prospectus for the Evergreen VA Capital Growth, Evergreen VA Growth, Evergreen VA High Income and Evergreen VA Perpetual International Funds. Thus, any owner affected by the substitutions will have received prospectus disclosure for the Evergreen VA Capital

Growth, Evergreen VA Growth, Evergreen VA High Income and Evergreen VA Perpetual International Funds in advance of the proposed substitutions.

24. On the date of the proposed substitutions, shares of each Mentor Trust Fund held by the Accounts will be redeemed by Hartford Life and Annuity, Hartford Life and PFL, as applicable. The proceeds of such redemptions, which to the extent practical will be effected substantially inkind, will then be used to purchase the appropriate number of shares of each counterpart Evergreen Trust Fund. The Accounts will redeem all of their shares of the Mentor Trust Funds. Each Mentor Trust Fund will transfer the redemption proceeds (securities and cash) to the Evergreen Trust, and shares of each Evergreen Trust Fund, as the case may be, of equal value will be issued to the Accounts. The purpose of transferring assets in-kind is to avoid commission expenses.

25. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the substitutions, or will their rights or Hartford Life and Annuity's, Hartford Life's or PFL's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by First Union or one of its advisory affiliates. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Neither Hartford Life and Annuity, Hartford Life nor PFL will exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the proposed substitutions.

26. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the proposed substitutions will be sent a written notice informing them that the proposed substitutions were carried out and that they may transfer all Contract value or cash value under a Contract invested in each of the affected sub-accounts to other available sub-account(s). The notice will also reiterate the fact that neither Hartford Life and Annuity, Hartford Life nor PFL will exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states may also explain that, under the insurance regulations in those states, Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts issued by Hartford Life and Annuity, Hartford Life or PFL (or one of the affiliates) during the 60 days following the proposed substitutions. The notices will be accompanied by current prospectuses for Evergreen Trust.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states: It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the proposed substitutions.

3. The Contracts expressly reserve for Hartford Life and Annuity, Hartford Life and PFL the right, subject to Commission approval, to substitute shares of another Management Company for shares of a Management Company held by a subaccount of the Accounts. Applicants assert that the statements of additional information and prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

4. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by Hartford Life and Annuity, Hartford Life and PFL. Applicants assert that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants assert that in the cases of the proposed substitution of shares of Evergreen Trust's Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund for shares of Mentor Trust's VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio, Mentor VIP High Income Portfolio and Mentor VIP Perpetual International Portfolio, respectively, the Mentor Trust Funds would be replaced by essentially the same Fund under a different name. As noted above, Evergreen Trust has established four new Funds to mirror the current investment objectives and policies of each of the Mentor Trust Funds. Not only will the investment objectives, investment adviser, portfolio managers and fees of each of the new Evergreen Trust Funds be identical to those of the replaced counterpart mentor Trust Fund, but also, following the in-kind redemption and purchase procedure described herein, the investment securities held by each new Evergreen Trust Fund on the substitution date will be substantially similar in composition to those held by the counterpart Mentor Trust Fund on the previous business day.

6. Applicants assert that they anticipate that Contract owners will be at least as well off with the array of sub-accounts offered after the proposed substitutions as they have been with the array of sub-accounts offered prior to the substitutions. Applicants assert that the proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among the same number of sub-accounts as they could before the proposed substitutions.

7. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide that

each Contract owner has the right to exercise his or her own judgment and transfer Contract or cash value into other sub-accounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. Applicants assert that the proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

8. Section 17(a)(1) of the Act prohibits any affiliated person, or an affiliate of an affiliated person, of a registered investment company from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

9. Section 17(b) of the Act authorizes the Commission to issue an order exempting any transaction from the prohibitions of Section 17(a) if: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

10. Mentor Trust, Evergreen Trust, Hartford Life and Annuity, Hartford Life and Annuity Account, Hartford Life and Hartford Life Account (the ''Section 17 Applicants'') request an order pursuant to Section 17(b) of the Act exempting them, Mentor Trust and Evergreen Trust from the provisions of Section 17(a) to the extent necessary to permit Hartford Life and Annuity and Hartford Life to carry out the proposed substitutions.

11. The Section 17 Applicants assert that the terms of the proposed substitutions by Hartford Life and Annuity and Hartford Life including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also assert that the proposed substitutions by Hartford Life and Annuity and Hartford Life are consistent with the policies of: (1) Mentor trust and of its Mentor VIP Capital Growth Portfolio, Mentor VIP Growth Portfolio, Mentor VIP High Income Portfolio and Mentor VIP Perpetual International Portfolio; and (2) Evergreen Trust and of its Evergreen VA Capital Growth Fund, Evergreen VA Growth Fund, Evergreen VA High Income Fund and Evergreen VA Perpetual International Fund, as recited in the current registered statements and reports filed by each under the Act. Finally, the Section 17 Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

12. The boards of trustees of Mentor Trust and Evergreen Trust have adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the Funds of each may purchase and sell securities to and from their affiliates. Hartford Life and Annuity, Hartford Life, Mentor Trust and Evergreen Trust will carry out the proposed Hartford Life and Annuity and Hartford Life substitutions in conformity with all of the conditions of Rule 17a–7 and each Trust's procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. The Section 17 Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a–7. The Section 17 Applicants assert that to the extent that the proposed transactions do not comply fully with all of the conditions of Rule 17a–7 and each Trust's procedures thereunder, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Fund of Mentor Trust and the affected Funds of Evergreen Trust from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business.

13. The Section 17 Applicants assert that because of the circumstances surrounding the proposed Hartford Life and Annuity and Hartford Life substitutions, Mentor Trust could not ''dump'' undesirable securities on Evergreen Trust or have their desirable securities transferred to other advisory client of First Union and its advisory affiliates or to Funds other than those in Evergreen Trust supporting the Accounts. Nor can Hartford Life and Annuity and Hartford Life (or any of their affiliates) effect the purpose transactions at a price that is disadvantageous to any Mentor Trust Fund or Evergreen Trust Fund. Although the transactions may not be entirely for cash, each will be effected based upon: (a) The indepdent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7; and (b) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in the respective Trust's registration statement and as required by Rule 22c–1 under the Act. The Section 17 Applicants assert that no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the Section 17 Applicants assert that the boards of trustees of each Trust will subsequently review and proposed substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

14. the Section 17 Applicants assert that the proposed transactions are consistent with the general purposes of the Act and that the proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the proposed substitutions are consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33341 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27115]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 16, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 10, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with

the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After January 10, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–7561)

Entergy Corporation (''Entergy''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, its public utility generating subsidiary, System Energy Resources, Inc. (''SERI''), 1340 Echelon Parkway, Jackson, Mississippi 39213, and Entergy's other public utility operating subsidiaries, Entergy Arkansas, Inc. (''Arkansas''), 425 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy Mississippi, Inc. (''Mississippi''), 308 East Pearl Street, Jackson, Mississippi 39201, Entergy Louisiana, Inc. (''Louisiana''), 639 Loyola Avenue, New Orleans, Louisiana 70113, and Entergy New Orleans, Inc. (''New Orleans''), 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed a post-effective amendment under sections 6(a) and 7 of the Act and rule 54 to a declaration previously filed under the Act.

By order dated December 23, 1988 (HCAR No. 24791), SERI was authorized to enter into two arrangements, expiring on July 15, 2015 (''Lease Term''), for the sale and leaseback of undivided portions of its interest in Unit No. 1 of the Grand Gulf Steam Electric Generating Station. In connection with the equity funding portion of the arrangements, SERI also was authorized to enter into reimbursement agreements in connection with obtaining letters of credit in amounts of up to $130 million in support of its lease payment obligations.[1] By subsequent order dated November 6, 1996 (HCAR No. 26601) (''Order''), SERI was authorized to pay fronting and annual fees (''Fees'') to banks for these letters of credit, up to an aggregate of 1.4375% *per annum* on the aggregate amount of letters of credit outstanding.

SERI now requests authority to increase the Fees that it may pay in connection with obtaining replacement letters of credit. Specifically, it proposes to pay Fees during the Lease Term not exceeding an aggregate of 3.75% *per annum* on the aggregate amount of letters of credit outstanding.

Wisconsin Energy Corporation (70–9571)

Wisconsin Energy Corporation (''WEC''), 231 West Michigan Street, P.O. Box 2949, Milwaukee, WI 53201, an exempt holding company under section 3(a)(1) of the Act, has filed a declaration under sections 9(a)(2) and 10 of the Act.

WEC proposes to acquire, by means of a merger (''Transaction''), all of the issued and outstanding common stock of WICOR, Inc. (''WICOR''), a Wisconsin corporation and an exempt holding company under section 3(a)(1) of the Act, pursuant to an Agreement and Plan of Merger dated as of June 27, 1999, and as amended on September 9, 1999 (''Merger Agreement''). WEC proposes to cause the formation of a wholly-owned subsidiary (''CEW Acquisition'') solely for the purposes of facilitating the merger between WEC and WICOR.

As a result of the Transaction, WICOR will become a wholly-owned subsidiary of WEC, and WICOR's subsidiaries will be indirect subsidiaries of WEC. The means of accomplishing such a result will depend on whether the entire merger consideration is paid in cash or in a combination of cash and WEC stock. If the former, CEW Acquisition will be merged with and into WICOR, with WICOR surviving as a wholly-owned subsidiary of WEC. If the latter, WICOR will be merged with and into CEW Acquisition, with CEW Acquisition remaining a wholly-owned subsidiary of WEC. The name of CEW Acquisition then would be changed to WICOR. WEC requests that after the Transaction, WEC, and each of its subsidiary companies, will be exempt from all provisions of the Act, other than section 9(a)(2), under section 3(a)(1) of the Act.

Under the Merger Agreement, the consideration to the received for each outstanding share of WICOR common stock, par value $1.00 per share (''WICOR Common Stock'') will be $31.50 per share of WICOR Common Stock, provided the Transaction occurs on or before July 1, 2000. In the event the Transaction occurs after July 1, 2000, the consideration will be increased by an amount equivalent to daily simple interest on $31.50 at the rate of six percent per annum for each day after July 1, 2000, through the closing date (''Exchange Value''). The consideration will be paid in the form of cash, common stock of WEC, par value $0.01 per share (''WEC Common Stock''), or a combination of cash and WEC Common Stock. Prior to the closing date, WEC will select the percentage of the consideration to be paid in WEC Common Stock, which may be not less than 40% nor more than 60% the balance of the consideration will be paid in cash. The exchange ratio for each share of WICOR Common Stock converted into WEC Common Stock will be determined by dividing the Exchange Value by the average of the closing prices of the WEC Common Stock on the New York Stock Exchange for the 10 trading days ending with the fifth trading day prior to the closing date (''Average WEC Price''). Each WICOR shareholder may elect to receive cash, WEC Common Stock or a combination thereof, subject to proration if the cash or stock elections exceed the maximum amounts permitted. Cash will be paid in lieu of any fractional shares of WEC Common Stock, which holders of WICOR Common Stock otherwise would receive. If the Average WEC Price is less than $22.00 per share, WEC may elect to pay the entire Merger Consideration in cash.[2]

WEC is an exempt public utility holding company by order of the Commission dated May 21, 1998 (HCAR No. 26877). WEC owns all of the common stock of two public utility companies: Wisconsin Electric Power Company (''WEPCOR''), a combination electric and gas utility company and Edison Sault Electric Company (''Edison Sault''), an electric utility company.

WEPCO is authorized to provide retail electric in designated territories in Wisconsin, and in certain territories in Michigan. WEPCO also sells wholesale electric power. WEPCO generates, transmits, distributes, and sells electric energy in a territory of 12,000 square miles in southeastern, east central and northern Wisconsin and in the Upper Peninsula of Michigan. WEPCO also purchases, distributes, and sells natural gas to retail customers and transports customer-owned gas in four distinct service areas of about 3,800 square miles in Wisconsin.[3]

Edison Sault is authorized to provide retail electric service in certain territories in Michigan. Edison Sault generates, transmits, distributes, and sells electric energy in a territory of

[1] To secure its obligations under the reimbursement agreement, including the payment of fees, SERI was required to assign, for the benefit of the letter of credit bank, the administrating bank and the participating banks, its right under: (1) the Availability Agreement, dated as of June 21, 1974, as amended, among SERI, Arkansas, Mississippi, Louisiana and New Orleans; and (2) the Capital Funds Agreement, dated as of June 21, 1974, as amended, between SERI and Entergy.

[2] The Transaction is expected to be accounted for a purchase of WICOR by WEC in accordance with generally accepted accounting principles.

[3] At December 31, 1998, WEPCO had total assets of $4.8 billion and approximately 989,000 electric customers and 1,200,000 gas customers. During 1998, WEPCO had electric operating revenues of $1.64 billion and gas operating revenues of $296 million. WEPCO had total operating revenues of $1.96 billion, and net income of $183 million after dividends on preferred stock.

approximately 2,000 square miles in the eastern Upper Peninsula of Michigan. Edison Sault also provide whole sale electric service under contract with one rural cooperative.[4]

At December 31, 1998, WEC had 5,404 employees, of which 5,333 were utility employees. On a consolidated basis at the end of 1998, WEC had total assets of $5.4 billion, total operating revenues of $2.0 billion and net income of $188 million. At September 30, 1999, there were 117,681,613 shares of WEC Common Stock outstanding.

WICOR owns one public utility subsidiary, Wisconsin Gas Company (''Wisconsin Gas'') that distributes gas to residential, commercial and industrial customers throughout Wisconsin.[5]

On a consolidated basis at the end of 1998, WICOR had total assets of $1 billion, total operating revenues of $944 million and net income of $45 million. At September 30, 1999, there were 37,619,133 shares of WICOR Common Stock outstanding.

Conectiv, et al. (70–9573)

Conectiv, a registered holding company, and its nonutility subsidiaries, Conectiv Solutions LLC (''Solutions''), ATE Investment, Inc. (''ATE'') and King Street Assurance Ltd. (''KSA''), all located at 800 King Street, Wilmington Delaware 19899, have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rules 45 and 54.

By order dated February 25, 1998 (HCAR No. 26832) (''Merger Order''), the Commission authorized Conectiv to organize itself as a registered holding company and retain certain nonutility subsidiaries, including Solutions. Solutions were authorized to provide, directly and indirectly, a variety of energy-related goods and to furnish service line repairs, extended warranties and other services, including risk management services. Subsequently, KSA was organized as an indirect subsidiary of Solutions to provide risk management services for Solutions.

Solution now plans to expand the products offered to customers beyond the current offering of heating, ventilating and air conditioning (''HVAC'') warranties and to offer a selection of additional insurance products to customers, including surge protection and ''whole house'' appliance protection. KSA now requests authorization for KSA to reinsure a portion of the exposure under all of these programs. KSA also proposed to provide reinsurance covering the Convectiv system's transmission and distribution lines and for general liability, workers' compensation and other system risks.

GPU, Inc. (70–9565)

GPU, Inc. (''GPU''), 300 Madison Avenue, Morristown, New Jersey 07960, a registered holding company,has filed an application-declaration under sections 6(a), 7, 9(a) 10 and 12(b) of the Act and rules 45 and 54 under the Act.

GPU proposes to organize a new, wholly owned subsidiary company, (''Newco''), as a Delaware corporation whose initial purpose will be to acquire from time to time limited partner interests in EnerTech Capital Partners II, L.P., a Delaware limited partnership formed under an Agreement of Limited Partnership (''Partnership Agreement''), and any successor or affiliated limited partnership having substantially similar investment objectives and terms (EnerTech Capital Partners, II L.P., and all successor or affiliated limited partnerships are collectively referred to as the ''EnerTech Partnership''). The aggregate amount of investments in the EnerTech Partnership will not exceed $5 million.

The targeted size of the EnerTech Partnership's investment pool is $100 million, with a minimum commitment of $30 million necessary for an initial closing. Additional commitments may be added until the investment pool reaches a maximum not to exceed $150 million, unless otherwise approved by a majority in interest of the Limited Partners. The interests to be acquired by Newco will in the aggregate represent not more than 9.9% of the Limited Partner interests in any EnerTech Partnership.

The sole general partner of the EnerTech Partnership (''General Partner'') will be ECP II Management L.P., a Delaware limited partnership of which EnerTech Capital Partners II LLC is the managing general partner. The EnerTech Partnership fund will be managed by EnerTech Capital Partners (''EnerTech''), a group of experienced investment professionals associated with Safeguard Scientifics, Inc. and TL Ventures. The EnerTech Partnership fund is the second fund managed by EnerTech.

The EnerTech Partnership is being formed to invest in companies (''Portfolio Companies'') engaged in activities primarily related to the electric and natural gas utilities and their convergence into the broader energy, communications and other utility-like services industries. The Portfolio Companies (none of which will be an affiliate of GPU) may be involved in the development of technologies in one or more of the following categories: Information Technology and Systems Integration; Communications and Networking; Customer Premise Products and Services; Industry Specific Content and Consulting Services; and Asset Utilization and Efficiency Improvement.

The term of the Partnership Agreement will continue until December 31, 2009. The General Partner may extend the term for up to two one-year periods to permit the orderly liquidation of the EnerTech Partnership's assets, upon written consent of the Limited Partners holding a majority in interest of the commitments of all Limited Partners. Profits, gains and losses will generally be allocated 80% to all the Limited Partners, pro rata in accordance with their capital contributions, and 20% to the General Partner.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33342 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

[4] At December 31, 1998, Edison Sault had total assets of $70.1 million and approximately 21,000 electric customers. During 1998, Edison Sault had electric operating revenues of $22 million and net income of $2 million.

[5] At December 31, 1998, Wisconsin Gas had total assets of $651 million and approximately 529,000 electric customers. During 1998, Wisconsin Gas had total operating revenues of $429 million, and net income of $23 million.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24206; 812–11674]

Security Equity Fund et al.; Notice of Application

December 17, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

APPLICANTS: Security Equity Fund, Security Growth and Income Fund, Security Ultra Fund, Security Income Fund, Security Municipal Bond Fund, Security Cash Fund, SBL Fund, (each a ''Fund'' and collectively, the ''Funds''),

and Security Management Company, LLC (''SMC'').

FILING DATES: The application was filed on July 1, 1999 and amended on October 29, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0609. Applicant, 700 SW Harrison, Topeka, Kansas 66636.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Funds, each a Kansas corporation, are registered under the Act as open-end management investment companies. Each of the Funds is authorized to offer shares of one or more series, each with its own investment objectives, policies and restrictions. Currently each of the Funds, other than SBL Fund, is offered to the public. SBL Fund serves as the funding vehicle for certain variable annuity and variable life insurance policies issued by the Security Benefit Life Insurance Company.

2. SMC, a Kansas limited liability company, serves as the investment adviser to the Funds, and is registered under the Investment Advisers Act of 1940 (''Adviser Act''). SMC is an indirectly wholly-owned subsidiary of Security Benefit Mutual Holding Company, a Kansas mutual insurance company.[1]

3. SMC serves as investment adviser to the Funds pursuant to an investment advisory agreement between each Fund and SMC that was approved by the board of directors of each Fund (the ''Board''), including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), and the shareholders of the Funds (''Investment Advisory Agreements''). Under the Investment Advisory Agreements, SMC has overall general supervisory responsibility for the investment program of the Funds and, subject to Board approval, can select one or more subadvisers (each a ''Subadviser'' and collectively, ''Subadvisers'') to provide one or more of the Funds with day-to-day portfolio management services (''Subadviser Structure''). Each Subadviser is (or will be) an investment adviser registered or exempt from registration under the Advisers Act, and performs (or will perform) services pursuant to a written agreement with SMC (the ''Subadvisory Agreement''). Subadvisers' fees are paid by SMC out of the fees it receives from the Funds at rates negotiated with the Subadvisers by SMC. Each Fund that currently uses Subadvisers has a single Subadviser.

4. SMC makes qualitative evaluations of each Subadviser's skills and demonstrated performance in managing assets under particular investment styles. SMC recommends to the Board for selection those Subadvisers that have consistently distinguished themselves and demonstrated a high level of service and responsibility to investors. SMC reviews, monitors and reports to the Board regarding the performance and procedures of the Subadvisers. SMC may recommend to the Board reallocations of assets of a Fund among Subadvisers, if necessary, and also may recommend hiring additional Subadvisers or the termination of Subadvisers in appropriate circumstances.

5. Applicants request relief to permit SMC to enter into and materially amend Sub-Advisory Agreements without shareholder approval.[2] The requested relief will not extend to a Subadviser that is an ''affiliated person'', as defined in section 2(a)(3) of the Act, of the Funds or SMC, other than by reason of serving as a Subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such 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 Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Sub-Advisory Agreements without shareholder approval.

3. Applicants assert that under the Subadviser Structure, the Funds' shareholders rely on SMC to select and monitor one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants contend that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Sub-Advisory Agreements would impose expenses and unnecessary delays on the Funds, and may preclude SMC from promptly acting in a manner considered advisable by the Board. Applicants note that the Management Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

[1] Applicants also request relief with respect to future series of the Funds and all future registered open-end management investment companies that are (a) advised by SMC or any entity controlling, controlled by, or under common control with SMC, and (b) which operate in substantially the same manner as the Funds and comply with the terms and conditions contained in the application. All registered open-end management investment companies that currently intend or rely on the requested order are named as applicants.

[2] The term ''shareholder'' includes variable life insurance policy and variable annuity contract owners that are unitholders of any separate account for which the Funds serve as a funding medium.

1. No fund will enter into a subadvisory agreement with an Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, then pursuant to voting instructions by the unitholders of the sub-account).

2. At all times, a majority of each Fund's Board will be persons who are Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

3. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Fund's Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Fund's Board minutes, that such change of Subadviser is in the best interests of the Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and the unitholders of any sub-account) and that the change does not involve a conflict of interest from which SMC or the Affiliated Subadviser derives an inappropriate advantage.

4. SMC will provide management services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund, and, subject to review and approval by the applicable Fund's Board will (a) set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the investment performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Fund's investment objectives, policies, and restrictions.

5. Within 90 days of the hiring of any new Subadviser, SMC will furnish shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, SMC will furnish the unit holders of the sub-account) with respect to the appropriate Fund with all information about the new Subadviser that would be included in a proxy statement. Such information will include any changes caused by the addition of a new Subadviser. To meet this condition, SMC will provide shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

6. Any Fund relying on the requested relief will disclose in its prospectus the existence, substance and effect of any order granted pursuant to this application. In addition, any such Fund will hold itself out as employing the management structure described in the application. The prospectus will prominently disclose that SMC has ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

7. Before a Fund may rely on the order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or in the case of a Fund whose public shareholders (or variable contract owners through a separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by Condition 6 above, by the sole initial shareholder(s) before the shares of such Fund are offered to the public (or the variable contract owners through a separate account).

8. No director or officer of the Funds or director or officer of SMC will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such director or officer) any interest in a Subadviser except or (a) ownership of interests in SMC or any entity that controls, is controlled by, or is under common control with SMC; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of a publicly-traded company that is either a Subadviser or controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33343 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24207]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 17, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, by lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Empirical Growth Fund [File No. 811–8493]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 26, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of approximately $1,500 incurred in connection with the liquidation were paid by Worldwide Financial Management Advisors, Inc., applicant's investment adviser.

Filing Date: The application was filed on November 30, 1999.

Applicant's Address: 300 South Pointe Dr., #4306, Miami Beach, Florida 33139.

American Association of Homes for the Aging Tax-Free Trust, High Income Series 1 [File No. 811–5249]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On August 7, 1998, applicant made a final liquidating distribution to its unitholders at the net asset value per unit. As of December 1, 1999, applicant had 1 account totaling 5 units that had not surrendered its certificate. Funds representing the aggregate liquidation value of applicant's remaining units are being held by Chase Manhattan Bank, N.A. Expenses of approximately $2,600 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on May 25, 1999, and amended on December 14, 1999.

Applicant's Address: 1221 Post Road East, Westport, CT 06880.

WPG Growth Fund [File No. 811–4446]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 30, 1998, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $3,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on December 7, 1999.

Applicant's Address: One New York Plaza, New York, New York 10004.

Bear Stearns Investment Trust [File No. 811–7290]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 29, 1999, applicant transferred its assets to Emerging Markets Debt Portfolio, a series of The Bear Stearns Funds (''Acquiring Fund''), in exchange for shares of the Acquiring Fund based on net asset value per share. Expenses of approximately $105,300 were incurred in connection with the reorganization, of which the Acquiring Fund paid 70% and applicant paid the remaining 30%.

Filing Date: The applicant was filed on November 10, 1999.

Applicant's Address: 575 Lexington Avenue, New York, New York 10022.

LifeUSA Funds, Inc. [File No. 811–7865] IAI Investment Funds V, Inc. [File No. 811–4463]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 30, 1998, each applicant had made a final liquidating distribution to its shareholders based on net asset value. Expenses of $3,897 and $11,933, respectively, incurred in connection with the liquidations were paid by Investment Advisers, Inc., the investment adviser for each applicant.

Filing Date: Each application was filed on December 3, 1999.

Applicants' Address: 3700 U.S. Bank Place, 601 Second Street South, Minneapolis, Minnesota 55402.

The Alabama Tax-Exempt Bond Trust, Series 5 [File No. 811–5044]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On August 1, 1998, applicant made a final liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on November 30, 1999.

Applicant's Address: 1901 Sixth Avenue North, Birmingham, Alabama 35203.

The Fahnestock Funds [File No. 811–6166]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 29, 1999, applicant transferred its assets to Ivy US Emerging Growth Fund, based on net asset value. Expenses of $160,000 incurred in connection with the reorganization were paid by Fahnestock & Co. Inc., applicant's principal underwriter.

Filing Date: The application was filed on November 18, 1999.

Applicant's Address: 125 Broad Street, New York, New York 10004.

Lexington Convertible Securities Fund [File No. 811–4925]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 1999, applicant transferred all of its assets and liabilities to Ariston Convertible Securities Fund, a newly created series of AmeriPrime Funds, based on net asset value. Expenses of approximately $14,327 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 27, 1999, and amended on November 19, 1999.

Applicant's Address: Lexington Funds, Park 80 West Plaza Two, Saddle Brook, New Jersey 07663.

Lexington Strategic investments Fund, Inc. [File No. 811–2506]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 1999, applicant transferred all of its assets and liabilities to Lexington Goldfund, Inc., based on net asset value. Expenses of $128,338 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 27, 1999, and amended on November 19, 1999.

Applicant's Address: Lexington Funds, Park 80 West Plaza Two, Saddle Brook, New Jersey 07663.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33344 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42241; File No. SR–MSRB–99–8]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

December 16, 1999.

I. Introduction

On September 7, 1999, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to produce a daily report containing information on individual transactions in frequently traded municipal securities.

The proposed rule change was published for comment in the **Federal Register** on November 8, 1999,[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Board proposed to institute a service (''Service'') to produce a daily public report containing information on individual transactions in frequently traded municipal securities (''Daily Transaction Report'' or ''Report''). The transaction information in the Report will come from dealer reports made to the Board pursuant to MSRB Rule G–14, which governs reports of sales or purchases.

Currently, the MSRB publishes transaction data in the Combined Daily Report and the Inter-Dealer Report. Like

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42090 (November 2, 1999), 64 FR 60865.

these other reports, the Daily Transaction Report will contain information about transactions made in ''frequently traded'' municipal issues. As with the current reports, the phrase ''frequently traded'' will be defined as issues trading at least four or more times on a business day for which the prices are reported. In addition, like the current transaction reports, the proposed Report will be produced and made available electronically by approximately 7:00 a.m. on the business day following the trade date. The main difference between the proposed Daily Transaction Report and the current reports is that the proposed Report will provide transaction detail on each reported trade in a frequently traded issue, rather that merely providing the high, low, and average prices.

The Daily Transaction Report will be available by subscription. Subscribers will be required to sign a subscription agreement, but will not be charged a fee for the Report.

As described above, the proposed Report will provide information on individual transactions in frequently traded municipal securities. In particular, the Report will contain, for each transaction, the CUSIP number, a short description of the issue, the par value traded, the time of the trade reported by the dealer, and the price of the transaction.[4] The Report will classify transactions into three categories: (1) Sales by dealers to customers, (2) purchases by dealers from customers, and (3) inter-dealer trades. The Report will be organized by issue, with the most frequently traded issues listed first. Within each issue, trades will be listed in order of the time of trade, from the earliest reported to the latest.

The Board will provide details on how to subscribe to the report via the Internet before the Report becomes operations.

III. Discussion

After careful review, 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 Board.[5] In particular, the Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C),[6] which requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Commission finds that the proposed Daily Transaction Report should enhance and increase transparency in the municipal securities market. The proposed Report will provide municipal securities investors with more transaction information about the issues that are currently being traded. In particular, investors will now have access to specific price information, trade size information and information about the parties involved. Further, this expanded information will be provided to investors in a timely fashion, by 7:00 a.m. on the date following the reported trade. Upon approval of this proposed rule change, municipal securities investors will have detailed information about actual transactions that occurred the previous trading day. This detailed Report will allow investors to monitor and analyze individual trades in frequently traded municipal securities, which should assist municipal securities investors in making informed investment decisions.

The Report should help investors in the price discovery process. The proposed Report will contain detailed price information in frequently traded issues. In addition, the Report will identify what type of transaction occurred, such as whether a frequently traded issue was traded in the inter-dealer market or involved customer trading. The Report should provide a more complete picture of the municipal securities market, which could enhance liquidity in the municipal securities market.

One of the Commission's main objectives is to increase transparency in our securities markets. The Commission believes that transparency in the securities markets helps to preserve the market's integrity, assists in the price discovery process, and enhances liquidity. The Commission commends the MRSB's efforts to increase municipal market transparency by looking for means to update its reporting programs and systems.

The Commission is satisfied with the current definition of ''frequently traded.'' The Commission appreciates that such a definition has been appropriate given the extensive number of municipal securities issues that trade very infrequently and concerns about the market impact of reporting trades in such securities. The Commission, however, believes that MSRB should consider whether to lower the frequently traded threshold in the future to further increase municipal securities transparency. In addition, the Commission agrees that the MSRB should continue to consider the feasibility of a real-time transaction reporting system for municipal securities in the near future.[7]

In conclusion, the Commission believes that the proposed rule change is consistent with the Act because it provides investors with more detailed market data upon which the municipal securities investors will be able to make better informed investment decisions. The Daily Transaction Report should further enhance the integrity of the municipal securities market because it provides a view of the transactions occurring in the market. As a result, the municipal securities market should enjoy greater transparency and liquidity.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–MSRB–99–08) is approved.

[4] A dollar price is given for each transaction listed on the report. If the dealer submits a yield with the transaction report, the yield is included with the dollar price. There are instances, however, when a yield is not reported. For example, dealers for secondary market inter-dealer transactions do not submit yields because the automated comparison system used to report inter-dealer trades cannot accept yield information on those transactions. In addition, dealers cannot report a yield for customer transactions done on a dollar price basis that involve defaulted or variable rate securities. Transactions including customers or dealers in new issues without a determined settlement date may be effected and reported by dealers wither with a dollar price or yield. The MSRB Transaction Reporting System will calculate a dollar price from yields submitted for these transactions, using an assumed settlement date if necessary. There must be, however, sufficient securities data available to make this calculation (*e.g.*, coupon, dated date, maturity date, first interest payment date, etc.). For additional information, *see* ''Public Reporting of Transactions in Municipal Securities: Rule G–14,'' *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 25–27.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] The Commission notes that the MSRB recently submitted a proposed rule change, which demonstrated possible methods for dissemination of real-time transactions reports based on the transactions information collected via the Board's Transaction Reporting System. *See* Exchange Act Release No. 41916 (September 27, 1999), 64 FR 53759 (October 4, 1999).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33345 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42240; File No. SR–NASD–99–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Public Disclosure Program

December 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. On December 1, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice of the rule change, as amended, 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

NASD Regulation proposes to amend Interpretive Material 8310–2(a), which concerns the Public Disclosure Program. Proposed new language is italicized; proposed deletions are in brackets.

IM–8310–2. Release of Disciplinary Information

(a) [The Association shall, in response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U–4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or U–4; and all criminal indictments, information or convictions that are required to be reported on Form BD or Form U–4. The Association will also release information required to be reported on Form BD or Form U–4 concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of investment-related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.]

In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, the Association shall release certain information contained in the Central Registration Depository regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through the Public Disclosure Program. Such information shall include:

(1) the person's employment history and other business experience required to be reported on Form U–4;

(2) currently approved registrations for the member or associated person;

(3) the main office, legal status, and type of business engaged in by the member; and

(4) an event or proceeding—

(A) required to be reported under Item 23 on Form U–4;

(B) required to be reported under Item 11 on Form BD; or

(C) reported on Form U–6.

The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation 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

NASD Regulation's Public Disclosure Program is described in Interpretive Material 8310–2 of the NASD Rules (''the Interpretation''). Under the Public Disclosure Program, NASD Regulation releases to the public certain information reported on uniform forms[4]

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 1, 1999. In Amendment No. 1, NASD Regulation clarifies certain proposed changes to the Public Disclosure Program and submits Form U–6 as an exhibit (''Amendment No. 1''). The Commission notes that the Form U–6 is being submitted to help the public determine what additional information will be disclosed through the Public Disclosure Program and is not the subject matter of this rule filing.

[4] The uniform forms are Form BD (the Uniform Application for Broker-Dealer Registration); Form BDW (the Uniform Request for Broker-Dealer Withdrawal); Form U–4 (the Uniform Application for Securities Industry Registration or Transfer); Form U–5 (the Uniform Termination Notice for Securities Industry Registration); and Form U–6 (the Uniform Disciplinary Action Reporting Form). Except for the Form U–6, all of these forms have been approved by the Commission. *See* Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999) (order adopting the amended Form BD); Securities Exchange Act Release No. 41356 (April 30, 1999), 64 FR 25144 (May 10, 1999) (order adopting the amended Form BDW); Securities Exchange Act Release No. 41560

Continued

to the Central Registration Depository (''CRD'') regarding the employment history, other business experience[5] and disciplinary history of NASD members and associated persons. The NASD's practice is and will continue to be to provide such information on a per associated person or per member basis. The primary purpose of the Public Disclosure Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business.

NASD Regulation has determined that the Interpretation governing the Public Disclosure Program should be amended to ensure that disclosure practices are clearer and fairer to NASD members, associated persons, and the public.[6] The proposed rule change would affect only information released through the Public Disclosure Program. NASD Regulation is not proposing any change to the uniform forms or requesting authority to delete or change any information in CRD records that would require agreement from state regulators.

Persons Subject to the Interpretation. Since the inception of the Public Disclosure Program, NASD Regulation's practice has been to release information about a *current or former* member or associated person. The current Interpretation, however, refers to the release of information about ''members'' or ''their associated persons,'' which the NASD By-Laws define as current members and persons currently associated with members.[7] The Interpretation does not explicitly address the issue of disclosure regarding former members and associated persons.

The proposed rule change would explicitly address disclosure on former members and associated persons. Persons who would be subject to disclosure under the Program would include: (1) Current and former NASD members; (2) persons currently associated with an NASD member; and (3) persons who have been associated with an NASD member within the preceding two years. NASD Regulation believes that it is inappropriate to continue public disclosure indefinitely for an individual who has chosen to leave the securities industry. Instead, NASD Regulation believes it should strike a balance between an investor's interest in being easily able to obtain information about a former associated person and that person's desire for privacy once he has left the securities industry. A two-year disclosure period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to the jurisdiction of the Association.[8] NASD Regulation notes, however, that with the exception of part II of the Form U–5 Internal Review Disclosure Reporting Page (''DRP''),[9] there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record. Accordingly, NASD Regulation intends to clearly identify the scope of the disclosure information for former associated persons or members.

Release of Information Reported on Forms U–5 and U–6. NASD Regulation currently releases under the Public Disclosure Program those events and proceedings that are *required to be reported* on Form U–4 and Form BD. The Interpretation currently does not explicitly address events and proceedings reported on Form U–5 or Form U–6.

Form U–6 is filed by state securities regulators and self-regulatory organizations (''SRO'') to report disciplinary and other matters that are also required to be reported on Form U–4 or Form BD.[10] Form U–6 includes DRPs in five categories: (1) Bankruptcy/SIPC/Compromise with Creditors; (2) Civil Judicial; (3) Criminal; (4) Regulatory Action; and (5) SRO Arbitration/Reparation. The format of the Form U–6 DRPs parallels the format of the DRPs used for the Forms U–4, U–5, and BD for those categories. Generally speaking, the Form U–6 reports the identifying information on the subject of the filing (*i.e.,* the individual or entity), the regulator reporting the action, and a brief description of the matter being reported, including its status or final solution.

Until 1996, the NASD only released information actually reported on Form U–4 or Form BD. In 1996, the NASD proposed and the Commission approved a rule change that permitted the NASD to release information ''required to be reported'' on Form U–4 or Form BD.[11] NASD Regulation proposed the change because in some instances, it possessed information about a currently registered person that should have been reported on the person's Form U–4, but the amended Form U–4 had not yet been submitted. NASD Regulation proposed the rule change so that it could release all information that it possessed that was required to be reported on the Forms U–4 and BD, even if the registered person or firm was not current in its filings, thereby ensuring that investors received more complete information.

NASD Regulation currently interprets the ''required to reported'' standard as follows. For current members and associated persons, NASD Regulation interprets the ''required to be reported'' standard to include all information reported on Form U–4 or Form BD, as well as information that has been reported on a Form U–5 or Form U–6 that should be, but has not yet been, reported on a Form U–4 or Form BD. For example, a former employer of a currently registered representative may report a customer complaint against that registered representative by amending his Form U–5. NASD Regulation includes information about this complaint in any public disclosure report it issues about the registered representative, even if the current employer of the registered person has not updated his Form U–4 to reflect the complaint.

(June 25, 1999), 64 FR 36059 (July 2, 1999) (order approving the new Forms U–4 and U–5).

[5] Employment experience includes the last ten years of full- and part-time work, self-employment, military service, unemployment, and full-time education. The Form U–4 also requires registered persons to report certain other business experience on page 2 of the Form.

[6] To that end, the Interpretation has been reformatted to make it easier to read and understand. The Interpretation has been amended to conform to style and grammatical conventions followed in the NASD Rules, *e.g.,* using singular nouns. In addition, certain words and phrases in the Interpretation have been conformed to usage in the uniform forms. All of these changes are clarifying, non-substantive amendments.

[7] *See* Articles I(q) and (ee) of the NASD By-Laws.

[8] *See* NASD Rules 1021(c) and 1031(c); NASD By-Laws Article V, Section 4. Article V, Section 4 of the By-Laws provides that a person whose association with a member has been terminated or revoked shall continue to be subject to the NASD's jurisdiction for certain specified purposes. Under that provision, the two-year period begins on the effective date of the termination, and may be extended under certain circumstances. For purposes of disclosure under the Public Disclosure Program, the two-year period would begin on the effective date of the termination and would not be extended beyond the initial two-year period. The effective date of termination is the date that the Form U–5 is captured by the CRD system. Conversation between Mary Dunbar, Office of General Counsel, NASD Regulation, and Joseph P. Corcoran, Attorney, Division, Commission on December 10, 1999.

[9] Part II of the Form U–5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U–5 by a former employer.

[10] If a state securities regulator or SRO chooses to report regulatory information to CRD, it must use a Form U–6 for the information to be available through the Public Disclosure Program. Regulators also are able to report on Form U–6 matters involving individuals or entities that are not currently registered, provided the events being reported to CRD would be required to be reported if the individuals or entities were registered or attempted to become registered.

[11] *See* Securities Exchange Act Release No. 37797 (October 9, 1996), 61 FR 53984 (October 16, 1996).

For former members and associated persons, the ''required to be reported'' standard has a different result because once an association or membership is terminated, there is no longer a *requirement to report* on Form U–4 or Form BD, respectively. Consequently, when NASD Regulation receives a public disclosure request for a former associated person or member, NASD Regulation releases all information reported to CRD *up to* the date of the termination of association or membership. However, events and proceedings reported on an initial or amended Form U–5 or Form BDW,[12] or on Form U–6 *after* an individual has terminated his association or *after* termination of a firm's membership, are not released under the Program. If a former associated person or member reapplies and is approved for NASD registration or membership, NASD Regulation resumes public disclosure under the ''required to be reported'' standard, which includes releasing all information reported on any uniform form during any period of active or inactive registration or membership.

Under the proposed rule change, NASD Regulation would begin releasing information reported on Form U–6 for former members and associated persons, subject to the two-year time limitation discussed above. There are several reasons for this change. First, the information reported on Form U–6 is provided by regulators and SROs, and therefore NASD Regulation believes that it is highly reliable. Second, the information reported on Form U–6 may be particularly valuable to a public investor who who done business with a former member of associated person who has recently left the industry. Third, the proposed rule change would make disclosure of Form U–6 information more consistent between currently registered members and associated persons and former members and associated persons. Finally, the proposed rule change would result in more consistent disclosure by the Program and the states; some of which currently release information reported on all uniform forms, whether or not it is currently reportable on a uniform form.

NASD Regulation does not release information that has been reported on a Form U–5 regarding former registered persons because that information may not have been reviewed by such individuals and may not, as a result, include their comments on, or concurrence with, the information. NASD Regulation does not propose any change to this policy in this filing.

Release of Arbitration Decisions Involving Members. NASD Regulation makes all arbitration awards rendered in its forum available pursuant to NASD Rule 10330(f). Interested persons may obtain hard copies of such awards upon request by contacting the Office of Dispute Resolution. In addition, for the convenience of investors, NASD Regulation makes available through the Public Disclosure Program information on awards rendered in the arbitration forum administered by the NASD that involve securities or commodities disputes between members and public customers.[13]

Clarification of Information Not Released Through Program. A number of members and associated persons have asked whether social security numbers, home addresses, or physical description information reported on the uniform forms are released through the Public Disclosure Program. NASD Regulation does not release such information, and the proposed rule change clarifies this policy.

The proposed rule change also clarifies that NASD Regulation will not release information through the Public Disclosure Program that it is otherwise prohibited from releasing under Federal law, *e.g.,* criminal history record information provided by the Federal Bureau of Investigation.[14] The criminal history information that is released through the Public Disclosure Program is the information provided by the associated person or the member on the uniform forms.

Disconintinuing Release of Certain *Factually Incorrect Information.* NASD Regulation also would like to inform the Commission of NASD Regulation's intention to exercise discretion in discontinuing public disclosure of a limited category of factually incorrect information that may be contained in the CRD. NASD Regulation occasionally receives requests to expunge an event from CRD where the person who was the subject of the CRD filing can demonstrate that it was factually impossible for him to have been involved in the event (*e.g.,* a person was named in an arbitration as a branch manager of a firm, and the person was working at a different firm at that time). NASD Regulation and the North American Securities Administrators Association (''NASAA'') agree that such information can be expunged from the CRD if the person obtains a court order of expungement. However, obtaining a court order can be time-consuming and expensive. NASD Regulation believes that information that can be proven to be factually incorrect should be expunged from the CRD system without a court order and is discussing this issue with NASAA. NASD Regulation and NASAA also are currently discussing other circumstances in which expungement orders are appropriately honored.[15] Until an agreement is reached with NASAA on expunging factually incorrect information from the CRD system, NASD Regulation intends to discontinue releasing such information via the Public Disclosure Program. NASD Regulation will develop guidelines to implement this policy. The policy will provide some measure of assurance that this type of factually incorrect information is not provided to investors or other members of the public.

Automation of Public Disclosure Reports. Currently, when NASD Regulation receives a public disclosure request, NASD Regulation staff reviews the CRD record of the subject of the request, identifies events that must be disclosed under the Interpretation, and manually prepares a summary report for the requester. With the deployment of Web CRD,[16] NASD Regulation's Internet-based registration system, the staff plans to discontinue the manual preparation of these reports. Instead, staff will use a computer program that automatically generates a report after drawing information directly from the Web CRD data base. The computer program will draw the information from specified fields in WEB CRD that parallel fields on the Forms U–4, U–6,, and BD (and Form U–5 in the limited circumstances discussed above). The report then will be sent by regular or electronic mail to the requester. This approach removes the NASD Regulation staff from the preparation of the reports, provides for consistent disclosure without manual intervention, and allows the information that is actually reported to Web CRD on the uniform forms or from the NASD Regulation Office of Dispute Resolution [17] to be reported to the public.[18]

[12] The Commission notes that copies of a firm's Form BDW is available to the public through the Commission's Public Reference Room.

[13] CRD obtains information regarding awards involving members from its Office of Dispute Resolution because members are not required to report arbitration awards on Form BD.

[14] 28 CFR 50.12(b).

[15] *See* Notices to Members 99–09 and 99–54.

[16] *See* Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (April 30, 1999)(notice of filing of SR–NASD–98–96, which describes Web CRD).

[17] *See supra* note 13.

[18] As part of the transition from Legacy CRD to Web CRD, information that was reported prior to

Continued

One significant consequence of this approach is that the automatically generated reports will include verbatim any comment submitted by a registered representative, firm, or regulator in response to the last question on the Disclosure Reporting Pages of the uniform forms. This question typically asks for a summary of the circumstances or details relating to the disclosure event. These comments are not currently included in the manual reports prepared by the staff and may contain customer names. They also may contain confidential account information or language that is offensive or potentially defamatory, although that is far less likely.

Because these comments have not been included previously in the manual reports, NASD Regulation does not intend to begin using these automated reports until the SEC approves this proposed rule change. Upon approval, NASD Regulation will inform members and registered persons via a Notice to Members and other communications that it is inappropriate, and may subject members to regulatory sanctions or civil liability, to submit offensive or potentially defamatory language on the uniform forms.[19] NASD Regulation also is considering developing electronic notices that would appear on the electronic screen when forms are being completed on-line advising Web CRD users of this issue. NASD Regulation would undertake to conduct a continuing program to educate members and registered persons on this issue.

After implementation of automated reports, NASD Regulation will address objections to disclosure of customer names, confidential customer information, or offensive or potentially defamatory language on a case-by-case basis as follows. After receiving an objection, NASD Regulation will identify the filer of the uniform form (*i.e.,* a member firm, regulator, or self-regulatory organization) containing the language in controversy and notify the filer of the objections. NASD Regulation will provide the filer with the opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or defamation claims.[20] Based on the outcome of this test, NASD Regulation may determine to redact the language in controversy from reports prepared under the Public Disclosure Program. NASD Regulation will inform any requester of a report that has been redacted of the reasons for the redaction. NASD Regulation staff anticipates that objections to disclosure will be infrequent. If objections are more frequent than anticipated, NASD Regulation staff will consider alternative approaches.

Other. In Notice To Members 98–71, the NASD requested comment on whether public disclosure of certain non-investment-related crimes should be discontinued after ten years. In response, the NASD received nearly 100 comments. The NASD is still considering this issue in light of the comments, and therefore the issue is not addressed in this filing.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[21] of the Act, which requires, among other things, that the Association's rules must designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6)[22] because it strikes an appropriate balance between: (1) Investor's interest in obtaining accurate and up-to-date information about current or former members or associated persons; and (2) members' and associated persons' interests in having accurate information provided through the Public Disclosure Program; and (3) former associated persons' interest in protecting their privacy after leaving the securities industry. By expanding the availability of Form U–6 information, the proposed rule change also will provide investors and the public with additional information about former associated persons with whom they have done business. NASD Regulation also believes that the proposed rule change is consistent in all respects with Section 15a(i),[23] particularly the provision for immunity from liability for actions taken or omitted in good faith with respect to the Public Disclosure Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were nether solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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

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the deployment of Web CRD was converted from the Legacy CRD system and brought into the Web CRD database structure. Because of differences between the current and previous uniform registration forms, data was necessarily reformatted. In nearly all cases, information was converted as filed (*i.e.,* information reported on a Form U–4 in Legacy CRD was converted to Web CRD as Form U–4 information, albeit reformatted). In certain circumstances, however, information submitted on different uniform forms relating to the same disclosure event was combined in the data conversion; this occurred only if there were inconsistencies reported regarding such event. For example, of a Form U–4 reported that a regulatory action became final but did not report the date of the final action, and a Form U–6 reported both the regulatory action and the date, the date of the final action was populated to the Form U–4 on Web CRD. NASD Regulation will include an explanation of the data conversion process in all public disclosure reports provided pursuant to the Program.

[19] For example, if a Form contained egregiously offensive language, NASD Regulation may take disciplinary action against the member and/or registered person under NASD Rule 2110, which requires them to observe just and equitable principles of trade and high standards of commercial honor.

[20] If its impossible for a filer to amend, *e.g.,* the firm is defunct and the person is no longer registered, then NASD Regulation also will apply the balancing test and proceed as described above.

[21] 15 U.S.C. 78o–3(b)(6).

[22] *Id.*

[23] This Section requires the NASD to establish and maintain a public disclosure program. 15 U.S.C. 78o–3(i).

rule change that refiled with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. JR–NASD–99–45 and should be submitted by January 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33346 Filed 12–22–99; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of: (1) Proposed options for promulgating a temporary, emergency guideline amendment revising the guideline for offenses involving electronic copyright infringement; and (2) intent to re-promulgate as a permanent amendment to the sentencing guidelines the temporary emergency guideline amendment relating to telemarketing fraud offenses. Request for Comment. Notice of public hearing.

SUMMARY: (1) The Commission is preparing to promulgate a temporary, emergency guideline amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark) and accompanying commentary to implement the directive contained in section 2(g) of the No Electronic Theft (NET) Act of 1997. This notice sets forth three options for implementing that directive.

The proposed amendment is presented in one of two formats. First, the amendment is proposed as specific revisions to guideline § 2B5.3 and accompanying commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, a bracketed specific offense characteristic means that the Commission invites comment on whether the provision is appropriate as a specific offense characteristic, or whether it should be considered as a departure factor, or not at all. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

Recently, Congress clarified the Commission's emergency amendment authority to implement the directive in the NET Act. The Commission must implement that directive within 120 days of the enactment of the Digital Theft Deterrence and Copyright Damages Improvement Act of 1999 (not later than April 6, 2000).

(2) The Commission proposes to make permanent the temporary, emergency guideline amendment to § 2F1.1 (Fraud and Deceit) and § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) promulgated by the Commission in September 1998. This emergency amendment was issued to implement section 6 of the Telemarketing Fraud Prevention Act of 1998. The Commission proposes to re-promulgate as a permanent amendment the temporary emergency telemarketing fraud amendment without change.

DATES: (1) The NET Act temporary, emergency amendment.—Comment on the proposed amendment should be received by the Commission not later than January 26, 2000. After considering any public comment, the Commission plans to promulgate a temporary emergency amendment not later than April 6, 2000. (2) The telemarketing fraud amendment.—Comment on the proposed re-promulgation of the telemarketing fraud amendment should be received not later than March 10, 2000. (3) Public hearing.—The Commission has scheduled a public hearing for March 23, 2000, at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20002–8002 (time to be announced). The scope of the hearing is expected to include the proposed re-promulgation of the telemarketing fraud amendment described herein and any other permanent amendments that may be proposed for action in this amendment cycle ending May 1. (The Commission may promulgate a temporary, emergency guideline amendment to implement the NET Act before the public hearing on March 23.) A person who desires to testify at the public hearing should notify Michael Courlander, Public Affairs Officer, at (202) 502–4590 not later than March 10, 2000. Written testimony for the hearing must be received by the Commission not later than March 16, 2000. Submission of written testimony is a requirement for testifying at the public hearing.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500 South, Washington, DC 20002–8002, Attention: Public Information—Public Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Reports and other additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 4.3, 4.4.

Diana E. Murphy,

Chair.

Proposed Temporary, Emergency Guideline Amendment

1. *Synopsis of Proposed Amendment:* The No Electronic Theft (NET) Act of 1997, Pub. L. 105–147, directs the Commission to: (1) Ensure that the applicable guideline range for a crime committed against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime; and (2) ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed.

This proposal presents three options for implementing the congressional directives. Each option implements the directives by changing the monetary calculation currently found in the copyright and trademark infringement guideline, § 2B5.3, to provide for consideration of the retail value of the infringed item. (Currently, § 2B5.3(b)(1) contains an enhancement based on a calculation of the retail value of the infringing item multiplied by the quantity of infringing items.) Some or all of a number of aggravating and mitigating factors could be incorporated into the guideline as an additional means of implementing the directive to provide sufficient deterrence. (These factors, or some combination thereof, are presented in Options 2 and 3 but

[24] 17 CFR 200.30–3(a)(12).

could be added to Option 1 as well. In addition, any number of these factors could form the basis for a departure provision.)

The NET Act gave the Commission emergency authority to promulgate temporary amendments necessary to implement the Act's directives. The recently enacted Digital Theft Deterrence and Copyright Damages Improvement Act of 1999 requires the Commission to promulgate the emergency amendments within 120 days after the date of the enactment of that Act, *i.e.,* by April 6, 2000.

(A) Option 1

Option 1 provides the most direct and straightforward manner for implementing the directive to provide for consideration of the retail value of the infringed item. Option 1 amends the copyright and trademark infringement guideline to provide a sentencing enhancement based on a calculation of the retail value of the infringed item multiplied by the quantity of infringing items for all copyright and trademark offenses. As presented, it does not incorporate any additional enhancements or adjustments for aggravating or mitigating factors, nor does it propose any change in the base offense level (although this, too, could be made a part of that option).

An arguable disadvantage of Option 1 is that it likely would overstate the pecuniary harm caused to copyright and trademark owners in the majority of cases currently sentenced under the guideline because it presumes: (1) a one-to-one correlation between the sale of infringing items and the displaced sale of legitimate infringed items, which is unlikely in most cases, and (2) that the pecuniary harm resulting from each lost sale is equal to the retail value of the infringed item. Proposed Application Note 3 would address substantial overstatement of pecuniary harm through an invited downward departure provision. That proposed application note would also provide an upward departure provision for cases in which the pecuniary harm is substantially understated.

Proposed Amendment—Option 1: Strike § 2B5.3 in its entirety and insert the following:

§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: 6

(b) Specific Offense Characteristic

(1)(A) Except as provided in subdivision (B), if the retail value of the infringed items multiplied by the quantity of infringing items exceeded $2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

(B) If (i) the defendant was convicted of an offense under 18 U.S.C. 2319A; and (ii) the retail value of the infringing items multiplied by the quantity of infringing items exceeded $2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

Commentary

Statutory Provisions: 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Definitions.—For purposes of this guideline:

''Infringed items'' means the copyrighted or trademarked items with respect to which the crime against intellectual property was committed.

''Infringing items'' means the items that violate the copyright or trademark laws (not the legitimate items that are infringed upon).

2. In a case involving the illegal interception of a satellite cable transmission in violation of 18 U.S.C. 2511, the ''retail value of the infringed items'', for purposes of subsection (b)(1)(A), is the price the user of the transmission would have paid to lawfully receive that transmission. (In such a case, the ''infringed items'' are the satellite transmissions rather than the intercepting devices.)

[3. Departure Provision.—There may be cases in which the offense level determined under subsection (b)(1) substantially understates or substantially overstates the pecuniary harm caused by the offense. In such cases, an upward departure or a downward departure, as appropriate, may be warranted.]

Background: Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act of 1997, which directs the Commission to ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

(B) Option 2

Option 2 is a revised proposal submitted by the Department of Justice in August 1998 in response to the Commission's May 1998 **Federal Register** notice (see 63 FR 28202 (1998)) and has not previously been published in the **Federal Register**. Like Option 1, Option 2 amends the copyright and trademark infringement guideline to provide an enhancement based on a calculation of the retail value of the infringed items multiplied by the quantity of infringing items for all copyright and trademark offenses (except offenses involving a copyright violation of 18 U.S.C. 2319A, for which there is no infringed item). In contrast to Option 1, the Department proposed a 2-level reduction in offense level (but not less than offense level 6) for offenses involving infringing goods with a price less than 10% of the average retail price of the infringed item. According to the Department of Justice, this downward adjustment is proposed to address the likelihood that ''relying on the price of the infringed-upon item may lead to an inappropriately high economic harm calculation where there is a dramatic price differential between the genuine and illegal products.'' The Commission has bracketed options for this reduction that would provide a 2-level downward adjustment for cases in which the price of the infringing item is [10%] [20%] [30%] [40%] [50%] of the retail price of the infringed item.

In addition, Option 2 includes adjustments for two aggravating factors and one mitigating factor. It provides a 2-level increase for offenses involving ''online electronic infringement,'' and a 2-level increase for offenses involving a ''reasonably foreseeable risk to public health or safety,'' with a minimum offense level of level 13. It also provides a 2-level decrease (but not less than offense level 6) if the offense was not committed for purposes of commercial advantage or private financial gain.

Proposed Amendment—Option 2: Strike § 2B5.3 in its entirety and insert the following:

§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) Except as provided in subsection (2), if the infringed value exceeded $2,000, increase by the number of levels from the monetary table in § 2F1.1 (Fraud and Deceit) corresponding to that value.

(2) If (A) the offense involved a copyright violation under 19 U.S.C. 2319A; and (B) the infringing value exceeded $2,000, increase by the number of levels from the monetary table in § 2F1.1 corresponding to that value.

(3) If the offense involved online electronic infringement, increase by 2 levels.

(4) If (A) the offense was not committed for commercial purpose or private financial gain, or (B) subsection (1) applies and the offense involved greatly discounted merchandise, decrease by 2 levels, but not below level 6.

(5) If the offense involved a reasonably foreseeable risk to public health or safety, increase by 2 levels. If the resulting offense level is less than level [13], increase to level [13].

Commentary

Statutory Provisions: 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. For purposes of this guideline—

''Infringed value'' means the average retail price of the infringed-upon item multiplied by the number of the infringing items. Average retail price of the infringed-upon item means the average price in the retail market at the time of the offense, which may be different from the Manufacturer's Suggested Retail Price. In cases involving the interception of a communication in violation of 18 U.S.C. 2511, the infringed value means the price the user would have paid if that communication had been obtained lawfully.

''Infringing value'' means the price of the infringing item multiplied by the number of infringing items.

''Greatly Discounted Merchandise'' means infringing goods whose price is less than [10%][20%][30%][40%][50%] of the average retail price of the infringed-upon item.

''Online Electronic Infringement'' includes the unlawful producing, reproducing, distributing, selling, performing, or trafficking in copyrighted or trademarked articles or services via an electronic bulletin board, a worldwide web site or any online facility.

''Commercial advantage or private financial gain'' includes receipt, or expectation of receipt, of anything of value, including the receipt of other protected works or products.

2. In some cases a 2-level enhancement may not reflect the seriousness of the risk to public health or safety. In such cases, an upward departure may be warranted.

Background: This guideline treats copyright and trademark violations much like fraud. The enhancements in subsections (b)(1) and (2) are intended as an approximate determination of the aggregate pecuniary harm resulting from trafficking in goods or services that violate the copyright or trademark laws. The reduction in subsection (b)(4) for greatly discounted merchandise is appropriate because in such cases there is some reduced likelihood of loss of legitimate sales.

The Electronic Communications Privacy Act of 1986 prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

(C) Option 3

Like Options 1 and 2, Option 3 amends the copyright and trademark infringement guideline to provide for consideration of the retail value of the infringed item in all copyright and trademark cases, but that value ultimately might not be used in every case. For some cases, the retail value of the infringing item is used to calculate the monetary adjustment because that value is the more accurate measure of the pecuniary harm to the intellectual property owner for those cases.

Option 3 directs the court to use the retail value of the infringed item multiplied by the quantity of infringing items in any case in which: (1) the quality and performance of the infringing item are identical to, or substantially indistinguishable from, the infringed item; (2) the retail value of the infringing item is difficult or impossible to determine; or (3) the offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. 2511; or any other case in which the government provides sufficient information to demonstrate that the retail value of the infringed item provides a more accurate assessment of pecuniary harm to the copyright or trademark owner than the retail value of the infringing item. The court would use the retail value of the infringing item multiplied by the quantity of infringing items (the calculation that currently exists in § 2B5.3) for all other copyright and trademark offenses.

Option 3 implements the second directive of the NET Act (to provide for consideration of the retail value of the infringed item) by permitting the government to show, for any intellectual property offense, that such value is the more accurate assessment of lost sales to the intellectual property owner than is the use of the retail value of the infringing item. An arguable advantage of Option 3 over Options 1 and 2 is that, by using the retail value of the infringing item in some cases, such as those involving obviously inferior counterfeited goods, it reduces the likelihood that the pecuniary harm would be overstated when the sale of a counterfeit item is not likely to displace the sale of a legitimate item on a one-to-one basis.

Option 3 also presents a number of enhancements and adjustments that, as mentioned above, take into account aggravating and mitigating factors that may be present in an infringement case. For ease and clarity of presentation, they are presented for the most part as specific offense characteristics. However, there is an issue for comment following Option 3 that addresses whether the Commission should adopt these as departure provisions, or not at all.

The possible additional enhancements and adjustments are as follows:

1. Increase the base offense level from level 6 to level 8. A 2-level increase in the base offense level would bring the infringement guideline more in line with the fraud guideline, § 2F1.1. Both guidelines have a base of offense level of level 6; however, the fraud guideline contains a 2-level enhancement for more than minimal planning, which applies in the great majority of fraud offenses. A similar enhancement does not exist in the infringement guideline, but, based on a review of cases sentenced under the guideline, if a more than minimal planning enhancement did exist, it similarly would apply in the majority of infringement cases. Thus, the majority of fraud offenses effectively start at an offense level of level 8, whereas infringement cases start at an offense level of level 6.

2. Provide an enhancement of 2 offense levels (or suggested upward departure) if the infringing item was distributed by the offender before the copyright or trademark owner commercially released the infringed item. If the infringing item is a close substitute for the infringed item, the harm is exacerbated by denying the copyright or trademark owner the front end of the market. If the infringing item is substantially inferior, the harm is exacerbated by damaging the reputation of the copyright or trademark owner.

3. Provide an enhancement of 2 offense levels (or suggested upward departure) if purchasers of the infringing item were deceived to believe that they were purchasing the legitimate infringed item. This enhancement takes into account harm to the consumer who is actually deceived, over and above the harm to the copyright or trademark owner. However, this enhancement may present significant proof problems. An attempt to ameliorate those problems by lowering the standard for triggering the enhancement to something less than actual deception, such as the reasonable likelihood of deception, risks promulgating an enhancement that is triggered merely by an element of the offense (see 18 U.S.C. 2320(e)).

4. Provide a downward adjustment of 2 offense levels, but not less than the base offense level, (or suggested downward departure) if the offense was not committed for commercial advantage or private financial gain. This proposed adjustment is identical to one included in Option 2 and takes into account the different statutory penalty structures established for these offenses by the NET Act. The Commission has been unable to determine the frequency with which such a downward adjustment would apply because the statutory change criminalizing such conduct was enacted in December 1997, and has formed the basis for a very limited number of prosecutions.

5. Provide an enhancement of 2 offense levels (and a minimum offense level of level 12) if the offense involved the manufacture, importation, or uploading of infringing items. The uploading prong is somewhat similar to the 2-level enhancement proposed in Option 2 for online electronic infringement. The Commission estimates that this enhancement would

apply in approximately 60% of the cases currently sentenced under § 2B5.3. Defendants who manufacture, import, or upload infringing items arguably are more culpable because they initially place infringing items in the stream of commerce, thereby enabling many others to infringe the copyright or trademark.

6. Provide an enhancement of 2 offense levels [and minimum offense level of level 13 as proposed in Option 2] (or suggested upward departure) if the offense involved the conscious or reckless risk of serious bodily injury. The Commission's review of cases sentenced under the guideline suggests that this enhancement rarely would apply, which might argue for taking this factor into account as a departure provision, if at all.

7. Provide an application note that expressly provides that § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) will apply if the defendant engaged in de-encryption or circumvented some other technological security measure in order to gain initial access to copyrighted material. Alternatively, the Commission could suggest an upward departure or specific offense characteristic for such cases. As stated in the background commentary to § 3B1.3, persons who use a special skill to facilitate or commit a crime generally are viewed as more culpable. Based on the Commission's review of cases sentenced under the copyright and trademark infringement guideline, it is anticipated that this adjustment rarely would be applied.

Proposed Amendment—Option 3: Strike § 2B5.3 in its entirety and insert the following:

§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: [8]

(b) Specific Offense Characteristics

(1) If the infringement amount exceeded $2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

[(2) If the infringing item was distributed before the infringed item was commercially released by the copyright or trademark owner, increase by [2] levels.]

[(3) If a purchaser of an infringing item actually believed such item was the infringed item, increase by [2] levels.]

[(4) If the offense was not committed for commercial advantage or private financial gain, decrease by [2] levels[, but not less than level [6][8]].]

[(5) If the offense involved the manufacture, importation, or uploading of infringing items, increase by [2] levels. If the resulting offense level is less than level [12], increase to level [12].]

[(6) If the offense involved the conscious or reckless risk of serious bodily injury, increase by [2] levels.] If the resulting offense level is less than level [13], increase to level [13].]

Commentary

Statutory Provisions: 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes

1. Definitions.—For purposes of this guideline:

''Commercial advantage or private financial gain'' means the receipt, or expectation of receipt, of anything of value, including other protected works.

''Infringed item'' means the copyrighted or trademarked item with respect to which the crime against intellectual property was committed.

''Infringement amount'' means the approximate pecuniary harm to the copyright or trademark owner caused by the offense.

''Infringing item'' means the item that violates the copyright or trademark laws.

''Uploading'' means making an infringing item available by electronic means with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item.

2. Determination of Infringement Amount.—This note applies to the determination of the infringement amount for purposes of subsection (b)(1).

(A) Use of Retail Value of Infringed Item.—The infringement amount is the retail value of the infringed item, multiplied by the number of infringing items, in a case involving any of the following:

(i) The quality and performance of the infringing item are identical to, or substantially indistinguishable from, the infringed item.

(ii) The retail value of the infringing item is (I) difficult to determine without unduly complicating or prolonging the sentencing proceeding; or (II) impossible to determine.

(iii) The offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. § 2511. (In a case involving such an offense, the 'retail value of the infringed item' is the price the user of the transmission would have paid to lawfully receive that transmission, and the 'infringed item' is the satellite transmission rather than the intercepting device.)

(iv) The government provides sufficient information to demonstrate that the retail value of the infringed item provides a more accurate assessment of the pecuniary harm to the copyright or trademark owner than does the retail value of the infringing item.

(B) Use of Retail Value of Infringing Item.—The infringement amount is the retail value of the infringing item, multiplied by the number of infringing items, in any case not covered by subdivision (A) of this Application Note, including a case involving the unlawful recording of a musical performance in violation of 18 U.S.C. 2319A.

(C) Determination of Infringement Amount in Cases Involving a Variety of Infringing Items.—In a case involving a variety of infringing items, the infringement amount is the sum of all calculations made for those items under subdivisions (A) and (B). For example, if the defendant sold both counterfeit videotapes that are identical in quality to the infringed videotapes and obviously inferior counterfeit handbags, the infringement amount, for purposes of subsection (b)(1), is the sum of the infringement amount calculated with respect to the counterfeit videotapes under subdivision (A)(i) (i.e., the quantity of the infringing videotapes multiplied by the retail value of the infringed videotapes) and the infringement amount calculated with respect to the counterfeit handbags under subdivision (B) (i.e., the quantity of the infringing handbags multiplied by the retail value of the infringing handbags).

(D) Determination of Retail Value.—For purposes of this Application Note, the 'retail value' of an infringed item or an infringing item usually is the retail price of that item in the market in which it is sold.

3. Pre-Release Infringement.—Subsection (b)(2) applies to the distribution of an infringing item before the infringed item is commercially released by the copyright or trademark owner. For example, if the defendant unlawfully videotaped a film at a movie theater, then distributed copies of that videotape before lawful copies of the film were commercially available in videotape form, the enhancement will apply.

4. Manufacturing, Importing, and Uploading Enhancement.—With respect to uploading, subsection (b)(5) applies only to uploading with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item. For example, this subsection applies in the case of illegally uploading copyrighted software to an Internet site, but it does not apply in the case of downloading or installing that software on a hard drive on the defendant's personal computer.

5. Application of § 3B1.3.—If the defendant engaged in de-encryption or circumvented some other technological security measure in order to gain initial access to an infringed item, an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) will apply.

Background: This guideline treats copyright and trademark violations much like theft and fraud. Similar to the sentences for theft and fraud offenses, the sentences for defendants convicted of intellectual property offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, similar to the loss enhancement in the theft and fraud guidelines, the infringement amount in subsection (b)(1) serves as a principal factor in determining the offense level for intellectual property offenses.

Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act by using the retail value of the infringed items, multiplied by the number of infringing items, to determine the pecuniary harm for cases in which use of the retail value of the infringed item is a reasonable estimate of that harm. For cases referred to in Application Note 2(B), the Commission determined that use of the retail value of the infringed item would overstate the pecuniary harm or otherwise be impracticable or inappropriate. In these types of cases, use of the retail value of the

infringing item, multiplied by the number of those items, is a more reasonable estimate of the resulting pecuniary harm.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.

Issue for Comment: The Commission has bracketed specific offense characteristics (b)(2) through (b)(6) in Option 3 to indicate that any or all of these factors, or any combination thereof, could form the basis for an enhancement. The Commission specifically invites comments on which, if any, of these specific offense characteristics, or combination of these specific offense characteristics, should be incorporated into the guideline. The Commission also specifically invites comment on whether, if the Commission were to adopt either Option 1 or Option 2, any or all of these specific offense characteristics, or any combination of these specific offense characteristics, should be incorporated into the adopted Option.

The Commission also invites comment on whether, as an alternative to proposed specific offense characteristics (b)(2) through (b)(6), the factors which form the bases for those specific offense characteristics should be expressed as bases for departure from the guideline range.

Proposed Re-Promulgation as Permanent Guideline Amendment

2. *Synopsis of Proposed Amendment:* This amendment proposes to re-promulgate as a permanent amendment the emergency telemarketing fraud amendment adopted by the Commission on September 23, 1998. It implements the directives to the Commission in section 6 of the Telemarketing Fraud Prevention Act of 1998, Pub. L. 105–184 (the ''Act''), but in a somewhat broader form than that required by the directives.

The Act directs the Commission to provide for ''substantially increased penalties'' for telemarketing fraud offenses. It also more specifically requires that the guidelines provide ''an additional appropriate sentencing enhancement, if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States,'' and ''an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to [telemarketing fraud victims over age 55], are affected by a fraudulent scheme or schemes.''

This amendment responds to the directives by building upon the amendments to the fraud guideline, § 2F1.1, that were submitted to Congress on May 1, 1998. (See Amendment 577 in USSC Guidelines Manual, Appendix C Supplement.) The May 1, 1998 amendments added a specific offense characteristic for ''mass-marketing.'' Under that amendment, the definition of ''mass-marketing'' would include, but not be limited to, telemarketing fraud. The May 1, 1998 amendments also added a specific offense characteristic for sophisticated concealment.

This amendment broadens the ''sophisticated concealment'' enhancement to cover ''sophisticated means'' of executing or concealing a fraud offense. In addition, the amendment increases the enhancement under the vulnerable victim guideline, § 3A1.1, for offenses that impact a large number of vulnerable victims.

In designing enhancements that may apply more broadly than the Act's above-stated directives minimally require, the Commission acts consistently with other directives in the Act (e.g., section 6(c)(4) (requiring the Commission to ensure that its implementing amendments are reasonably consistent with other relevant directives to the Commission and other parts of the sentencing guidelines)) and with its basic mandate in sections 991 and 994 of title 28, United States Code (e.g., 28 U.S.C. 991(b)(1)(B) (requiring sentencing policies that avoid unwarranted disparities among similarly situated defendants)).

Proposed Amendment: Amendment 587 (See USSC Guidelines Manual, App. C Supplement; see also 63 FR 55912 (1998)) is re-promulgated without change as follows:

Section 2F1.1(b), as amended by amendment 577, is further amended by striking subdivision (3) and all that follows through the end of the subsection and inserting the following:

''(3) If the offense was committed through mass-marketing, increase by 2 levels.

(4) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (B) violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(5) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(6) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

(7) If the offense—

(A) Substantially jeopardized the safety and soundness of a financial institution; or

(B) Affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,

increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.''.

The Commentary to § 2F1.1 captioned ''Application Notes'', as amended by amendment 577, is further amended by striking Application Note 14 and all that follows through the end of the Application Notes and inserting the following:

''15. For purposes of subsection (b)(5)(B), 'United States' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(5)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

The enhancement for sophisticated means under subsection (b)(5)(C) requires conduct that is significantly more complex or intricate than the conduct that may form the basis for an enhancement for more than minimal planning under subsection (b)(2)(A).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis for an adjustment under § 3C1.1

(Obstruction of Justice), do not apply an adjustment under § 3C1.1.

16. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. 20, 656, 657, 1005–1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and 'any health, medical, or hospital insurance association,' as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

17. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if, as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above.

18. 'The defendant derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(7)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. 982(a)(4).

19. If the defendant is convicted under 18 U.S.C. 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

20. If subsection (b)(7)(A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ''.

The Commentary to § 2F1.1 captioned ''Application Notes'', as amended by amendment 577, is further amended by redesignating Notes 3 through 13 as Notes 4 through 14, respectively; and by inserting after Note 2 the following new Note 3:

''3. 'Mass-marketing,' as used in subsection (b)(3), means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply, for example, if the defendant conducted or participated in a telemarketing campaign that solicited a large number of individuals to purchase fraudulent life insurance policies.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''§ 2F1.1(b)(3)'' and inserting ''§ 2F1.1(b)(4)''; in redesignated Note 5 (formerly Note 4), by striking ''(b)(3)(A)'' and inserting ''(b)(4)(A)''; and in redesignated Note 6 (formerly Note 5), by striking ''(b)(3)(B)'' and inserting ''(b)(4)(B)''.

The Commentary to § 2F1.1 captioned ''Background'' is amended by inserting after the fifth paragraph the following new paragraph:

''Subsection (b)(5) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.''.

Section 3A1.1 is amended by striking subsection (b) in its entirety and inserting:

''(b)(1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.

(2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by 2 additional levels.''.

The Commentary to § 3A1.1 captioned ''Application Notes'' is amended in Note 2 in the first paragraph by striking '' 'victim' includes any person'' before ''who is'' and inserting '' 'vulnerable victim' means a person (A)''; and by inserting after ''(Relevant Conduct)'' the following:

''; and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct''.

The Commentary to § 3A1.1 captioned ''Application Notes'' is amended in Note 2 in the second paragraph by striking ''where'' each place it appears and inserting ''in which''.

The Commentary to § 3A1.1 captioned ''Application Notes'' is amended in Note 2 in the third paragraph by striking ''offense guideline specifically incorporates this factor'' and inserting ''factor that makes the person a vulnerable victim is incorporated in the offense guideline''.

The Commentary to § 3A1.1 captioned ''Background'' is amended by adding at the end the following additional paragraph:

''Subsection (b)(2) implements, in a broader form, the instruction to the Commission in section 6(c)(3) of Public Law 105–184.''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''United States'' before ''Virgin Islands''.

[FR Doc. 99–33380 Filed 12–22–99; 8:45 am]

BILLING CODE 2210–40–P; 2211–01–P

SOCIAL SECURITY ADMINISTRATION

Testing Modifications to the Disability Determination Procedures; Extension of Single Decisionmaker Model and Full Process Model With Rationale Summary

AGENCY: Social Security Administration.

ACTION: Notice of extension of tests involving a single decisionmaker and Full Process Model.

SUMMARY: The Social Security Administration (SSA) is announcing the extension of two tests being conducted under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test, individually or in any combination, several modifications to the disability determination procedures we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income (SSI) payments based on disability under title XVI of the Act. Under these rules, SSA is testing the use of a single decisionmaker who may make the initial disability determination without requiring the signature of a medical consultant in all cases. SSA is also testing integrated model procedures which will focus on certain SSA requirements for preparing a rationale for the adjudicator's disability determination to see if these modifications have any effect on how these requirements are met.

DATES: Selection of cases to be included in these tests is being extended through

December 31, 2001. If the Agency decides to continue these tests beyond this date, another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Landis, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–5388.

SUPPLEMENTARY INFORMATION: Current rules codified at 20 CFR 404.906 and 416.1406 authorize us to test modifications to the disability determination procedures individually or in any combination. On July 16, 1997 (62 FR 38182–38183), we announced the locations of sites where we would conduct tests involving a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. On October 30, 1998 (63 FR 5844), we announced the locations of sites for additional testing of the full process model which would focus on whether integrated model procedures have any effect on how the requirements for preparing a rationale for the disability determination are met. We are announcing the extension of case selection for these two tests through December 31, 2001.

The following is a listing of site locations at which these tests are being conducted:

State of Florida, Office of Disability Determinations, 4140 Woodcock Drive, Dew Building, Suite 100, Jacksonville, FL 32207.

State of Florida, Office of Disability Determinations, 9495 Sunset Drive, Sunset Square, Suite B100, Miami, FL 33173.

State of Florida, Office of Disability Determinations, 3438 Lawton Road, Chandler Building, Suite 127, Orlando, FL 32803.

State of Florida, Office of Disability Determinations, 2729 Fort Knox Boulevard, Building 2, Suite 300, Tallahassee, FL 32399–9994.

State of Florida, Office of Disability Determinations, 2729 Fort Knox Boulevard, Building 2, Suite 301, Tallahassee, FL 32399–9994.

State of Florida, Office of Disability Determinations, 1321 Executive Center Drive, Ashley Building, Suite 200, Tallahassee, FL 32399–6512.

State of Florida, Office of Disability Determinations, 3450 West Busch Boulevard, Buschwood Park II, Suite 395, Tampa, FL 33618.

State of Idaho, Disability Determination Services, 1505 McKinney Street, Boise, ID 83704.

State of Kansas, Department of Social and Rehabilitation Services, Disability Determination Services, Docking State Office Building, Room 1016, 915 SW Harrison Street, Topeka, KS 66612–1596.

State of Kentucky, Division of Disability Determinations, 102 Athletic Drive, Frankfort, KY 40602.

Social Security Administration, District Office, 1460 Newton Pike, Lexington, KY 40511.

State of Kentucky, Division of Disability Determinations, 7th and Jefferson Streets, Louisville, KY 40201.

State of Maine, Department of Human Services, Bureau of Rehabilitation, Disability Determination Services, Arsenal Street Extension, State House Station #116, Augusta, ME 04333.

State of Nevada, Department of Employment, Training and Rehabilitation, Bureau of Disability Adjudication 1050 East William Street, Room 300, Carson City, NV 89710.

State of North Carolina, Division of Social Services, Disability Determination Services, 321 Chapanoke Street, Raleigh, NC 27603.

State of Vermont, Disability Determination Services, 2 Pilgrim Park Road, Second Floor, Waterbury, VT 05676.

State of Washington, Department of Social and Health Services, Division of Disability Determination Services, Airindustrial Way, Building 12, Tumwater, WA 98502.

State of Washington, Department of Social and Health Services, Division of Disability Determination Services, 5221 East Third Street, Spokane, WA 99212.

State of Washington, Department of Social and Health Services, Division of Disability Determination Services, 1119 SW Seventh Street, Renton, WA 98055.

State of West Virginia, Division of Rehabilitation Services, Disability Determination Section, 1206 Quarrier Street, Suite 200, Charleston, WV 25301.

State of West Virginia, Division of Rehabilitation Services, Disability Determination Section, 153 West Main Street, Suite 607, Clarksburg, WV 26301.

State of Arizona, Department of Economic Security, Disability Determination Service Administration, 3655 East Second Street, Suite 105, Tucson, AZ 85716.

State of Georgia, Division of Rehabilitation, Disability Adjudication Section, Clark Harrison Building, 330 West Ponce de Leon Avenue, Decatur, GA 30030.

Department of Vocational Rehabilitation, Disability Determination Service, Central Avenue, Building 1313, Tiyan, Guam 96913.

State of Oregon, Division of Vocational Rehabilitation, Disability Determination Services, 500 Summer Street NE, Ground Floor, Salem, OR 97310.

Not all cases received in the sites listed above will be selected for handling under the test procedures. However, if a claim is selected as part of one of these tests, the claim will be handled under the procedures established under the final rules noted above.

Dated: December 16, 1999.

Sue C. Davis,

Director, Disability Process Redesign Team.

[FR Doc. 99–33307 Filed 12–22–99; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3184]

Culturally Significant Objects Imported for Exhibition Determinations: ''Crowning Glories: Two Centuries of Tiaras''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations:

Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, ''Crowning Glories: Two Centuries of Tiaras,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at The Museum of Fine Arts, Boston, from on or about March 1, 2000, to on or about June 25, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and

the address is Room 700, United States Department of State, 301 4th Street, S.W., Washington, DC 20547–0001.

Dated: December 16, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 99–33351 Filed 12–22–99; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice Regarding the 1999 Product Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the petitions that were accepted for the 1999 GSP Annual Review for modifications of GSP product eligibility; lists the schedule for the public hearing on these petitions, for requesting participation in the hearing, and for submitting pre-hearing and post-hearing briefs.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The GSP program is authorized by Title V the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2461 *et seq.*), and administered in accordance with GSP regulations (15 CFR Part 2007) which provide for a GSP annual review.

In a notice dated April 23, 1999, USTR initiated the 1999 GSP Annual Review and announced a deadline of June 16, 1999 for the filing of petitions (63 FR 18963). The product petitions that we received requested changes in the eligibility of products by adding or removing products, or the waiver of ''competitive need limitations'' (CNLs) for eligible articles. Authorization for granting CNL waivers is set forth in section 503(d) of the Trade Act (19 U.S.C. 2464(d)).

The GSP Subcommittee of the TPSC has reviewed the 28 product petitions that were received and has decided that 9 of these petitions involving 7 products should be accepted for consideration in the 1999 GSP Annual Review. The annex to this notice sets forth the case number, product identification, the change requested and the petitioner for each product included in the 1999 GSP Annual Review.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of, or in opposition to, any petition which is the subject of this notice. Submissions should comply with 15 CFR Part 2007, including sections 2007.0, and 2007.1. All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (''HTS'') nomenclature.

Comments should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW, Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked ''confidential'' at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should also be clearly marked at the top and bottom of every page (either ''public version'' or ''nonconfidential''). Comments should be submitted no later than 5 p.m. on January 14, 2000.

Notice of Public Hearings

Hearings will be held on February 1, 2000 beginning at 10 a.m. at the Office of the United States Trade Representative, 1724 F Street, NW, Washington, DC 20508. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearings must submit the name, address, and telephone number of the witnesses representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by fourteen (14) copies, in English, of a written brief or statement, and should be received by 5 p.m. on January 14, 2000. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted in fourteen (14) copies, in English, no later than 5 p.m. February 24, 2000. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5 p.m. on January 14, 2000, and post-hearing and rebuttal written briefs or statements by February 24, 2000. Comments by interested persons on the USITC Report prepared as part of the product review should be submitted in fourteen (14) copies, in English, by 5 p.m. April 14, 2000.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3901–01–M

Annex

Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Ferroalloys:	
		Other:	
		Other:	
99-1	7202.99.10 1/	Ferrozirconium	Victoria Alloys, Inc., Cleveland, OH; Italmagnesio Nordeste S/A, Brazil; Trablin-Trading Brasileira de Ligas e Inoculantes S/A, Brazil
		Magnesium and articles thereof, including waste and scrap:	
		Unwrought magnesium:	
		[Containing at least 99.8 percent by weight of magnesium]	
99-2	8104.19.00	Other	Polymet Alloys, Inc., Calera, AL; Rima Industrial S/A, Brazil
99-3	8104.30.00	Raspings, turnings and granules, graded according to size; powders	do.
B.		Petitions to remove duty-free status from beneficiary developing country/countries for a product on the list of eligible articles for Generalized System of Preferences. 2/	
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Other polyhydric alcohols:	
99-4	2905.42.00 (Brazil)	Pentaerythritol	Hercules Incorporated, Wilmington, DE
C.		Petition to determine whether products like or directly competitive with an eligible article were being produced in the United States on January 1, 1995.	
		Mixed alkylbenzenes and mixed alkylnaphthalenes, other than those of heading 2707 or 2902:	
		Mixed alkylbenzenes:	
		[Mixed linear alkylbenzenes]	
99-5	3817.10.50	Other	Shrieve Chemical Products, Inc., Houston, TX

1/ The petitioner also requests a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Brazil on the articles provided for in subheading 7202.99.10.

2/ The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well the GSP status of the entire article.

Annex
-2-

Case No.	HTS Subheading	Article	Petitioner
D.		Petitions for waiver of competitive need limits for a product on the list of eligible products for the Generalized System of Preferences.	
		Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Saturated monohydric alcohols:	
		Methanol (Methyl alcohol):	
		[Imported only for use in producing synthetic natural gas (SNG) or for direct use as a fuel]	
99-6	2905.11.20 (Chile)	Other	Government of Chile; Methanex Methanol Company, Dallas, TX
		Ferroalloys:	
99-7	7202.50.00 (Russia)	Ferrosilicon chromium	PMI Alloys, Inc., Charleston, SC; Chelyabinsk Electrometallurgical Plant, Russia

[FR Doc. 99–32220 Filed 12–22–99; 8:45 am]
BILLING CODE 3901–01–C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Preferential Tariff Treatment Under the Generalized System of Preferences for Certain Articles From South Africa

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Implementation of preferential tariff treatment under the Generalized System of Preferences (GSP) for three articles from South Africa.

FOR FURTHER INFORMATION CONTACT: Jon Rosenbaum, Assistant United States Trade Representative for Trade and Development, Office of the United States Trade Representative, 600 17th Street, NW., Room 517, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: Pursuant to section 503(c)(2) of the Trade Act of 1974, as amended (19 U.S.C. 2463 (c)(2)), beneficiary developing countries are subject to competitive need limitations on the preferential tariff treatment afforded under the GSP. Presidential Proclamation 7107 of June 30, 1998 (63 FR 36531; July 6, 1998), in relevant part, proclaimed the waiver of competitive need limitations and the granting of GSP preferential tariff treatment with respect to certain articles from South Africa, with an effective date to be determined and announced by the United States Trade Representative by publication of a notice in the Federal Register. These included four articles in Harmonized Tariff Schedule of the United States (''HTS'') subheadings 7108.12.50 (unwrought gold, for electronics, dental), HTS 7108.13.70 (semi-manufactured gold), HTS 8704.10.50 (articulated dump trucks), and HTS 2849.90.50 (carbides). Since that time, the normal tariff for one of these items, articles in subheading HTS 8704.10.50 (articulated dump trucks) has been reduced to zero in accordance with the Annex to Presidential Proclamation 6763 of December 23, 1994 (60 FR 1007, 1614; January 4, 1995), implementing U.S. commitments under the Uruguay Round agreements.

Granting GSP preferential tariff treatment for the articles listed above was held in abeyance because of concerns regarding South Africa's Medicines Act and its protection of patent rights for pharmaceuticals. Section 503 of the Trade Act of 1974 requires the President to consider the program's eligibility requirements, including a country's protection of intellectual property rights, before granting waivers or extending GSP benefits (19 U.S.C. 2463). On September 17, 1999, the Governments of the United States and South Africa came to an understanding with respect to South Africa's urgent need to provide better, more affordable health care while ensuring that intellectual property rights are protected. Both Governments reaffirmed their shared objective of fully protecting intellectual property rights, including their commitment to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

Pursuant to authority vested in the United States Trade Representative by the laws of the United States, including but not limited to sections 503 and 604 of the Trade Act of 1974 and Proclamation 7107 of June 30, 1998, and in order to (1) grant GSP preferential tariff treatment to articles in HTS subheadings 7108.12.50 (unwrought gold, for electronics, dental) and 7108.13.70 (semi-manufactured gold), and (2) provide GSP preferential tariff treatment to articles from South Africa in HTS subheading 2849.90.50 (carbides), the HTS is modified as specified in the Annex to this notice, effective with respect to articles entered, or withdrawn from warehouse, on or

after the day of publication of this notice.

Charlene Barshefsky,

United States Trade Representative.

Annex

Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States (''HTS'') is modified by deleting the country set out opposite the following HTS subheading:

2849.90.50 South Africa

Section B. Modifications to the Harmonized Tariff Schedule of the United States (''HTS'') of an article's preferential tariff treatment under the Generalized System of Preferences (''GSP'').

For the following HTS subheadings, the Rates of Duty 1-special subcolumn is modified by deleting the symbol ''A+,'' in the parentheses following the ''Free'' rate and by inserting the symbol ''A,'' in lieu thereof.

7108.12.50
7108.13.70

Section C. A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to imports of eligible articles from South Africa that are provided for in HTS subheading 2849.90.50.

[FR Doc. 99–33385 Filed 12–22–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Final Environmental Impact Statement; Denver, Arapahoe, and Douglas Counties

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA and the FTA, in cooperation with the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD), have jointly prepared a Final Environmental Impact Statement (EIS) for proposed transportation improvements in the Southeast Corridor of the Denver, Colorado metropolitan area. The project is within the municipalities of Denver, Arapahoe and Douglas Counties. The Final EIS identifies a preferred alternative and the associated environmental impacts of the proposed preferred alternative. Interested citizens are invited to review the Final EIS and submit comments. Copies of the Final EIS may be obtained by telephoning or writing the contact person list below under Addresses. Public reading copies of the Final EIS are available at the locations listed under Supplementary Information.

DATES: A 30-day public review period will begin on December 23, 1999, and conclude on January 28, 2000. Written comments on the preferred alternative and impacts to be considered must be received by CDOT by January 28, 2000. A public hearing to receive oral comments on the Final EIS will be held in one location in Denver. See **SUPPLEMENTARY INFORMATION** section for hearing date and location.

ADDRESSES: Written comments on the Final EIS should be addressed to Jim Bumanglag, Project Manager, Colorado Department of Transportation, Southeast Corridor, 4201 East Arkansas, Denver, CO 80222. Requests for a copy of the Final EIS may be addressed to Mr. Bumanglag at the address above. Please see **SUPPLEMENTARY INFORMATION** section for a listing of the available documents and formats in which they may be obtained. Copies of the Final EIS are also available for public inspection and review. See Supplementary Information section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Final EIS or for additional information, contact: Mr. Vincent P. Barone, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone (303) 969–6730, extension 369; or Mr. David L. Beckhouse, FTA Region VIII, 216 16th Street Mall, Suite 650, Denver, CO 80202, Telephone (303) 844–3242.

SUPPLEMENTARY INFORMATION:

Hearing Date and Location:

- January 12, 2000, Most Precious Blood Catholic School, 2250 South Harrison Street, Denver, CO 80237, 4:00 p.m. to 7:30 p.m.

Copies of the Final EIS are available in hard copy format for public inspection at:

- CDOT Region 6 Office, 2000 South Holly Street, Denver, CO 80222, 303–757–9372.
- CDOT Environmental Services, 1325 S. Colorado Boulevard, Denver, CO 80222, 303–757–9259.
- RTD Administrative Services, 1600 Blake Street, Denver, CO 80202, 303–299–2484.
- Denver Public Library, 10 West 14th Avenue, Denver, CO 80203, 303–640–6220.
- Castlewood Public Library, 6739 South Uinta Street, Denver, CO 80237, 303–771–3197.
- Southeast Corridor Project Office (Carter & Burgess), 216 16th Street Mall, Suite 1700, Denver CO 80202, 303–820–5278.
- Aurora Central Library, 14949 East Alameda Drive, Aurora, CO 80012, 303–739–6600.
- Aurora Planning Office, 1470 South Havana St., Room 608, Aurora, CO 80012, 303–739–7250.
- Douglas Public Library District-Philip S. Miller Branch, 961 South Plum Creek Blvd., Castle Rock, CO 80104, 303–688–5157.

Copies of supporting technical reports and engineering plan sheets are available at:

- CDOT Region 6 Office, 2000 South Holly Street, Denver, CO 80222, 303–757–9372.
- Southeast Corridor Project Office (Carter & Burgess), 216 16th Street Mall, Suite 1700, Denver CO 80202, 303–820–5278.

Background

The Final EIS evaluated a No-Action, and a Preferred Alternative (including transportation management solutions) in the Southeast Corridor and determined the estimated costs and potential impacts associated with each. The project study limits are on I–25 from Broadway Avenue to Lincoln Avenue, which includes I–225 from I–25 to Parker Road. CDOT was the local lead agency for the preparation of the Final EIS.

The FHWA, the FTA, the CDOT, the RTD and other local agencies invite interested individuals, organizations, and Federal, State and local agencies to comment on the identified preferred alternative and associated social, economic, or environmental impacts related to the alternatives.

The preferred alternative is generally consistent with the Southeast Corridor Major Investment Study completed in July 1997. It begins at approximately I–25 and Broadway Avenue and proceeds south and southeast to Lincoln Avenue following the general alignment of I–25. Also included is a segment along I–225 from I–25 to Parker Road. The preferred alternative excludes any proposed roadway improvements near I–25 from 6th Avenue to approximately the Logan Street crossing including the I–25 interchanges at Alameda, Santa Fe, and Broadway. The primary purpose of the Southeast Corridor Multi-Modal Project is to improve travel time and enhance safety along these two transportation corridors, while causing the least disruption to neighboring residents, businesses, and commuters. The Southeast Corridor is the most heavily congested corridor on a daily basis, in the State of Colorado. It has been the focus of study for twenty years. These studies have consistently recommended

that improvements be made to the highway system and that public transit be provided.

The alternatives evaluated in the Final EIS include the following:

1. The No-Action alternative served as the baseline for environmental analysis and consists of the existing transit and highway systems and all projects contained in the federally approved Transportation Improvement Program (TIP) for the Denver metropolitan area.

2. The Preferred Alternative generally will use the I–25 right-of-way between Broadway Avenue and Lincoln Avenue, and the I–225 right-of-way between I–25 and Parker Road. There are 19.12 miles of double tracked light rail transit beginning at the existing Broadway Station and ending at Lincoln Avenue on the west side of I–25. Light rail will also be added to the median of I–225, from I–25 to the existing Nine Mile park-n-Ride. Thirteen light rail stations are planned. Improvements to I–25 and I–225 consist of one additional lane in each direction on I–25 from Logan Avenue to I–225, two additional lanes in each direction on I–25 from I–225 to C–470/E–470 and one additional lane in each direction on I–225 from I–25 to Yosemite. This alternative is designed to accommodate future transportation needs and includes improvements to the highway, transportation systems management, and pedestrian and bicycle facilities in the study area.

The FHWA, the FTA, the CDOT and the RTD evaluated all significant social, economic, and environmental impacts of the alternatives. The primary areas of examination included transit ridership, the capital outlays needed to construct the recommended alternative, the cost of operating and maintaining facilities created by the project, and the financial requirements on the funding agencies. Environmental and social impacts evaluated in the analysis included land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, hazardous material impacts, impacts on cultural and paleontological resources, and noise and vibration impacts. Impacts on natural areas, threatened and endangered species, air and water quality, and groundwater are also covered. Right-of-way impacts are also identified. Impacts were also evaluated both for the construction period and for the long-term period of operation. Measures to mitigate adverse impacts were developed.

In accordance with the Federal Transit Act, as amended, (49 U.S.C. 5301 *et seq.*) and FHWA and FTA policy, the Final EIS was prepared with required engineering design studies necessary to complete the document. On the basis of the Final EIS and the comments received, a Record of Decision will proceed. (23 U.S.C. 315; 49 U.S.C. 107, 5301 *et seq.*; 49 CFR 1.48 and 1.51)

James Daves,

Division Administrator, Federal Highway Administration, Lakewood, Colorado.

Louis F. Mraz Jr.,

Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.

[FR Doc. 99–32984 Filed 12–22–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6669]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled, ''Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report.''

DATES: Comments should be submitted on or before February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones, Jr., Director, Office of Maritime Labor, Training and Safety, MAR–250, Room 7302, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone number: 202–366–5755 or fax 202–493–2288. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: ''Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report.''

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0509.

Form Number: MA–930.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: Every student and graduate of the USMMA and subsidized State maritime academy student and graduate incurs a mandatory service obligation in the U.S. merchant marine.

Need and Use of the Information: The information collection is necessary to determine if a graduate of the USMMA or subsidized State maritime academy graduate is complying with the requirement to submit annually a form to MARAD. This form is used to determine if a graduate has complied with the terms of the service obligation for that year.

Description of Respondents: Every student and graduate of the USMMA and subsidized State maritime academy student incurs a mandatory service obligation in the U.S. merchant marine.

Annual Responses: 3000 responses.

Annual Burden: 1500 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: December 20, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 99–33352 Filed 12–22–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2000–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2000 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2000 RCAF (Unadjusted) is 1.043. The first quarter 2000 RCAF (Adjusted) is 0.594. The first quarter 2000 RCAF–5 is 0.581.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: (202)565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33337 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33817]

Arkansas Short Line Railroads, Inc.—Continuance in Control Exemption—Central Columbiana & Pennsylvania Railway, Inc.; Dardanelle & Russellville Railroad, Inc.; and the Ouachita Railroad

Arkansas Short Line Railroads Inc. (ASR), has filed a notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Central Columbiana & Pennsylvania Railway, Inc. (CCPR), upon CCPR's becoming a Class III railroad.[1] This transaction is related to STB Finance Docket No. 33818, *Central Columbiana & Pennsylvania Railway, Inc.—Lease and Operation Exemption—Columbiana County Port Authority,* wherein CCPR seeks to lease and operate 35.7 miles of rail line.[2]

ASR states that consummation of the transaction is contingent on the approval and acceptance of the OFA filed by CCPA to acquire the line that CCPR will operate and that CCPR has agreed to commence operations on the line at the earliest possible date after all approvals have been acquired and/or granted. The earliest date that the transaction could have been consummated was November 30, 1999, the effective date of the exemption.[3]

According to ASR, it is the controlling corporate owner of the stock of D&RR and Ouachita and, following consummation of the transactions, it will control, through stock ownership and management, D&RR, Ouachita, and CCPR. ASR states that: the railroads will not connect with one another; the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and the transaction involves only Class III rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323–25. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33817, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33182 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33834]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company between Roseville, CA, in the vicinity of UP's milepost 106.6 (Valley Subdivision), and Binney Junction, CA, in the vicinity of UP's milepost 141.9 (Valley Subdivision).

The transaction is scheduled to be consummated on December 21, 1999.

The purpose of the trackage rights is to facilitate southbound directional train operations between Roseville and Binney Junction.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

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[1] ASR controls Dardanelle & Russellville Railroad, Inc. (D&RR), and the Ouachita Railroad (Ouachita). It is not clear from prior filings with the Interstate Commerce Commission (ICC), the Board's predecessor, that appropriate approval was authorized by the ICC, of the control by ASR of D&RR and Ouachita. Therefore, to ensure that ASR is in compliance with the Board's statutory provisions, exemption for ASR's control of D&RR and Ouachita will also be covered by this notice.

[2] The Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Railroad Ventures, Inc., of the 35.7-mile line extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by The Ohio & Pennsylvania Railroad Company (OHPA). *See Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA,* STB Docket No. AB–556 (Sub-No. 2X), et al. (STB served Sept. 3, 1999). On November 8, 1999, Columbiana County Port Authority (CCPA) filed an offer of financial assistance (OFA) to purchase the entire line of railroad. This proceeding is currently pending. The OFA does not cover a connecting 3-mile line segment from milepost 0.0 to milepost −3.0 between Youngstown and Struthers, OH. Portions of this 3-mile segment are apparently owned separately by OHPA, Allied Erecting and Dismantling Company, Inc., and Darlington Pipe Company, Inc./Matteson Equipment. CCPA has a tentative agreement with OHPA concerning the portion of the 3-mile segment that OHPA owns and intends to negotiate with other property owners to obtain the right to operate over their respective portions.

[3] Under 49 CFR 1150.32(b), notices of exemption become effective 7 days after being filed. Here, the effective date is calculated from November 23, 1999, when supplemental information was filed by CCPR.

a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33834, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Yolanda Grimes Brown, Esq, The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161-0039.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 17, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33336 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33818]

Central Columbiana & Pennsylvania Railway, Inc.—Lease and Operation Exemption— Columbiana County Port Authority

Central Columbiana & Pennsylvania Railway, Inc. (CCPR), a noncarrier and wholly owned subsidiary of Arkansas Short Line Railroads, Inc. (ASR), has filed a notice of exemption under 49 CFR 1150.31 to lease and operate 35.7 miles of rail line from Columbiana County Port Authority (CCPA) extending from milepost 0.0 at or near Youngstown, OH, to milepost 35.7 at or near Darlington, PA.[1] CCPR states that a tentative agreement has been reached with OHPA that will allow CCPR to operate over the 35.7-mile line and the portion of the connecting 3-mile segment that is owned by OHPA. In order for CCPR to interchange with CSX Transportation, Inc., at milepost −3.0 at or near Struthers and with Norfolk Southern Railway Company at milepost −1.5 at Haselton Yard, CCPR states that it hopes to take advantage of the existing easements whereby OHPA is operating over the portions of the line that it does not own. If it is unable to do so, CCPR will seek to negotiate agreements with other property owners[2] so that it will be able to perform railroad operations over the entire line of railroad.[3]

CCPR states that consummation of the transaction is contingent on the approval and acceptance of the OFA filed by CCPA to acquire the line and that CCPR has agreed to commence operations on the line at the earliest possible date after all approvals have been acquired and/or granted. The earliest date that the transaction could have been consummated was November 30, 1999, the effective date of the exemption.[4]

This transaction is related to STB Finance Docket No. 33817, *Arkansas Short Line Railroads, Inc.—Continuance in Control Exemption—Central Columbiana & Pennsylvania Railway, Inc.; Dardanelle & Russellville Railroad, Inc.; and the Ouachita Railroad,* wherein ASR seeks to continue in control of Dardanelle & Russellville, Inc., the Ouachita Railroad, and CCPR, upon CCPR's becoming a Class III railroad.

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33818, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33181 Filed 12–22–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Railroad Ventures, Inc., of the 35.7-mile line and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by The Ohio & Pennsylvania Railroad Company (OHPA). *See Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA,* STB Docket No. AB–556 (Sub-No. 2X), *et al.* (STB served Sept. 3, 1999). On November 8, 1999, CCPA filed an offer of financial assistance (OFA) to purchase the entire line of railroad. This proceeding is currently pending. The OFA does not cover a connecting 3-mile line segment from milepost 0.0 to milepost −3.0 between Youngstown and Struthers, OH. Portions of this 3-mile segment are apparently owned separately by OHPA, Allied Erecting and Dismantling Company, Inc. (Allied Erecting), and Darlington Pipe Company, Inc./ Matteson Equipment (Matteson).

[2] CCPR states that Matteson has indicated a willingness to negotiate with CCPR and that CCPR will seek to negotiate an agreement with Allied Erecting in the near future.

[3] In issuing this notice, the Board is making no ruling on the contractual rights of the parties. Therefore, by invoking the class exemption, CCPR has the right to perform common carrier service to the extent that it has or obtains the property rights to enable it to carry out the service.

[4] Under 49 CFR 1150.32(b), notices of exemption become effective 7 days after being filed. Here, the effective date is calculated from November 23, 1999, when supplemental information was filed by CCPR.

DEPARTMENT OF THE TREASURY

Fiscal Service

Application Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed.

SUMMARY: Effective December 31, 1999, the Department of the Treasury, Financial Management Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch, (202) 874–6765.

SUPPLEMENTARY INFORMATION: The fees imposed and collected, as referred to in 31 CFR 223.22, cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business. These fees are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$4,950.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$2,900.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,750.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$1,235.

Questions concerning this notice should be directed to the Surety Bond Branch, Financial Accounting and Services Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, Telephone (202) 874–6850.

Dated: December 15, 1999.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 99–33257 Filed 12–22–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: The Service Insurance Company, Inc.

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury .

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 3 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35888 to reflect this addition *The Service Insurance Company, Inc.* Business Address: 80 Main Street, West Orange, New Jersey 07052. Phone: (973) 731–7650. Underwriting Limitation b/: $122,000. Surety Licenses c/: NJ. Incorporated In: New Jersey.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 15, 1999.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–33256 Filed 12–22–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA) 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 extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the reasonable value of properties proposed as security for guaranteed or direct home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0045'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–8310 or FAX (202) 275–4884.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 and Form Number: VA Request for Determination of Reasonable Value, VA Form 26–1805.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1805 is used to collect data necessary for VA compliance with the requirements of Title 38, U.S.C. 3710 (b)(4), (5), and (6). These requirements prohibit the VA guaranty or making of any loan unless the suitability of the security property for dwelling purposes is determined, the loan amount does not exceed the reasonable value, and if the loan is for purposes of alteration, repair, or improvements, the work substantially improves the basic livability of the property. The data supplied by persons and firms completing VA Form 26–1805 is used by VA personnel to identify and locate properties for appraisal and to make assignments to appraisers. VA is required to notify potential veteran-purchasers of such properties of the VA-established reasonable value. VA will also use VA Form 26–1843, Certificate of Reasonable Value, (included in the VA Form 1805 Package) as a notice to requesters of the reasonable (appraised) value or an authorized lender will issue a notice of value in connection with the Lender Appraisal Processing Program.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33247 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 extension of a currently approved collection for which approval has expired and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if a veteran has established entitlement to an automobile allowance or adaptive equipment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0067'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Application for Automobile or other Conveyance and Adaptive Equipment, VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C. 3901–3904 authorized assistance in providing an automobile and adaptive equipment for disabled veterans under certain conditions. VA Form 21–4502 is used to gather the necessary information to determine if the veteran has established entitlement to an automobile allowance or adaptive equipment benefits.

Affected Public: Individuals and households.

Estimated Annual Burden: 375.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 1,500.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33248 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0335]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) 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 reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to authorize a veteran to seek a private dentist for dental examination and treatment plan and to authorize payment for such dental services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0335'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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 and Form Number: Dental Record Authorization and Invoice for Outpatient Services, VA Form 10–2570d.

OMB Control Number: 2900–0335.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 10–2570d is used to serve the following multi-purposes: (1) VA authorization to the veteran to seek a private dentist for examination; (2) Fee dentist's record of examination

findings; (3) Dentist's treatment plan and listing of services needed; (4) Listing of dentist's usual and customary fees for specific services involved in treatment plan; (5) VA review, verification and authorization of treatment to the fee dentist; (6) Dentist's certification of services completed; (7) VA's permanent record of treatment provided for veterans and statement of exhaustion of benefits, if indicated; VA's approval of dental services and total fees for payment; and (8) Fiscal approval and certification of payment and amount. Without this information, veterans' dental treatment needs could not be identified, fees for services could not be established, the veterans could not receive treatment, and the fee dentist could not be reimbursed.

Affected Public: Business or other for profit.

Estimated Total Annual Burden: 14,333 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 43,000.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33249 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–NEW.''

SUPPLEMENTARY INFORMATION:

Title: Ecclesiastical Endorsing Organization Verification/Reverification Information, VA Form 10–0379.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: This information is used by VHA's Chaplain Service to determine whether organizations seeking recognition as ecclesiastical endorsing organizations meet VA requirements for such recognition. To assure that individuals employed by VA as chaplains are qualified to provide for constitutional rights of veterans to free exercise of religion, VA requires that each applicant for Chaplaincy submit an official statement (''ecclesiastical endorsement'') from their religion or faith group, certifying that the applicant is in good standing with the faith group and is qualified to perform the full range of ministry required in the VA setting. VA must obtain information from the faith groups which supply these endorsements in order to determine: (1) Who the faith group designates as its endorsing official(s); (2) whether the faith group provides ministry to a lay constituency; and (3) what is the constituency to which persons endorsed by this group may minister.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 23, 1999, at page 51584.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 3 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 11.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33250 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8135 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0004.''

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

OMB Control Number: 2900–0004.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to gather the necessary information to determine the spouse's and children's eligibility, dependency and income, as applicable, for the death benefits sought.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on

September 23, 1999, at pages 51584–51585.

Affected Public: Individuals or households.

Estimated Annual Burden: 79,125 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 63,300.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0004'' in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary:

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33251 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0006]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0006.''

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614.

OMB Control Number: 2900–0006.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–614 is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 1, 1999 at page 47892.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0006'' in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary:

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33252 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0205.''

SUPPLEMENTARY INFORMATION:

Titles and Form Number:

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists.

c. VA Form 10–2850b, Application for Residents.

d. VA Form 10–2850c, Application for Associated Health Occupations.

e. VA Form FL 10–341a, Appraisal of Applicant.

OMB Control Number: 2900–0205

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Forms 10–2850 and 10–2850a through c are applications designed specifically to elicit appropriate information about each candidate's qualifications for employment with VA. VHA officials use the information to evaluate education, professional experience and credentials and to determine suitability and grade level of applications of physicians, dentists, podiatrists, optometrists, nurses and nurse anesthetists, residents, and associated health occupations, and appraisal of applicants. The forms require disclosure of details about all licenses ever held, Drug Enforcement Administration certification, board certification, clinical privileges, revoked certification or registrations, liability insurance history, and involvement in malpractice proceedings. Form Letter 10–341a is a pre employment reference form used to elicit information concerning the prior education and/or performance of the Title 38 applicant.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 20, 1999, at pages 50868–50869.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden: 68,610 hours.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—6,450 hours.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—25,800 hours.

c. VA Form 10–2850b, Application for Residents—13,760 hours.

d. VA Form 10–2850c, Application for Associated Health Occupations—8,600 hours.

e. VA Form FL 10–341a, Appraisal of Applicant—14,000 hours.

Estimated Average Burden Per Respondent: 27 minutes.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—30 minutes.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—30 minutes.

c. VA Form 10–2850b, Application for Residents—30 minutes.

d. VA Form 10–2850c, Application for Associated Health Occupations—30 minutes.

e. VA Form FL 10–341a, Appraisal of Applicant—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 151,220.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists and Optometrists—12,900.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists—51,600.

c. VA Form 10–2850b, Application for Residents—27,520.

d. VA Form 10–2850c, Application for Associated Health Occupations—17,200.

e. VA Form FL 10–341a, Appraisal of Applicant—42,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0205'' in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33253 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 24, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0368.''

SUPPLEMENTARY INFORMATION:

Title: Monthly Statement of Wages Paid to Trainee VA, Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Establishments training veterans on the job or in apprenticeship programs use VA Form 28–1917, to report each veteran's wages during the preceding month. The veteran's case manager reviews the form and uses the information to determine whether the veteran is receiving the appropriate wage increases and to ensure the veteran is receiving the correct rate of subsistence allowance. Without this information, there would be a high risk of large overpayments of VA vocational rehabilitation benefits to this class of trainees.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 20, 1999 at page 50869.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 3,600.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0368'' in any correspondence.

Dated: December 3, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 99–33254 Filed 12–22–99; 8:45 am]

BILLING CODE 8320–01–U

Corrections

Federal Register

Vol. 64, No. 246

Thursday, December 23, 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 AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

Correction

In notice document 99–32731, appearing on page 70687, in the issue of Friday, December 17, 1999, make the following correction:

On page 70687, in the first column, under the heading **SUPPLEMENTARY INFORMATION**, the OMB Number, ''0551-0227'' should read ''0551-0027''.

[FR Doc. C9–32731 Filed 12-22-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of The National Missile Defense Deployment Draft Environmental Impact Statement

Correction

In notice document 99–32878 appearing on page 71123 in the issue of Monday, December 20, 1999, make the following correction:

In the third column, under **COMMENTS**, in the second line ''[insert 30 days from date of publication]'' should read ''January 19, 2000''.

[FR Doc. C9–32878 Filed 12–22–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D-0969]

Guidance for Industry: Consideration of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals (GFI #78); Availability

Correction

FR Doc. 99-32313 which was published at page 70715 in the **Federal Register** of Friday, December 17, 1999, was an uncorrected version of the document published at page 70716 in the same issue. It was inadvertently published.

[FR Doc. C9–32313 Filed 12–22–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
December 23, 1999

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 381 and 424

Irradiation of Meat Food Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 424

[Docket No. 97–076F]

Irradiation of Meat Food Products

AGENCY: Food Safety and Inspection Service

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to permit the use of ionizing radiation for treating refrigerated or frozen, uncooked meat, meat byproducts, and certain other meat food products to reduce levels of foodborne pathogens and to extend shelf-life. FSIS also is revising the regulations governing the irradiation of poultry products so that they will be as consistent as possible with the regulations for the irradiation of meat food products.

EFFECTIVE DATES: February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulation Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1999, the Food Safety and Inspection Service (FSIS) published a proposal (64 FR 9089) to permit the use of ionizing radiation for treating refrigerated or frozen uncooked meat, meat byproducts, and certain other meat food products (hereafter referred to as ''meat food products'' when discussed as a group) to reduce levels of foodborne pathogens and to extend shelf-life. FSIS also proposed to revise the regulations governing the irradiation of poultry products so that they will be as consistent as possible with the regulations for the irradiation of meat food products. FSIS initially provided 60 days for public comment, ending the comment period on April 26, 1999. Because of the great interest in this proposal, FSIS reopened the comment period for 15 days on June 2, 1999 (64 FR 29602). FSIS announced that it would consider all comments received between April 27, 1999 and June 17, 1999. In this document, FSIS makes final the proposed regulations, with some revision in response to comments.

Food Irradiation

Food irradiation is the process of exposing food to high levels of radiant energy. Forms of radiant energy include: microwave and infrared radiation that heat food during cooking; visible light or ultraviolet light used to dry food or kill surface microorganisms; and ionizing radiation, resulting from cobalt-60, cesium-137, x-ray machines, or electron accelerators, that penetrates deeply into food, killing insect pests and microorganisms without raising the temperature of the food significantly. Food is most often irradiated commercially to extend shelf-life, eliminate insect pests, or reduce numbers of pathogenic microorganisms. Food irradiation for these purposes is practiced in many countries, including the United States.

Section 201(s) of the Federal Food, Drug and Cosmetic Act (FFDCA) defines sources of radiation used to treat food as food additives:

> The term ''food additive'' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized * * * to be safe under the conditions of its intended use * * *.

The Food and Drug Administration (FDA) of the Department of Health and Human Services has the primary responsibility for determining whether food additives are safe for particular uses. FDA lists uses of food additives it has concluded are safe in 21 CFR parts 172 through 179.

On August 25, 1994 (59 FR 43848), FDA announced that it had received a petition from Isomedix, Inc., requesting that FDA amend the food additive regulations in 21 CFR part 179 (Irradiation in the Production, Processing and Handling of Food). The petition requested that FDA authorize the safe use of sources of ionizing radiation to:

> control microbial pathogens in raw, fresh-chilled, and frozen intact and comminuted edible tissue of the skeletal muscle and organ meat of domesticated mammalian food sources; with concomitant control of infectious parasites, and, extension of acceptable edible/marketable life of chilled/refrigerated and defrosted meat through the reduction in levels of spoilage microorganisms.

The petition further specified that the proposed foods were to be ''primarily from bovine, ovine, porcine, and equine sources.'' Also, Isomedix requested that a maximum dose of 4.5 kiloGray (kGy) be established for the irradiation of refrigerated meat, and that a maximum dose of 7.0 kGy be established for the irradiation of frozen meat.

After an evaluation of available data, FDA concluded that there was a reasonable certainty of no harm from the irradiation of meat food products under the conditions requested in the petition and that irradiation would not adversely affect the nutritional adequacy of these products. On December 3, 1997, FDA published a final rule (FDA Docket No. 94F–0289; 62 FR 64107) granting the Isomedix petition. In that publication, FDA expanded the list of products (21 CFR 179.26(b)) for which ionizing irradiation may be safely used to include: refrigerated and frozen uncooked meat, as defined by FSIS in 9 CFR 301.2(rr); meat byproducts (e.g., edible organs, such as the liver and the kidneys), as defined by FSIS in 9 CFR 301.2(tt); and certain meat food products (e.g., ground beef and hamburger) within the meaning of 9 CFR 301.2(uu), with or without nonfluid seasoning, that are otherwise composed solely of intact or ground meat or meat byproducts, or of both.

The FSIS Proposal

As stated above, on February 24, 1999, FSIS proposed regulations governing the irradiation of refrigerated and frozen, uncooked meat food products and also proposed to revise the poultry irradiation regulations for consistency. Specifically, FSIS proposed the following:

Dosage

FSIS proposed that the defined meat food products could be treated with ionizing irradiation at dosages of up to 4.5 kiloGrays (kGy), if refrigerated, and 7 kGy, if frozen. FSIS proposed no minimum dosage.

Process Control

FSIS proposed to require that official establishments irradiate meat food products for food uses only in accordance with a Hazard Analysis and Critical Control Point (HACCP) system or, if not yet operating under HACCP requirements, in accordance with a process schedule validated by a process authority.

Dosimetry

FSIS proposed to require that official establishments that irradiate meat food products have in place a dosimetry system to measure the absorbed dose of radiation. The dosimetry system would

ensure that each lot of treated product has received the dose defined in the process schedule or HACCP plan. The proposed requirements mandated that each dosimetry system included:

- Procedures for determining the absorbed radiation dose value from the dosimeter;
- Procedures for calibrating dosimeters and other means of measurement (e.g., time clocks and weight scales);
- Procedures for ensuring specific absorbed dosages of irradiation by product unit and product lot; and
- Procedures for verifying the integrity of the radiation source and the processing procedure.

Documentation

FSIS proposed to require official establishments that irradiate meat food products to have on file the following documents that relate to the establishment's compliance with other Federal requirements concerning irradiation:

- Documentation that an irradiation facility that possesses gamma radiation sources is licensed with the Nuclear Regulatory Commission (NRC) or the appropriate State government acting under authority granted by the NRC, and that a worker safety program addressing OSHA regulations is in place;
- Documentation that an irradiation facility that uses machine radiation sources is registered with the appropriate State government, if applicable;
- Citations or other documents that relate to the instances in which the establishment was found not to comply with Federal or State agency requirements for irradiation facilities;
- Certification by the operator that the irradiation facility's personnel are operating under the supervision of a person who has successfully completed a course of instruction for operators of food irradiation facilities;
- Certification by the operator that the key irradiation personnel have been trained in food technology, irradiation processing, and radiation health and safety; and
- Guarantees from the suppliers of all food-contact packaging materials that may be subject to irradiation, that those materials comply with the FFDCA (21 U.S.C. 301 *et seq.*).

Labeling

FSIS proposed that labeling for packaged meat food products irradiated in their entirety bear the radura logo along with a statement such as ''Treated with radiation'' or ''Treated by irradiation.'' FSIS proposed that the logo be placed prominently and conspicuously in conjunction with the required statement and that the statement appear as a qualifier contiguous to the product name. Also, FSIS proposed to require that inclusion of an irradiated meat food product ingredient in any multi-ingredient product be reflected in the ingredient statement on the finished product labeling. Finally, FSIS stated that it would allow optional labeling statements about the purpose for radiation processing to be included on the product label in addition to the above stated requirements. Statements indicating a specific reduction in microbial pathogens would have to be substantiated by processing documentation.

FSIS proposed to require that for unpackaged meat food products irradiated in their entirety, the required logo and a statement must be prominently and conspicuously displayed to purchasers either through labeling on a bulk container or some other appropriate device.

Poultry

FSIS also proposed to revise the existing regulations governing the irradiation of poultry products to make them as consistent as possible with the regulations proposed for meat food products. FSIS proposed to eliminate the regulations requiring that establishments irradiate poultry products only in accordance with Partial Quality Control programs and to instead require that poultry establishments, like meat establishments, irradiate product in accordance with HACCP plans or process schedules. FSIS also proposed to eliminate the provision that stated that only packaged poultry products may be treated with irradiation. FSIS had adopted this requirement to ensure that the antimicrobial effects of irradiation would be maintained throughout the processing and distribution of the poultry products. However, because under the proposal all poultry establishments would be required to develop and implement HACCP plans, this prescriptive packaging requirement would no longer be necessary.

FSIS could not, however, propose to rescind the FDA requirement in 21 CFR 179.26(b)(6) that if packaged poultry product is irradiated, that packaging be air permeable: ''* * * any packaging used shall not exclude oxygen.'' FSIS originally requested that FDA establish this requirement for control of the pathogen *C. botulinum.* In light of the new HACCP requirements, this prescriptive requirement is no longer necessary. Under HACCP, poultry establishments have both the responsibility and the flexibility to determine the best means for controlling any hazards resulting from the irradiation of product in anaerobic packaging. FSIS submitted a petition to FDA on August 19, 1999, to eliminate this packaging requirement.

FSIS proposed to eliminate the minimum dose requirement for irradiated poultry products contained in § 381.147(f)(4). FSIS adopted this requirement to ensure that the irradiation of poultry product, which may occur only after the product is packaged for retail sale, does in fact achieve a specific reduction in pathogens. However, FDA and FSIS have concluded that different doses of ionizing radiation can be appropriate, in different circumstances, for achieving different technical effects and, therefore, that to continue to require a minimum dose of irradiation for poultry products would limit the flexibility needed for the successful implementation of HACCP. FSIS considers irradiation to be just one of many treatments that could be used within a HACCP system to achieve a reduction in pathogens.

FSIS could not propose to revise the FDA limits on the maximum absorbed radiation dose for poultry products. However, it is possible that poultry products could be safely treated with higher doses of radiation than those that are currently allowed. Higher doses could achieve greater reductions in pathogens. In the August 19, 1999, petition mentioned above, FSIS asked FDA to reconsider and raise the limit on the maximum absorbed dose of radiation in poultry products.

FSIS proposed to eliminate two of the labeling requirements in § 381.135(a): the requirement that the radura logo on irradiated poultry product labels be colored green and the requirement that ''letters used for the qualifying statement shall be no less than one-third the size of the largest letter in the product name.'' The elimination of these requirements will make FSIS requirements consistent with FDA requirements and provide more flexibility for labeling irradiated poultry products, without affecting the information content of such labels.

Because FSIS proposed to allow unpackaged poultry product to be irradiated, it also proposed labeling requirements for unpackaged, irradiated poultry product sold at the retail level (proposed § 318.135(b)). The proposed labeling requirements are consistent with those proposed for unpackaged,

irradiated meat food products and with FDA labeling requirements for irradiated products sold in bulk (21 CFR 179.26(c)(2)).

Also, because FSIS proposed to allow irradiated poultry products to be used as ingredients in further processed products, FSIS also proposed to require that the ingredient statement on such products reflect the inclusion of irradiated poultry products (§ 381.135(b)). For example, under the proposal, an ingredient statement for a sausage product containing irradiated poultry would be required to include an entry such as, ''irradiated poultry'' or ''poultry, treated by irradiation.''

Comments and Responses

By the close of the comment period, FSIS received about 1,100 comments from consumers, consumer advocacy organizations, academia, trade and professional associations, scientific organizations, the meat and poultry products industries, the irradiation equipment industry, industry consultants, and State governments. Generally, industry, academia, and professional organizations supported the proposal. These commenters expressed concerns about the proposed labeling requirements, which they believe are too prescriptive, about the length of time it took to publish the proposal, and made recommendations for broadening the scope of the proposal. Consumer advocacy groups, for the most part, expressed qualified support for the proposal. All expressed concern that establishments will use irradiation to treat product produced under insanitary conditions and all wanted FSIS to require explicit and conspicuous product labeling. Many of the individual consumers and a few organizations opposed the irradiation of meat food products altogether, but demanded explicit and conspicuous product labeling in the event FSIS allowed it. Summaries of issues raised by commenters and Agency responses follow.

Safety of Irradiation

Comment: Numerous consumers questioned the research regarding the safety of irradiated food. Some demanded more research before irradiation is allowed; some opposed irradiation altogether. Several opposed irradiation because they believe it will significantly degrade the nutritional quality of treated food.

A few commenters opposed irradiation because, they asserted, its use would increase the risk of accidents involving radioactive material. Some raised concerns about worker safety and environmental issues related to irradiation. One consumer advocacy group argued that the rule's potential impact on the environment must be reviewed under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*). Finally, a few consumers requested that parents be asked to give their permission before their children are served irradiated food in the school lunch program.

Response: The safety and efficacy of food irradiation, as demonstrated by numerous experiments and studies, is widely accepted by Federal regulatory agencies and national and international food and public health organizations. Before listing the uses of sources of ionizing radiation permitted on meat food products, as well as on other foods, FDA examined numerous studies on the chemical effects of radiation, the impact of radiation on nutrient content of foods, potential toxicity concerns, and effects on microorganisms in or on irradiated products. FDA concluded that irradiation is safe in reducing disease-causing microbes in or on meat food products and that it does not compromise the nutritional quality of treated products. Furthermore, the World Health Organization, the Food and Agriculture Organization, the American Medical Association, and the American Dietetic Association endorse food irradiation.

FSIS has examined the potential impacts of food irradiation in a review of risk analysis literature made available with the proposed rule. This literature review is available from the FSIS Docket Clerk's Office (see **ADDRESSES** above) and from the FSIS Internet world wide web page at http://www.fsis.usda.gov/OA/topics/irrad-risk.htm.

From this review of recent studies, FSIS concluded that the proposed regulations permitting the irradiation of meat food products and the revision of the regulations governing the irradiation of poultry products would pose no significant risk to worker or transportation safety. FSIS concluded that oversight by other Federal and State agencies will ensure the safety of food irradiation facilities:

> In summary, proper design and operating procedures of commercial irradiators have been shown to operate without significant radiation risk to workers or the public. NRC [Nuclear Regulatory Commission] has set stringent environmental protection requirements for any facilities that use radionuclide sources (10 CFR Parts 20, 30, 51, and 71). There are special carrier requirements for transport of hazardous materials (such as the radionuclides used at the facility) set by the DOT [Department of Transportation]. Any extraneous radiation from radionuclides would be contained in plants by shielding required by the NRC and the Bureau of Radiological Health at FDA. The risk of radiation exposure to workers is very low with adherence to the required NRC, OSHA, and other safety requirements. And finally, FSIS ensures that the risks from food irradiation are insignificant by its requirement that all irradiation facilities adhere to the safety regulations of the NRC, DOT, and FDA.

Furthermore, FSIS employees will receive training from FSIS in radiation health and safety and will be required to wear dosimetry devices. The Agricultural Research Service (ARS) will issue the devices as part of their radiological safety program for all USDA employees. Radiation exposure records for FSIS employees will be maintained and monitored by ARS, and kept indefinitely.

Concerning NEPA, USDA has determined that FSIS programs and activities have been found to have no individual or cumulative effect on the human environment. Accordingly FSIS is categorically excluded from the preparation of an Environmental Assessment (EA) or Environmental Impact Statement unless the Administrator determines that an action may have a significant environmental effect (7 CFR 1b.4). The irradiation of various food products has been permitted and safely conducted for over 30 years. The irradiation of poultry products has been permitted and safely conducted since 1992. Therefore, the Administrator has not determined that circumstances dictate the need for preparation of an EA for the voluntary use of irradiation in meat food products.

FSIS works closely with the other agencies within USDA responsible for the school lunch program. Should USDA or individual school districts choose to purchase irradiated products for the school lunch program, FSIS would support that decision. Irradiation can significantly reduce the levels of pathogenic microorganisms in treated meat food and poultry products. Therefore, irradiated food products would be ideal for the school lunch program, which serves children, a population particularly vulnerable to foodborne illness. FSIS sees no need for any special notification of the parents of children participating in a school lunch program that serves irradiated meat food or poultry products because FSIS agrees with FDA's finding that food irradiation poses no toxicological or microbiological risks for consumers and does not affect the nutritional adequacy of treated product.

Efficacy of Irradiation

Comment: Several commenters from industry and academia requested that FSIS either maintain a minimum absorbed dose requirement or, if there is to be no required minimum dose, require establishments that irradiate product to achieve a minimum level of pathogen reduction (one irradiator suggested 1-log^{10} reduction of the pathogen of concern in a product). One commenter argued that unscrupulous processors could irradiate product with a minimal dosage, achieving an insignificant antimicrobial effect, merely to accrue the benefit of the label and extended product shelf-life. This commenter also maintained that consumers would be misled by product labeled as irradiated, but treated with only a negligible dose. Another industry commenter maintained that although FSIS should not mandate irradiation, FSIS should mandate that all official establishments achieve the level of pathogen reduction resulting from irradiation, regardless of the antimicrobial intervention they use.

Several consumer advocacy organizations recommended that FSIS maintain the minimum dose requirement for treated poultry and establish a minimum dose for meat food products so as to ensure specific reductions in pathogens.

Response: FSIS will allow meat and poultry establishments to determine what level of irradiation (subject to a maximum level) and what consequent reduction of pathogens is appropriate within their HACCP systems. Depending on the processing environment, the type of meat food or poultry product, and the type of radiation source employed, varying dosages of radiation will be appropriate. A required minimum dosage would undercut the flexibility needed for the successful implementation of HACCP.

Furthermore, FSIS finds that it is unnecessary to establish a minimum level of pathogen reduction to be achieved by irradiation or by any other specific antimicrobial intervention. Establishments must determine what level of pathogen reduction is necessary from a particular intervention based on the results of the hazard analysis they conduct when developing their HACCP plan. Establishments are required to meet specific pathogen reduction performance standards for numerous meat food and poultry products and FSIS plans to propose more standards to eventually cover every processing category. FSIS will ensure that safe meat food and poultry products are produced through compliance with these standards, but need not hinder processing innovation by mandating the use of specific antimicrobial interventions, or specific results from specific interventions.

Comment: Several consumer advocacy organizations argued that FSIS should require establishments that irradiate product, and especially establishments not yet under HACCP, to conduct regular micro-testing prior to irradiation. One organization requested that FSIS require end-product microbial testing of irradiated product. This testing would discourage establishments from using irradiation to treat ''dirty'' product or operate under insanitary conditions. Another suggested that FSIS clarify in the final rule that irradiation would in no way satisfy the ''zero-fecal'' policy. Finally, another organization argued that FSIS should allow meat food products to be irradiated only after final packaging, to prevent any recontamination of the treated product.

Response: Irradiation is just one of the many antimicrobial interventions available to establishments. As with other interventions, its use in no way exempts establishments from meeting statutory sanitation requirements. Moreover, FSIS emphasizes that establishments that employ irradiation still must meet the zero-tolerance requirements for visible fecal matter on meat or poultry carcasses.

FSIS will neither require special microbial testing nor conduct such testing in establishments that irradiate product (although FSIS may conduct microbial testing to verify pathogen reduction claims or for enforcement purposes). Compliance with the HACCP requirements, along with other FSIS requirements governing sanitation, will preclude the irradiation of product produced under insanitary conditions, as well as the adulteration of product after an irradiation treatment.

Finally, in order to promote processing flexibility and innovation that will lead to improvements in food safety, FSIS did not propose to require that meat food products be irradiated only after final packaging. Using a HACCP system, an establishment must control the conditions under which product is held from initial processing through irradiation and packaging to ensure and preserve the intended antimicrobial effects of irradiation. By law, establishments must produce unadulterated meat food and poultry products regardless of whether or when they irradiate within their processing systems.

Comment: Numerous commenters opposed irradiation of meat food and poultry products because they believe irradiation will allow establishments to clean up insanitary meat food and poultry products resulting from ''factory farming'' (concentrated animal production methods), which they believe is unethical and inhumane. They argue, therefore, that irradiation would indirectly promote the expansion of ''factory farming.''

Response: As stated above, the use of irradiation in no way exempts establishments from meeting statutory and regulatory sanitation requirements. Establishments are not permitted to produce meat food or poultry products under insanitary conditions, regardless of whether they irradiate. Furthermore, FSIS prohibits the inhumane handling and slaughter of livestock. Under the Humane Slaughter Act (7 U.S.C. 1901–1906), FSIS personnel may suspend inspection of an official establishment if the Agency determines that the method by which livestock is slaughtered is inhumane, as defined by the Humane Slaughter Act.

As part of its ''farm-to-table'' food safety strategy, FSIS is interested in effects of concentrated animal production methods on food safety, as well as humane handling and slaughter. Notably, no data was submitted that supported comments concerning concentrated animal production. FSIS would welcome and thoroughly review any such data.

Comment: One consumer advocate organization requested that FSIS provide information on how it intends to redeploy inspection program employees to irradiation facilities.

Response: As stated in the proposal, facilities that irradiate meat food and poultry products are considered by FSIS to be official establishments. As such, they are subject to inspection as provided for by the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act (PPIA). FSIS will deploy inspection program employees to irradiation facilities based on a number of factors, such as inspection force workload and the type of activities conducted at the individual facilities (e.g., product irradiation only, irradiation and additional processing, slaughter and irradiation) Assignment of FSIS program personnel to irradiation facilities will not differ from assignment to other types of official establishments.

Irradiation and HACCP

Comment: A few establishments and trade associations argued that FSIS should not mandate a critical control point (CCP) for irradiation, as they believed that the preamble implied that FSIS will mandate a CCP for irradiation.

Response: FSIS did not mandate any specific CCP or critical limit in the proposed rule language, although the Agency did give some examples. Because most, if not all, establishments will irradiate product specifically to reduce microbial pathogens (identified hazards), they would include irradiation as a CCP in their HACCP plans. A CCP is a point, step, or procedure at which control can be applied so that a food safety hazard can be prevented, eliminated, or reduced to an acceptable level. Dosage, ambient temperature, oxygen levels or other factors that affect the antimicrobial efficacy of irradiation will likely be monitored to determine if the critical limits for an irradiation CCP are being met.

In accordance with the FDA regulation on the use of irradiation, establishments could irradiate product solely to extend shelf-life. In its proposal to provide for the use of irradiation on meat food products, FSIS stated that it therefore might be possible for an establishment to irradiate product solely to extend shelf-life and not account for effects of the treatment on pathogens in its HACCP plan:

> Were an establishment to irradiate meat food products solely for the purpose of extending shelf-life, it is conceivable, although highly unlikely, that the establishment could disregard any amount of pathogen reduction achieved by the irradiation and therefore not list irradiation as a CCP in its HACCP plan. However, such an establishment still would have to meet the other requirements for irradiation facilities promulgated by FSIS and other Federal and State agencies, such as requirements for dosimetry and documentation. FSIS does not anticipate that any establishment will irradiate product solely to extend shelf-life and not account for the antimicrobial effects of irradiation in its HACCP plan.

(64 FR 9091–9092)

FSIS still maintains this position, but notes that there is a safety factor inherent in product shelf-life determination. Pathogenic and non-pathogenic microorganisms, including spoilage organisms, compete for nutrients in food products. Non-pathogenic and spoilage organisms generally are more plentiful than pathogenic organisms. Increasing the shelf-life of a product involves reducing the levels of the spoilage organisms. Although most antimicrobial treatments, including irradiation, reduce microbial levels fairly proportionately, an establishment must ensure that its treatment does not give a competitive advantage to pathogenic organisms, allowing for their disparate growth.

More specifically, irradiation can affect the levels and projected growth of microbial pathogens, which would be identified by establishments as hazards. Establishments should take into account the levels and projected growth of microbial pathogens in meat food and poultry products when determining product shelf-life. Therefore, in its HACCP plan, an establishment would need to account for the reduction of pathogens (and possibly the reduction of competing microorganisms) resulting from irradiation conducted solely to extend product shelf-life. Nonetheless, FSIS is not mandating the specific CCP or critical limit to be employed.

Comment: Numerous industry groups and establishments argued that facilities that only irradiate packaged product should not be considered official establishments, since, in their view, such establishments would not be processing product (traditionally considered to be grinding, salting, etc.). A few of these commenters noted that FSIS does not currently consider certain warehouses that freeze packaged meat food and poultry products to destroy parasites to be official establishments. One commenter suggested that third party irradiators be required to implement HACCP anyway; several suggested that irradiation conducted at a remote facility be considered under the HACCP plan of the establishment that provides the meat food or poultry products for irradiation.

Response: FSIS disagrees and will consider any facility that irradiates meat food or poultry products to be an official establishment. Sources of radiation used to treat food are defined as food additives under § 201(s) of the FFDCA. FSIS believes that the act of using any food additive constitutes processing, and the processing of meat food and poultry products may only take place in official establishments subject to FSIS inspection and regulation.

In regard to the freezing of meat food and poultry products to kill internal parasites, it is true that FSIS has allowed certain warehouses to freeze beef and pork for this purpose, without being designated as official establishments. FSIS is now reviewing this policy decision to determine whether this freezing constitutes processing and will designate these facilities as official establishments if it concludes that it does.

Because facilities that irradiate product will be designated as official establishments, FSIS will not permit such establishments to operate under other establishments' HACCP plans. Each official establishment must develop and implement its own.

Comment: Several commenters contended that the validation requirement for process schedules is inadequate, since irradiation is so complicated and relatively new to the meat food product industry. They suggested FSIS require that radiation specialists review process schedules and HACCP plans. One consumer advocacy organization suggested that FSIS should validate HACCP plans that include irradiation.

Response: FSIS disagrees. Food irradiation has been practiced in the United States for over 30 years. Further, the irradiation of poultry products has been permitted and safely conducted since 1992. Industry possesses the expertise and the resources to safely and effectively irradiate meat food products.

FSIS is requiring certain employees of official establishments conducting irradiation to be trained in various aspects of food irradiation and radiation safety (new § 424.22(c)(3)(v) and (vi)); FSIS already requires this training for personnel at establishments that irradiate poultry.

In regard to the proposed requirements for process schedule validation, because all official meat and poultry establishments will be operating under the HACCP requirements by the time the regulations are in effect, FSIS has not carried forward the proposed process schedule requirements (meant for establishments not yet operating under HACCP) into this final rule. FSIS does not validate establishment HACCP plans, regardless of the processing systems employed. In accordance with § 417.4(a) of the regulations, it is the responsibility of an establishment to validate its HACCP plan's adequacy in controlling the identified food safety hazards. FSIS does review HACCP plans for conformance with the HACCP regulations. Further, FSIS and establishments are responsible for verifying that HACCP plans are adequate and working on a day-to-day basis. Establishments must monitor and verify the performance of the controls in their HACCP plans and maintain records of this monitoring and verification. FSIS evaluates the HACCP plan's adequacy and successful operation as part of the inspection process.

Scope of Meat Food and Poultry Products That May Be Irradiated

Comment: Several commenters requested that FSIS specifically provide for irradiation as an acceptable treatment for raw, non-intact beef products contaminated with *Escherichia coli* O157:H7.

Response: On January 19, 1999, FSIS published a notice in the **Federal Register** (54 FR 2803; ''Beef Products Contaminated With Escherichia Coli

O157:H7'') clarifying that non-intact beef products, as well as intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption, that are contaminated with *E. coli* O157:H7 are adulterated under the Federal Meat Inspection Act unless the products are further processed to destroy this pathogen. Also in that notice, FSIS stated that it was considering irradiation as an option for effectively eliminating *E. coli* O157:H7 from contaminated beef products, since the only type of effective processing available at the time of the notice was cooking. Now, under the regulations in this final rule, establishments may use irradiation as a means of eliminating *E. coli* O157:H7 from contaminated beef products.

An establishment that irradiates beef product known to be contaminated with *E. coli* O157:H7 and intended for distribution as a non-intact product must have controls in place to ensure that the pathogen is eliminated from the product prior to its distribution for consumption. The establishment also must document its actions to eliminate *E. coli* O157:H7 from the product in accordance with applicable regulations. Establishments should refer to the above mentioned notice, as well as guidance available from the FSIS Internet site (www.fsis.usda.gov), for further clarification on the Agency's policy in regard to the treatment of beef products containing *E. coli* O157:H7.

Comment: Consumer and industry groups asked FSIS to broaden the scope of the final rule to provide for the irradiation of processed products, especially ready-to-eat products. Many commenters believed that the FDA finding in regard to the Isomedix petition allows FSIS to do this without petitioning FDA again. Also, several commenters criticized FSIS and FDA for failing to cooperate more closely in regard to approving the irradiation for various products. They suggested that:

- FSIS should act quickly to petition FDA to make the regulations for irradiating poultry consistent with those for meat and to allow for the irradiation of hot-boned meat.
- FSIS and FDA should expedite the approval of new packaging materials for product irradiated while packaged.
- FSIS should make final and implement Docket No. 88–026P (''Substances Authorized for Use in the Preparation of Meat and Poultry Products''; 60 FR 67459) so as to end the need for duplicative rulemaking by FDA and FSIS when approving food additives, including the use of sources of ionizing radiation.

Response: FDA's authority to regulate the uses of ionizing radiation on food is clear under § 409 of the FFDCA. FDA has approved the use of sources of ionizing radiation only on the uncooked meat food products described above. Until FDA approves the use of ionizing radiation on other meat food products, including processed or cooked products, FSIS will not provide for the irradiation of such products.

In August 23, 1999, a consortium of organizations, including the National Food Processor's Association (NFPA), petitioned FDA to allow for the use of approved sources of ionizing radiation on processed meat food and poultry products. Because the irradiation treatment is intended to significantly reduce the levels of pathogens in food, FDA is reviewing this petition in an expedited clearance process. FSIS will cooperate with FDA in reviewing this petition. Further, On August 19, 1999, FSIS petitioned FDA to clarify that sources of ionizing radiation may be used on ''hot-boned'' (unrefrigerated) meat food products and to revise the dosage and packaging restrictions on the irradiation of poultry products for consistency. FDA also is reviewing these petitions in an expedited clearance process.

FDA is also working to expedite the process for reviewing packaging materials to be used during food product irradiation and FSIS will cooperate with FDA in reviews of such packaging for poultry and meat food products. Under its new Premarket Notification Program, FDA will continue to review all food contact substances, including food packaging materials intended for use during irradiation, but will no longer necessarily list those permitted in the Code of Federal Regulations.

In regard to the approval of food additives in meat food and poultry products, elsewhere in this issue of the **Federal Register**, FSIS has published a final rule (FSIS Docket No. 88–026F; ''Substances Authorized for Use in the Preparation of Meat and Poultry Products'') that ends duplicative approval by both FDA and FSIS. Requests to approve the use of food additives in or on meat food and poultry products not permitted now must be sent to FDA. Although FDA will receive and review such petitions, FDA also intends to amend its regulations to provide for FSIS review of petitions for uses of food additives in or on meat food or poultry products. These actions will eliminate the need for separate FSIS rulemakings. FSIS will limit substance-specific rulemakings to those necessary to establish prohibitions or limitations on the use of substances in meat food or poultry products that are necessary to protect public health or to achieve other consumer protection benefits, such as to prevent product misbranding.

In this final rule, FSIS is consolidating its regulations governing irradiation into a single set of generic regulations under new § 424.22(c), applicable to the irradiation of all types of meat food and poultry products (FSIS proposed separate, but identical sets of regulations for meat and poultry). Therefore, in the future, when FDA lists new uses of ionizing radiation on various types of meat food and poultry products, unless FSIS needs to establish a prohibition or restriction, establishments may immediately take advantage of the newly approved usage of irradiation without waiting for additional FSIS rulemaking.

Consumer Acceptance of Irradiation

Comment: Numerous industry groups argued that FSIS should actively promote irradiation and implement a consumer education program regarding its benefits.

Response: Recognizing the diversity of meat food and poultry products and processing environments, FSIS does not mandate or actively promote any single intervention or antimicrobial technology. The meat food and poultry product industries, as well as consumer and public health organizations, have the primary responsibility for promoting irradiation and educating the public about the benefits and limitations of irradiation. However, FSIS recognizes the potential of irradiation to safely and effectively reduce foodborne pathogens in meat food and poultry products and therefore is eager to provide for its use as one of the many antimicrobial treatments that may be used within a HACCP system.

Labeling

Comment: Numerous commenters requested that FSIS make its labeling requirements for irradiated meat food and poultry products identical with FDA's requirements. Several commenters noted that the proposed labeling requirements regarding placement of the statement and radura, as well as the proposed disclosure requirements for irradiated meat food or poultry ingredients contained in multi-ingredient products, are inconsistent with FDA labeling requirements and with the Food and Drug Administration Modernization Act (FDAMA) of 1997 (Pub. L. 105–115). Many commenters argued that the proposed requirements are unworkable and expensive and

therefore will prevent the wide scale adoption of irradiation. A few trade associations maintained that establishments producing multi-ingredient meat food and poultry products will have to maintain two sets of labeling, since they will not always be using irradiated meat food or poultry products as ingredients.

Commenters suggested numerous and varied revisions to the proposed labeling requirements:

- One trade association requested that FSIS require the radura but not the statement on product irradiated in its entirety;
- An irradiator suggested that FSIS not require the irradiation statement to be contiguous to the product name and argued that the radura should be voluntary;
- A few commenters requested that FSIS require ''irradiated'' to be part of the product name. One commenter suggested that FSIS should then eliminate other labeling requirements, while another suggested this be an additional requirement;
- Several commenters asked that FSIS require the radura with a qualified statement indicating the beneficial effects of irradiation;
- One commenter requested that FSIS allow labeling that indicates the source of radiation, i.e., gamma or machine source;
- One trade association suggested that multi-ingredient products containing irradiated meat food or poultry product ingredients be labeled with the radura and statement such as ''contains beef products treated with irradiation;''
- One company maintained that the proposed labeling requirements for multi-ingredient products are inconsistent with FDA requirements in 21 CFR 101.100(a)(3)(i), which exempt from labeling disclosure ''Substances that have no technical or functional effect but are present in a food by reason of having been incorporated into the food as an ingredient in another food, in which the substance did have a functional or technical effect.''
- An irradiator suggested that there be no required disclosure in multi-ingredient products unless the irradiated component makes up more than 50% of the total product;
- One scientific organization argued that no irradiation labeling should appear on product irradiated before its final packaging. They contended that the treated product would not maintain the antimicrobial effects of irradiation and therefore, that any labeling implying otherwise would be misleading;
- Numerous individual consumers and consumer advocacy organizations commented in favor of explicit and conspicuous labeling disclosing that product has been irradiated or contains an irradiated ingredient. Two organizations submitted poll results suggesting that a majority of consumers are in favor of explicit and conspicuous disclosure of irradiation. Many of these commenters generally supported the labeling requirements FSIS proposed and opposed efforts at consistency with FDA regulations and the requirements of the FDAMA.
- Consumer advocacy groups and numerous consumers argued that, in the interest of the visually impaired, FSIS should not rescind the existing letter size requirements for the irradiation statement on treated poultry and should apply this same requirement to irradiated meat food products.
- One consumer advocacy group argued that multi-ingredient products with an irradiated poultry or meat food product ingredient making up more than 50% of the total weight should be labeled with the irradiation statement, as well as disclosure in the ingredient statement.

Response: FSIS proposed to require that the radura be contiguous to the irradiation statement and the statement to be contiguous to the name. In § 317.2(c)(1) of the regulations, FSIS requires that product names be on the principal display panel. Therefore, under the proposed regulations the statement and the radura would be required to be on the principal display panel. FDA, however, in response to the FDAMA, recently amended its regulations to clarify that the statement does not have to be any more prominent than the ingredients statement; that is, the statement and the radura can appear somewhere other than the principal display panel.

In response to comments and as part of an effort to make FSIS labeling requirements more consistent with those of FDA, FSIS will not require, as proposed, that the irradiation statement and the radura be any more prominent than the ingredients statement on the labeling of irradiated meat food and poultry products. Thus, the statement and the radura may appear somewhere other than on the principal display panel. The requirement in § 317.2(b) that any statement must be placed and in such terms so as to ''render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use'' will still apply to the irradiation statement, however. This requirement prohibits labeling of irradiated product in a manner that would intentionally mislead consumers.

FSIS disagrees with the comment that it should have letter size requirements for irradiation disclosure statements in the interest of the visually impaired. FSIS is working with FDA and other agencies to make food labeling regulations consistent. Maintaining the existing or proposing new letter size requirements solely for irradiated meat food and poultry products would counter these efforts. However, FSIS will continue to examine methods for improving the communication of food safety and other relevant information to all consumers.

Also in response to public comment, FSIS will allow the word ''irradiated'' to be part of the name of irradiated meat food or poultry product. FSIS will not require the irradiation statement on the labeling of product that has the word ''irradiated'' as part of its name. Having ''irradiated'' in a product name will be as meaningful to consumers as labeling irradiated product with the statement.

Although FDA does not exempt irradiated product from being labeled with the statement when ''irradiated'' is included in the product name, it is considering this issue as part of its ongoing reexamination of labeling requirements for irradiated foods. FDA recently solicited comment on possible revisions to the labeling requirements for irradiated food in an advance notice of proposed rulemaking (''Irradiation in the Production, Processing, and Handling of Food''; February 17, 1999; 64 FR 7834). During the comment period on for this notice, FSIS informed FDA of this revision to the labeling requirements for irradiated meat food and poultry products. If FDA ultimately does not adopt this labeling approach, FSIS will reassess its labeling requirements for irradiated products to determine how to best improve consistency between the requirements of the two agencies.

FSIS will allow labeling statements and claims regarding the beneficial effects of irradiation, provided they are truthful and not misleading. FSIS already has approved such claims for the labeling of irradiated poultry and FDA allows for such claims on the labeling of other irradiated foods. As proposed, any claims must be substantiated by processing documentation. The specificity and complexity of the documentation required will vary and depend on the specificity of the claim. For example, a general labeling claim, such as a statement that product was irradiated ''to reduce pathogens such as *Salmonella,*'' could be easily

substantiated by the establishment's HACCP plan and monitoring records. *Salmonella* and other microbial pathogens would need to be identified as a hazard in the establishment's HACCP plan and plan validation and monitoring records would demonstrate the claimed reduction. If an establishment wished to claim that a particular pathogen had been eliminated from the product as a result of irradiation, more specific documentation substantiating this would be required. This type of claim is discussed further below in the response to comments concerning the claimed elimination of *E. coli* O157:H7 from an irradiated product.

FSIS will allow labeling statements disclosing the specific source of radiation (gamma or machine source). FDA already allows such statements on irradiated food (e.g. ''Treated by electron beam irradiation'').

FSIS is making final the proposed requirement that inclusion of an irradiated meat food product ingredient in any multi-ingredient product be reflected in the ingredient statement on the finished product labeling. The FMIA and PPIA, like the FFDCA, require that food labeling not be false or misleading. In determining whether labeling is false or misleading under these statutes, FSIS must consider not only representations made or suggested by elements of the label, but also the failure to reveal material facts in light of such representations.

FSIS views the irradiation of meat and poultry products as a ''material fact'' that must be disclosed in product labeling, even if the irradiated meat and poultry products are used as ingredients in multi-ingredient products. Under this final rule, establishments may irradiate meat food or poultry products only to control foodborne pathogens or to extend product shelf-life. In FSIS's view, effects on pathogen levels or product shelf-life, whether achieved in single-ingredient or multi-ingredient meat or poultry products, are material facts that would not be evident to consumers in the absence of labeling. Moreover, some, and probably much, of the antimicrobial effect and extension of shelf-life achieved through irradiation is likely to persist in irradiated meat and poultry used as ingredients in multi-ingredient products, especially considering that FSIS anticipates that products in which irradiated meat or poultry are likely to be used as ingredients are also likely to contain a significant amount of these ingredients.

Thus, FSIS concludes that irradiation of a meat or poultry ingredient in a multi-ingredient product must be disclosed. FSIS will, however, continue to monitor how irradiation is used. As new information based on experience in the marketplace becomes available, and should FDA approve other uses of irradiation for meat and poultry products, FSIS may revisit whether irradiation of ingredients for those uses is a material fact that requires disclosure.

FSIS disagrees with the comment that disclosure of the irradiated ingredient will mislead consumers about the product's safety because, according to the commenter, multi-ingredient products with irradiated meat or poultry ingredients would be no different microbiologically than those without. FSIS acknowledges that the antimicrobial effects of irradiation will be maintained at varying levels in a multi-ingredient meat food or poultry product, depending on the type of product, how it is processed, whether it is combined with other non-irradiated ingredients, or if specific microorganisms are reintroduced. However, some antimicrobial effect from the irradiation would be maintained in the irradiated meat food or poultry product ingredient and that would not be apparent to consumers without labeling.

FSIS disagrees with the comment that the this disclosure requirement is inconsistent with FDA regulations in 21 CFR 101.100(a)(3)(i), which exempt from labeling disclosure ''Substances that have no technical or functional effect but are present in a food by reason of having been incorporated into the food as an ingredient in another food, in which the substance did have a functional or technical effect.'' FDA applies this requirement only to food ingredients. FDA consider sources of radiation to be additives, but not ingredients.

In regard to the possibility of requiring this disclosure on the basis of the percentage of the irradiated meat food or poultry product ingredient in a multi-ingredient product, FSIS, in cooperation with FDA, will continue to examine the issue. Although numerous commenters suggested labeling disclosure options based on a percentage, no data was submitted. FSIS is aware that Canada requires labeling disclosure only if the irradiated ingredient comprises more than 15 percent of a multi-ingredient product. FSIS is reviewing this Canadian policy.

FSIS could revise the labeling requirements in the future. In fact, as discussed in the next two comments and response, FSIS and FDA are considering the option of eventually revising some of the labeling requirements.

Comment: Numerous industry groups requested that FSIS plan to sunset all labeling requirements related to irradiation within 5 years or sooner. They note that FDA discusses this possibility in the recent notice (64 FR 7834).

Response: FSIS is consulting with FDA on this issue and will review the comments on the FDA notice. Central to the option of revising any of the labeling requirements will be consumer awareness and understanding of food irradiation. FSIS also will continue to assess the impact and effectiveness of its labeling requirements for irradiated meat food and poultry products. Interested persons may wish to submit information on this issue to FSIS.

Comment: A few commenters argued that labeling of irradiated product should be voluntary. They argued that demand for irradiated products will give producers and retailers incentive to disclose that their products were irradiated. Further, numerous commenters claimed that consumers will regard the statement and radura as a warning and not purchase the product and argued that irradiation, therefore, will not be widely adopted by industry. A few commenters claimed that if irradiation is not widely employed by the food industry as result of labeling requirements and other perceived regulatory impediments, significant reductions in foodborne illness will not occur.

Response: As explained above, to prevent misleading labeling, the FMIA, PPIA, and FFDCA require disclosure of facts material to food products. Irradiation can affect food in a manner that is not obvious to consumers in the absence of labeling. Antimicrobial effects, changes in product shelf-life, and in some cases, changes in characteristics of food (taste, smell, texture) can result from irradiation. FSIS views irradiation of meat and poultry, therefore, as a material fact that must be disclosed in product labeling. However, both FSIS and FDA are continuing to examine their labeling requirements and the options for revising these requirements so as to better convey information to consumers.

Although FSIS acknowledges that labeling may initially have some effect on consumer acceptance of irradiated meat food and poultry products, FSIS expects that as consumer awareness increases, the demand for these products will expand and the labeling will serve to promote these products. FSIS will continue to examine ways to remove regulatory impediments to

advances in food safety technologies, including irradiation, but it is the responsibility of industry to promote irradiated meat food and poultry products. FSIS does not agree that its labeling requirements will decrease the level of possible reductions in foodborne illness that may result from the use of irradiation. Potential reduction in foodborne illness are examined in detail below in the discussion of the economic impact of these regulations.

Comment: FSIS noted in the proposed rule that it had received a petition from NFPA regarding labeling requirements for irradiated food. In the petition, NFPA requested that FSIS address whether labeling requirements concerning the disclosure of irradiation are warranted for meat food and poultry products and how such labeling affects consumer acceptance of irradiation. In a subsequent comment on the irradiation proposal, NFPA demanded that FSIS publicly respond to each issue raised in its petition and ask for public comment on each issue, although they added that the FSIS's actions should not delay a final rule.

In its petition and subsequent comment, NFPA requested that FSIS address several labeling issues discussed elsewhere in this document, including: whether labeling of irradiated product is ''constitutionally, statutorily, and scientifically unwarranted;'' whether disclosure of radiation would contribute to unfounded apprehension among consumers and therefore preclude widespread use of irradiation; and whether FSIS and FDA labeling requirements for irradiated products should be identical. NFPA cited case law (*International Dairy Food Association* v. *Amestoy,* 92 F.3d 67, 73 (2d. Cir. 1996) and *Central Hudson Gas & Elec. Corp.* v. *Public Service Commission,* 447 U.S. 557 (1980)) in support of its argument that consumer desire to know how food was processed is not alone sufficient to justify mandatory disclosure of the processing. NFPA also requested that FSIS address whether irradiation is a material fact under section 403(a)(1) of the FFDCA; that is, should irradiated meat food or poultry products be labeled as such since otherwise, consumers would be unaware of the material fact that the products had been processed with radiation?

Response: All the labeling issues raised by NFPA in its petition and in its subsequent comment were also raised in other comments and FSIS has responded to them in this document. Furthermore, FDA has requested comment on these and other labeling issues in its recent notice and FSIS will review those comments. FSIS sees no need, therefore, to again solicit public comment on these labeling issues, and, NFPA did request that the response to their petition not delay any final regulations.

In response to NFPA questions regarding the legal basis for requiring disclosure, FSIS has reviewed the Supreme Court standards for governmental regulation of commercial speech as announced in *Central Hudson Gas & Elec. Corp.* v. *Public Service Commission* and summarized in the dissenting opinion in *International Dairy Food Association* v. *Amestoy:*

> At the outset, commercial speech enjoys no First Amendment protection at all unless it is not misleading (and related to lawful activity). If the speech passes that test, it is nonetheless subject to regulation if the government has a substantial interest in regulating the speech, the regulation directly advances that interest, and it is no more intrusive than necessary to accomplish its goal. 447 U.S. at 566, 100 S.Ct. at 2351. The Supreme Court later clarified that government's power to regulate commercial speech includes the power to compel such speech. *Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626, 651, 105 S.Ct. 2265, 2281–82, 85 L.Ed.2d 652 (1985).
>
> *International Dairy Food Association* v. *Amestoy,* 92 F.3d 67, 77 (2d. Cir. 1996).

FSIS does have a substantial interest in requiring the disclosure that meat or poultry products have been irradiated; such irradiation is a material fact that must be disclosed to consumers through labeling to avoid deception, since it can affect the meat or poultry products in a manner that is not obvious to consumers in the absence of labeling. Disclosure of irradiation through labeling is the most direct way to advance this interest. FSIS believes that the labeling requirements contained in this regulation are the least intrusive possible, but still accomplish the goal of disclosure. Therefore, FSIS is requiring labeling that indicates meat and poultry products have been treated with irradiation.

Comment: Numerous industry and academic commenters requested that FSIS allow alternative, euphemistic statements on irradiated products that would be more appealing to consumers, such as ''cold,'' ''electronic,'' and ''ionizing'' pasteurization. Several of these commenters cited or submitted consumer polling data to support the use of their claims. One food processor suggested that any euphemistic labeling statements containing the word ''pasteurization'' be contingent upon specific levels of pathogen reductions. Consumers and consumer advocacy organizations, for the most part, maintained that alternative and euphemistic statements would be misleading and erroneous and opposed them.

Response: FSIS will review, on a case-by-case basis, labels with alternative or euphemistic statements regarding irradiation. FSIS is requiring, however, that labels of meat food or poultry products that have been irradiated in their entirety be labeled with statements such as ''Treated with irradiation'' or ''Treated by irradiation,'' or, that the word ''Irradiated'' be part of the product name. FSIS will allow the terms ''cold,'' ''electronic,'' and ''ionizing'' to be used in conjunction with term ''irradiation,'' if truthful.

At this time, however, labeling statements or claims for irradiated product that include the term ''pasteurization'' probably would be misleading. ''Pasteurization'' implies the destruction of all vegetative microorganisms in the product as a result of irradiation. At the maximum dosages allowed by FDA and FSIS, it would be highly unlikely that all of the vegetative microorganisms in irradiated product would be destroyed.

For example, an establishment irradiates refrigerated, raw beef round or chuck using a gamma radiation source. They determine that they will achieve a 2:1 overdose ratio [1] using the maximum allowed dosage of 4.5 kGy. That is, the irradiation treatment will achieve at least a minimum absorbed dosage of 2.25 kGy throughout the product.

According to the International Consultative Group on Food Irradiation [2], the dosage necessary to eliminate 90 percent of *Salmonella* sp. in a gram of product (the ''D value,'' which is equivalent to 1-$\log_{10}$), ranges from 0.48 kGy to 0.7 kGy. Therefore, this establishment, by achieving a minimum absorbed dosage of 2.25 kGy throughout the product, also would effect a minimum reduction of *Salmonella* sp. ranging between 4.7-$\log_{10}$ and 3.2-$\log_{10}$ per gram of product, throughout the product. These hypothetical reductions are significant

[1] Product shape, density, and its distance from the source of radiation, as well as other factors, influence the absorbed dosage in an irradiated product. Therefore, it is difficult to achieve a uniform absorbed dosage in irradiated products, especially if the product is densely packed in large quantities. To achieve specific absorbed dosages of radiation in treated products, irradiators calculate a maximum/minimum ''overdose ratio.'' Using this ratio they are able to irradiate product so as to accurately predict that while some of the treated product will have absorbed the maximum dosage, all will have absorbed at least the minimum dosage.

[2] International consultative Group on Food Irradiation, ''Irradiation of red meat: A compilation of technical data for its authorization and control,'' August 1996.

and would greatly reduce the risk of foodborne illness from treated product. However, these reductions are well below the levels necessary to achieve a ready-to-eat roast beef product. FSIS recently established that it is necessary to achieve at least a 6.5-$\log_{10}$ reduction of *Salmonella* sp. throughout a roast beef product to consider that product ready-to-eat (64 FR 732; 9 CFR 318.17).

FSIS acknowledges that if an establishment were to greatly minimize the pathogen load on incoming whole muscle meat product, it could possibly use irradiation combined with stringent process controls to produce a ready-to-eat, though uncooked, meat product, such as steak tartar. In such a case, irradiation would effectively pasteurize the product. FSIS would allow ''pasteurized'' to be in the labeling statement on such a product. However, under the current regulations, FSIS would require that the product also be labeled with statements such as ''Treated with irradiation'' or ''Treated by irradiation,'' or, that the word ''Irradiated'' be part of the product name. FSIS will continue to examine these requirements in light of developments in irradiation technology and FDA policy.

Comment: Commenters from industry overwhelmingly supported incentive labeling (labeling claims regarding the benefits of irradiation) and most suggested that FSIS clarify what types of substantiating documentation would be required for using it. Most consumer advocacy groups expressed concerns about incentive labeling and requested that FSIS require stringent levels of pathogen reduction as prerequisites for making any claims, as well as regular microbial testing. One group argued that FSIS should allow claims only on product irradiated in its final packaging.

All of the consumer advocacy groups that commented, as well as a few industry commenters, opposed the use of labels claiming that a product is ''free'' of any pathogen as a result of irradiation treatment. Many cited concerns about post-processing contamination of treated and labeled product. Several commenters argued that consumers, misled by labeling claims, would mishandle treated product, believing that it is free of all pathogens.

One consumer advocacy organization suggested that FSIS put in place special ''trace back'' mechanisms for irradiated product. The organization is concerned that consumers, misled by claims concerning the efficacy of irradiation, may mishandle irradiated product that still contains pathogens. Special ''trace back'' mechanisms would ensure that establishments label irradiated products so as not to mislead consumers regarding the safety of those products.

Response: As proposed, FSIS will allow labeling statements on irradiated meat food and poultry products that indicate general or specific reductions in microbial pathogens, provided they can be substantiated by processing documentation. The amount and specificity of the required documentation will vary depending on the statement or claim.

Also in the proposal, FSIS discussed the possibility of product being labeled as ''free'' of the pathogen *E. coli* O157:H7:

> Several representatives of the meat and poultry industries have stated to FSIS that they would like to label product as being free of certain pathogens as a result of irradiation, *e.g.,* ''Free of *E. coli* O157:H7.'' It may be possible for an establishment to determine the pathogen load on incoming product, irradiate the product to completely eliminate those pathogens with an appropriate margin of safety, and ensure that the product remains free of that pathogen until it reaches the consumer. FSIS requests comment on whether to allow this type of incentive labeling. Specifically, FSIS is interested in whether it should establish performance standards for labeling statements that reflect a specific reduction of pathogens. For example, FSIS could require that to use such labeling, establishments must achieve, through a validated HACCP system incorporating irradiation, a specific reduction of a pathogen of concern (*e.g.,* an x-$\log_{10}$ reduction of *E. coli* O157:H7).

(64 FR 9094)

Irradiation, as provided for in this rule, could eliminate *E. coli* O157:H7 from products with an appropriate margin of safety. Therefore, FSIS will allow labeling of sufficiently irradiated product to state that processing has been conducted to eliminate *E. coli* O157:H7. As with any labeling statement that claims a specific reduction of pathogens resulting from irradiation, FSIS is requiring establishments claiming that *E. coli* O157:H7 has been eliminated from their products to have processing documentation substantiating this.

FSIS agrees with commenters that stringent processing controls (probably including monitoring of pathogen load on incoming product and the prevention of product recontamination and post processing temperature abuse) would be needed to substantiate a label claiming that a product was ''free'' of *E. coli* O157:H7. FSIS will expect establishments that treat product known to be adulterated with *E. coli* O157:H7 to implement such controls. FSIS emphasizes that it will closely assess any requests for labeling that a product is free of *E. coli* O157:H7 and, through inspection, will verify that processes to eliminate the pathogen are under control.

FSIS does not now have the data necessary to establish in the regulations a minimum level of reduction of *E. coli* O157:H7 that establishments must achieve in order to label products as being free of *E. coli* O157:H7. The FSIS Office of Public Health and Science currently is conducting a risk assessment concerning *E. coli* O157:H7. Using the results of this risk assessment, as well as other data that may be developed, FSIS may, in the future, propose to require that any such labeling claims be used only if establishments achieve a specific, minimum level of reduction of *E. coli* O157:H7 within treated product.

In the interim, establishments may want to note that for certain ready-to-eat products, establishments have been processing to achieve a 5-$\log_{10}$ reduction in *E. coli* O157:H7. For example, the cooking requirements for meat patties in § 318.23 of the regulations achieve an approximate 5-$\log_{10}$ reduction in *E. coli* O157:H7 and that compliance with the regulations in this section results in the production of a ready-to-eat meat patty. Further, since 1995, FSIS has encouraged establishments manufacturing ready-to-eat fermented sausage products to implement processes validated to achieve at least a 5-$\log_{10}$ reduction of *E. coli* O157:H7. Several outbreaks of food borne illness attributable to *E. coli* O157:H7 in fermented, shelf-stable sausage products led FSIS, in cooperation with the Agricultural Research Service, meat and poultry industry representatives, and members of the National Advisory Committee on Microbiological Criteria for Food (NACMCF) to develop a policy for ensuring the safety of ready-to-eat fermented sausages. This group developed several processing options that would ensure a 5-$\log_{10}$ reduction of *E. coli* O157:H7 in fermented sausages. In an August 21, 1995 correspondence, FSIS wrote to establishments producing fermented sausages and strongly encouraged that they implement one of the validated processing options contained in the document or that they validate their processes to ensure the processing used achieves at least a 5-$\log_{10}$ reduction of *E. coli* O157:H7. This specific level of reduction may not be adequate for all products or processes and establishments should carefully evaluate the specific product and processes at issue when developing treatments to eliminate *E. coli* O157:H7 from meat products.

In regard to consumer perceptions regarding pathogen reduction claims,

irradiated raw ground beef still must carry the safe handling instruction, regardless of the claimed pathogen reduction. FSIS recognizes that it may be asked to reconsider its requirements regarding safe handling instructions in the event establishments develop methods to pasteurize raw meat food and poultry products through irradiation or other means.

Comment: One commenter requested that FSIS permit irradiated meat and poultry to be labeled as being ''organic.'' A comment from an organic food cooperative opposed any such designation.

Response: The Organic Foods Production Act (OFPA) of 1990 requires USDA to develop national standards and regulations for organically produced agricultural products and to assure consumers that agricultural products marketed as ''organic'' are consistent with these standards. The OFPA also provides for USDA to establish an organic certification program based on recommendations received from a 14-member National Organic Standards Board (NOSB). Although the OFPA did not specifically address the use of irradiation, the NOSB has recommended, consistent with most existing State and private certification agency organic standards, that the use of irradiation be prohibited in handling organic products. This issue is most appropriately resolved in the agency rulemaking process under OFPA.

Comment: Several industry groups recommended that FSIS explicitly allow product irradiated at a separate establishment to be fully labeled before shipment to that facility. One trade organization asked that FSIS no longer require such product to be shipped under seal. Several industry commenters requested that FSIS specifically exempt irradiation facilities from using their marks of inspection over those of the originating plant and instead allow the irradiator to use a separate stamp, so as to facilitate trace-back.

Response: Meat food or poultry products may be packaged and labeled as being irradiated before shipment to an irradiation facility, provided that the shipping establishment implements controls to prevent the labeled, but as yet not irradiated, product from being distributed to consumers. Most establishments could control the shipment of such product through the maintenance and verification of records, such as bills of lading. FSIS inspection personnel will verify that these controls are implemented.

FSIS does not and will not require irradiators or other processors to place their marks of inspection over those of the establishments from which the product originated. In regard to which inspection legend and establishment number would be placed on an irradiated product, different scenarios are possible. For example, if bulk shippers of trimmings or cuts are received by an irradiator, irradiated, and then repackaged in smaller units such as retail trays, the irradiator will be required to declare its establishment number on the retail package. However, if an irradiator receives packaged and labeled products for irradiation, the legend and number of the originating establishment will be declared on the retail package label. FSIS would expect that the irradiator would place its legend on the shipper container in which it packs the product, even if the irradiator uses the same shipper in which the product was received. In all cases, every establishment that processes the product must maintain records, as part of its HACCP paperwork, showing where the product originated, where it was processed, and where it was distributed for consumption. Any necessary trace-back will be facilitated by review of these records.

Comment: Numerous consumers requested that FSIS extend required disclosure to restaurants and institutions that serve irradiated meat food and poultry products.

Response: Historically, FSIS has not extended its regulations regarding meat food and poultry product labeling or misbranding to restaurant and institutional menus. Requiring and enforcing disclosure that restaurant or institutional food has been irradiated would require a heavy expenditure of Agency resources for as yet indeterminate benefits. FSIS will continue to examine this issue. FSIS is aware that a restaurant in Florida has been disclosing on its menu that it serves irradiated poultry products. Possibly, other restaurants and institutions may want to disclose this information for marketing or other purposes.

Technical Concerns

Comment: One commenter stated that the hypothetical reduction of *E. coli* O157:H7 given in the preamble is misleading, as it does not take minimum/maximum ratios into account.

Response: The example of pathogen reduction given in the preamble was hypothetical and intended to emphasize the potential effectiveness of irradiation against pathogens. This level of reduction would be possible under the permitted dosages, though costly and probably unnecessary.

Comment: Several commenters requested that FSIS clarify its proposed training requirements for irradiation facility managers and ''key personnel.'' One commenter claimed that existing short courses available in North America are inadequate because they either concern only electron beam irradiation or are too simplistic and argued that ''in-house'' training should satisfy the intent proposed requirement. Another requested clarification as to who ''key personnel'' are and suggested that the ''key personnel'' include the facility manager, QC manager, an external consultant, or corporate management.

Response: FSIS proposed to require establishments that irradiate meat food products to have on file ''certification by the operator that the irradiation facility personnel would operate under supervision of a person who has successfully completed a course of instruction for operators of food irradiation facilities,'' as well as ''certification by the operator that the key irradiation personnel have been trained in food technology, irradiation processing, and radiation health and safety.'' These requirements already are in effect for poultry establishments.

The intent of the first training requirement is to ensure that supervisors of irradiation facilities gain an understanding about the process controls necessary when irradiating food, as well as the requirements set forth in FSIS regulations. FSIS is aware of numerous irradiation facilities that plan to irradiate meat food and poultry products, but that have previously irradiated only medical devices and other non-food products. Supervisors of such establishments certainly need and would benefit from food irradiation training.

The second training requirement is intended to ensure that ''key'' personnel in an establishment also have instruction in the safe and proper operation of an irradiation facility. Key personnel would include managers, supervisors, or other personnel of the facility who monitor or control daily operations. Key personnel must be knowledgeable about the environmental safeguards and worker safety precautions necessary in any irradiation facility and required by other Federal and State agencies. FSIS is revising § 424.22(c)(3)(vi) to clarify the term ''key irradiation personnel.''

FSIS is aware of several available food irradiation training courses, but does not intend to review or endorse any specific training course. Further, FSIS

agrees that in-house training in food irradiation or radiation safety could be adequate to meet the requirements. FSIS will verify that establishments have records confirming that the required training was received by the establishment personnel.

Comment: One irradiator objected to proposed §§ ((318.11(b)(6) and 381.149(b)(6) which appear to prescriptively specify minimum dosimeter placements. They suggested FSIS instead allow for statistically based validation and dose mapping to determine the number and placement of dosimeters.

Response: FSIS agrees and will revise the requirement in § 424.22(c)(2)(vi) accordingly. FSIS recommends that establishments consult some of the various technical guides on dosimetry when developing their systems. The American Society for Testing and Materials and the International Consultative Group on Food Irradiation both have published guides on food irradiation dosimetry.

Comment: Another irradiator asked that FSIS revise proposed §§ 318.11(b)(7) and 381.149(b)(7) to account for dosimetry from machine sources of radiation.

Response: The proposed provisions (a single provision in this final rule, § 424.22(c)(2)(vii)) did account for machine sources of irradiation in that they required establishments to have in place ''Procedures for verifying the relationship of absorbed dose as measured by the dosimeter to time exposure of the product unit to the radiation source.'' The radiation source could be a machine source of radiation, such as an electron beam accelerator. This requirement remains unchanged.

Comment: One commenter suggested that establishments employing irradiation be exempted from pathogen reduction (*Salmonella*) and process control microbial testing (generic *E. coli*) requirements for raw meat food and poultry products. This commenter argued that irradiation will reduce pathogens to immeasurable levels and testing would therefore be unnecessary. The commenter also maintained that such an exemptions would bring about cost savings to industry in excess of $100 million.

Response: FSIS disagrees. The microbial testing requirements are still necessary for measuring an establishment's performance in process control and pathogen reduction, even if an establishment irradiates its product. Establishments may irradiate product at any point in their processing system, including before the required testing for *Salmonella* or generic *E. coli.* Irradiation of raw product before testing could not only significantly improve a single establishment's performance, but also could lower the national baselines, compelling improvements in process control and pathogen reduction by all establishments. Although rescission of these testing requirements (or any regulatory requirements, for that matter) might result in cost savings to the regulated industry, FSIS has determined that these requirements are a necessary and cost-effective means for improving the safety of meat food and poultry products.

Costs and Benefits of Irradiation

Comment: A few commenters recommended revisions to the Agency's cost/benefit and economic impact analyses in the proposal. One commenter questioned FSIS's estimate of the cost of shipping irradiated products, arguing that the Agency underestimated the costs by an order of magnitude. Several commenters maintained that the required labeling would be perceived by consumers as a warning and, as discussed, would prevent the wide-scale acceptance of irradiated product. Many of these commenters argued that labeling should be voluntary, since demand for irradiated products would create adequate incentives for labeling.

Response: FSIS addresses the comments and reviews the submitted cost data below in the economic impact analyses.

Summary of the Final Rule

FSIS is amending it regulations to provide for irradiation of uncooked meat food and poultry products under the following conditions:

- Meat food products may be treated with ionizing irradiation, for purposes of reducing pathogens and extending shelf-life, at dosages up to 4.5 kiloGrays (kGy), if refrigerated, and 7 kGy, if frozen.
- Establishments may irradiate meat food and poultry products only in accordance with a HACCP system.
- Establishments that irradiate meat food products must have in place a dosimetry system to measure the absorbed dose of radiation.
- Establishments that irradiate meat food products must have on file documents that relate to other compliance with the requirements of Federal Agencies with jurisdiction over irradiation, such as NRC and OSHA.
- Labeling of meat food and poultry products irradiated in their entirety must bear the international radura logo. Also, either the product name must include the word ''Irradiated'' or the labeling must bear a disclosure statement such as ''Treated with radiation'' or ''Treated by irradiation.'' The logo must be placed in conjunction with the disclosure statement, if the disclosure statement is used. The radiation disclosure statement is not required to be more prominent than the declaration of ingredients.
- The inclusion of irradiated meat food or poultry product in a multi-ingredient product must be reflected in the ingredient statement on the finished product labeling.
- Optional labeling statements about the purpose for radiation processing may be included on the product label in addition to the above stated requirements. Statements that there has been a specific reduction in microbial pathogens must be substantiated by processing documentation.
- The regulations governing the irradiation of poultry products are now entirely consistent with the regulations governing the irradiation of meat food products but for the maximum dosage allowed (3 kGy) and the requirement that if packaged poultry product is irradiated, that packaging must be air permeable.

Risk Analysis

Section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (P.L. 103–354) requires any regulation published by USDA concerning human health, safety, or the environment, and having an annual economic impact of at least $100 million in 1994 dollars, contain a risk assessment and cost-benefit analysis. The risk assessment and cost-benefit analysis must be ''performed consistently and use reasonably obtainable and sound scientific, technical, economic, and other data.'' The USDA Office of Risk Assessment and Cost-Benefit Analysis (ORACBA), also established by the 1994 Act, must ensure that major rules include such analyses.

ORACBA and FSIS have agreed that FDA has already conducted a definitive risk analysis concerning the safety of meat food products treated with ionizing radiation in developing their final rule, ''Irradiation in the Production, Processing and Handling of Food'' (62 FR 64107; December 3, 1997). Therefore, FSIS and ORACBA are adopting the FDA finding as their risk assessment. Further, FSIS and ORACBA also have agreed that the cost-benefit and economic impact analyses that FSIS has performed for this final rule, as required by E.O. 12866 and the Regulatory Flexibility Act, satisfy the cost-benefit analysis requirements of the

Reorganization Act. Consequently, FSIS, with assistance from ORACBA, has produced only an analytical literature review addressing existing research and risk assessments on the safety of food irradiation for consumers and the related risks posed by irradiation, including worker safety and environmental concerns. This literature review is available from the FSIS Docket Clerk's Office (see ADDRESSES above) and from the FSIS Internet world wide web page at http://www.fsis.usda.gov/OA/topics/irrad-risk.htm.

In this document, FSIS is revising the current regulations governing the irradiation of poultry to make them more consistent with the proposed regulations for meat and with HACCP. These revisions to the poultry regulations would pose no new risks to human health or worker safety and do not concern the environment. Therefore, FSIS has not addressed these changes in a separate risk assessment or in the above mentioned literature review.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect.

Under this rule, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves a decision of an FSIS program employee relating to inspection provided under the FMIA and the PPIA.

Compliance With Executive Order 12866—Final Analysis

This action has been reviewed for compliance with Executive Order 12866. As this action is determined to be economically significant for purposes of Executive Order 12866, the Office of Management and Budget has reviewed it.

FSIS is amending its meat inspection regulations to allow for the safe use of ionizing radiation for the treatment of meat, meat byproducts, and certain other meat food products. FSIS also is revising the existing regulations governing the irradiation of poultry so as to render them more consistent with the proposed regulations for meat. In the proposal preceding this final action, FSIS requested comment concerning the potential economic effects of the proposed regulations, as well as data concerning the costs of and benefits from irradiation of meat and poultry. FSIS received only a few comments that included economic data or questioned the economic analysis included in the proposal. These comments are addressed below.

FSIS believes that the net benefits of this action will be positive. As discussed in the preamble, irradiation can reduce the levels of pathogens in meat food and poultry products significantly. Further, the use of irradiation is voluntary. If an establishment chooses to irradiate its meat food products, it can be assumed from the establishment's decision to incur the expense of irradiation that it expects the economic benefits of the investment in irradiation to exceed the costs of that investment. However, the current lack of quantification of both the benefits and costs of irradiation make comparison difficult.

FSIS endeavors to develop regulations that set forth performance objectives, rather than prescribe specific processing methods. For the irradiation of meat food products, and where possible, for the irradiation of poultry products, FSIS proposed requirements that allow for significant flexibility in integrating irradiation into processing operations. In this final rule, FSIS has been able to provide for even greater flexibility through revisions based upon the comments received in response to proposal.

Although FSIS recognizes the capability of irradiation treatment to reduce pathogens below current regulatory performance standards for pathogen reduction, these regulations do not change the existing performance standards. With standards unchanged, the primary benefit of the regulations to establishments is the increased processing flexibility they are allowed with this rule.

Alternatives

Executive Order 12866 requires that FSIS identify and assess alternative forms of regulation. FSIS considered two alternatives to the proposed regulation: (1) Not allowing for the irradiation of meat food products and (2) allowing the irradiation of meat food products only under very limited conditions, similar to those previously prescribed for the irradiation of poultry products. FSIS rejected these two alternatives for reasons explained below.

FSIS did not consider alternatives that would not be permissible under current FDA regulations, such as allowing irradiation at higher doses or allowing the irradiation of ready-to-eat meat and poultry products. FSIS believes that the regulations in this final rule are the most permissive possible under current FDA regulations. Also, as explained in the preamble above, FSIS has petitioned FDA to raise the allowable absorbed dosage for poultry, to remove certain requirements regarding the packaging for irradiated poultry, and to specifically allow the irradiation of unrefrigerated (''hot-boned'') meat food products. Further, an industry consortium has petitioned FDA to allow the irradiation of processed meat and poultry products.

No Action

Central to the FSIS food safety strategy are efforts to reduce the level of microbiological pathogens in raw meat and poultry products. Irradiation has been shown to be a highly effective method for reducing the levels of microbiological pathogens in raw meat food products. Further, FDA has concluded that irradiation of meat food products, under the conditions requested by Isomedix, Inc. and granted by FDA, would not present toxicological or microbiological hazards and would not adversely affect the nutritional adequacy of these products. FSIS, therefore, sees compelling reasons to provide for the irradiation of meat food products and has rejected the option of disallowing irradiation.

Notably, the irradiation of meat food products is voluntary. Although it is an effective antimicrobial treatment, irradiation may not be appropriate, feasible, or affordable in certain processing environments. Also, in certain situations, other antimicrobial treatments may be more effective. FSIS, therefore, is not requiring that raw meat food products be irradiated.

Irradiation of Meat Food Products Under Limited Conditions

The previous requirements governing the irradiation of poultry were fairly prescriptive in that they mandated a minimum dosage and required that only packaged product be irradiated. FSIS could have proposed similar requirements for the irradiation of meat food products. However, as explained above, FSIS believes that the previous requirements mandating minimum dosages and packaging for irradiated poultry products, originally intended to ensure that the effects of irradiation were maintained, are no longer necessary in light of the new HACCP requirements. Therefore, FSIS is making final no minimum irradiation dose and no specific packaging requirements for meat food products, rescinding the minimum dose requirements for irradiated poultry, and revising the packaging requirements for poultry, where possible.

Benefits

FSIS has concluded that the meat industry may accrue numerous benefits from the use of irradiation. As with other antimicrobial treatments, FSIS is allowing irradiation to be used at any point within a HACCP system and is requiring no minimum dosage. Establishments employing irradiation may accrue benefits from this flexibility. For example, slaughter establishments will gain added flexibility in treating products so as to meet pathogen reduction performance standards. Similarly, processors may use irradiated meat in further processed products.

Further, through the use of irradiation, product shelf-life can be increased. Andrews, *et al.* (1998), reviewed five studies encompassing shelf lives of different types of red meat products.[3] Their results suggest that shelf life of products treated with irradiation increase considerably compared to untreated products.

Society also may realize benefits from these final regulations if the use of irradiation results in a reduction of illnesses beyond what is achieved by current technologies. Several types of harmful microbial pathogens can be present in meat food products, including *E. coli* O157:H7, *Salmonella, Clostridium perfringens,* and the protozoan parasite *Toxoplasma gondii.* Irradiation at the dose levels allowed by this action can reduce the levels of these pathogens substantially. Economic benefits associated with these reductions would be decreases in the diseases associated with these pathogens. The reductions in the disease rates would translate into a reduction in the number of visits to physicians and hospitals.

FSIS believes that ground beef is likely to be the first meat product irradiated in great quantity. It is likely that ground beef will be irradiated in relatively large quantities initially because irradiation is a means for establishments to effectively eliminate *E. coli* O157:H7 from raw ground beef without cooking it. Following a 1993 outbreak of food borne illness associated with *E. coli* O157:H7 in hamburger, FSIS implemented a policy under which it considers raw ground beef containing *E. coli* O157:H7 to be adulterated. Until now, establishments could distribute ground beef containing *E. coli* O157:H7 only after they had thoroughly cooked it, so as to eliminate the pathogen. Establishments, therefore, are likely to benefit from the availability of irradiation as an additional treatment for rendering adulterated raw ground beef product safe. Of course, other types of raw meat and poultry products also may be irradiated to reduce or eliminate pathogens.

To give some sense of the potential benefit from the reduction of illnesses that may occur as a result of the irradiation of ground beef, a USDA Economic Research Service study on the use of irradiation to reduce *E. coli* O157:H7 and *Salmonella* in ground beef, conducted before the implementation of HACCP, is instructive. In that study, Morrison, *et al.* (1997), estimated the annual pre-HACCP economic value of the health costs and productivity losses attributable to *E. coli* O157:H7 and salmonellosis to be between $226 and $552 million.[4] If 25 percent of all ground beef were irradiated, the benefits could range between $56.5 and $138 million.

An assumption that only 25% of ground beef will be irradiated may be conservative in light of a 1993 survey, conducted by the American Meat Institute Foundation, which reported that 54 percent of respondents said that they would buy irradiated beef rather than non-irradiated beef after being told that irradiation can kill pathogens in raw meat.[5] This survey also reported that 60 percent of respondents said that they were willing to pay ten cents more per pound for hamburger sold at $2/lb. if bacteria levels were ''greatly reduced by irradiating the meat.''

One consumer advocacy organization requested clarification regarding FSIS use of the estimates of benefits from Morrison (1997). The group questioned whether Morrison assumed that ground beef would be irradiated only after final packaging, as was required for poultry irradiated at the time of the study. The group suggested that if Morrison made such an assumption, the estimated reductions in foodborne illness would be inflated if applied to the proposed regulations, which allow ground beef to be irradiated before final packaging. The group claimed that because the ground beef could be re-contaminated after irradiation and before final packaging, reductions in pathogens and consequently, foodborne illness, would not be so high.

FSIS disagrees. Morrison did not specify whether their estimates of benefits applied only to ground beef irradiated in its final packaging. However, FSIS is allowing meat and poultry product to be irradiated only in accordance with a HACCP system of process controls, regardless of when it is packaged. HACCP controls will considerably lessen, and likely prevent, the possibility that meat and poultry product will be re-contaminated after irradiation and before packaging. Therefore, these estimates of reductions in foodborne illness are applicable to these final regulations.

Another commenter suggested that the proposed labeling requirements could prevent the wide-scale acceptance of irradiated products by consumers, who will view the required labeling as a warning, and therefore diminish the potential benefits from reductions in foodborne illnesses. This commenter suggested the use of voluntary instead of mandatory labeling and argued that demand for irradiated product will give producers and retailers incentive to disclose that their products were irradiated.

As discussed above, disclosure of facts material to food products is required by the FMIA, PPIA, and the FFDCA. Irradiation can affect food in a manner that is not obvious to consumers in the absence of labeling and therefore is a material fact that must be disclosed to consumers to prevent misleading labeling. FSIS is requiring that irradiation of meat or poultry products be disclosed in product labeling. FSIS will consider, however, revising some or all of its labeling requirements as consumer awareness grows.

FSIS has made some revisions to the proposed labeling requirements that

[3] Andrews, L.S., *et al.* ''Food Preservation Using Ionizing Radiation,'' *Review of Environmental Contaminant Toxicology,* Vol. 154, 1998, pp. 1–53.

[4] Morrison, R.M., *et al.,* ''Irradiating Ground Beef to Enhance Food Safety,'' *Food Review,* January–April 1997, pp. 33–37.

[5] American Meat Institute Foundation, ''Consumer Awareness, Knowledge, and Acceptance of Food Irradiation,'' November, 1993.

will increase flexibility for processors and could represent some minimal cost savings. First, FSIS is requiring that single ingredient meat or poultry products irradiated in their entirety be labeled with a radura and either a statement indicating that the product was irradiated or the inclusion of the word ''irradiated'' in the product name. Allowing establishments to use the word ''irradiated'' as part of the product name instead of including a labeling statement was suggested in industry comments as a means of providing more labeling flexibility.

Also, in response to comments and as part of an effort to make FSIS labeling requirements more consistent with those of FDA, FSIS will not require, as proposed, that the irradiation statement and the radura be any more prominent than the ingredients statement on the labeling of irradiated meat food and poultry products. Thus, the statement and the radura may appear somewhere other than on the principal display panel.

Finally, the same commenter estimated the annual net social welfare gains from irradiation, without HACCP, to be $900 million, *i.e.*, almost ten times the benefits presented above. This higher estimate of benefits was based on an assumption that demand for irradiated ground beef would be similar to the potential demand for irradiated poultry as estimated by Fox and Olson (1998) from market surveys conducted between 1995 and 1996.[6] FSIS views this comment as further evidence that there could be benefits in excess of the health costs savings estimated by Morrison (1997).

Incremental Costs

In the proposed rule, using estimates from Morrison (1997) and other sources, FSIS estimated the incremental costs of irradiation to range from 2 to 6 cents/lb. of ground beef in 1995 dollars. These estimates included the cost of labels and of transportation of the ground beef products from establishments to third-party irradiators. Assuming that 25 percent of the total annual sales of ground beef (1.75 billion lbs.) would be irradiated, FSIS estimated the annual cost of irradiation to range from $35 to $105 million in 1995 dollars.

These costs are likely to be overestimated for two reasons. First, the cost estimates are based on the assumption that irradiation of ground beef would take place in the smallest plants, which have the capacity to irradiate only 52 million pounds per year. Second, FSIS assumed that only 25 percent of ground beef would be irradiated. Any increase in the irradiated quantity would tend to reduce costs considerably.

Buzby and Morrison[7] (1999) recently published updated cost estimates for ground beef for irradiation. They employed two estimates of costs, 1.6 cents/lb. and 5.0 cents/lb. in 1996 dollars. Again assuming that 25 percent of ground beef would be irradiated, they estimated that the costs of irradiation would range from $28.6 million to $89.3 million. Their new estimates fall within the range of costs estimated by FSIS in the proposed rule.

In the analysis included with the proposal, FSIS assumed the costs of transporting ground beef from slaughter houses or processing plants to and from irradiating facilities to be 0.2 cents/lb. A commenter suggested that this estimate was ''too low by more than one order of magnitude.'' In response to this comment, FSIS recalculated the transportation costs to be twice the amount originally estimated, that is 0.4 cents/lb. instead of 0.2 cents/lb. This assumption would increase the irradiation costs to range from 2.2 to 6.2 cents/lb. FSIS believes that these possible cost increases are too small to significantly decrease the net benefits of meat irradiation.

In conclusion, although FSIS has incomplete data regarding the costs and benefits of the rule, FSIS believes that the net benefits of this action will be positive. As discussed above, irradiation can reduce the levels of pathogens in meat food and poultry products significantly. Further, the meat industry may accrue numerous benefits from the use of irradiation.

Compliance With Regulatory Flexibility Act of 1996

The Administrator has determined that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–612), this final rule will not have a significant economic impact on a substantial number of small entities.

Data from the U.S. Bureau of Census, Survey of Industries, 1994, indicate that the beef industry is predominated by small firms and establishments. For example, based on the U.S. Small Business Administration definition of small business by the number of employees (fewer than 500), 96% of 1,226 firms comprising this industry are small. Similarly, 90% of individual meat establishments or plants in this industry are small. In 1994, these small businesses accounted for 19% of total employment in the industry. Their share of payroll was 18% of the total payroll of $2.8 billion and their revenues were 16% of the total revenues of $55.8 billion. FSIS believes that these small businesses will not be affected adversely by the irradiation requirements because the use of irradiation is voluntary.

The industry may be able to pass through the cost of irradiation to consumers without losing its market share significantly because demand for beef products is very inelastic. Huang (1993) analyzed a group of meats and other animal proteins consisting of products including beef and veal, pork, other meats, chicken, turkey, fresh and frozen fish, canned and cured fish, eggs and cheese. He concluded that price elasticity of demand for this group of products was (-0.3611), *i.e.*, a one percent increase in price of these products would reduce demand by only 0.3611 percent.[8]

Review of about a dozen recent studies annotated by William Hahn of the Economic Research Service reveals that estimates of price elasticity of demand for most beef products (ground beef, steak, chuck roast, etc.) is less than one.[9] An increase in price of any one these products by one percent would result in a decrease in its demand by less than one percent. In short, consumers are unlikely to reduce their demand for beef significantly when beef price is increased by a few pennies a pound.

In the long term, small establishments may have to irradiate their products to keep their market shares. In so doing, they may be affected relative to large size establishments because of economies of scale in irradiation. For example, bulk discounts provided by irradiating facilities would be realized mainly by the large size establishments. However, FSIS believes that eventually technological innovations may reduce the cost of in-plant accelerators and that the increased availability of such devices could help small firms compete with the larger firms.

This final rule may have a negligible economic impact on other small organizations or entities that are not engaged in the business of processing meat and meat products. To the extent

[6] Fox, John A. and Dennis G. Olson, ''Market Trials of Irradiated Chicken,'' *Radiation Physical Chemistry,* 52 (1–6), 1998, pp. 63–66.

[7] Buzby, Jean C. and Rosanna M. Morrison, ''Food Irradiation—An Update'' *Food Review,* May–August 1999, p. 21–22.

[8] Huang, Kao S., *A Complete System of U.S. Demand for Food,* ERS Technical Bulletin No. 1821, 1993, p. 24.

[9] Hahn, William F., *An Annotated Bibliography of Recent Elasticity and Flexibility Estimates for Meat and Livestock,* Staff Paper, Commercial Agriculture Division, Economic Research Service, July 1996, pp. 1–19.

that these entities purchase irradiated meat products, they could be affected somewhat by an increase in price.

Finally, FSIS is revising the regulatory requirements concerning the irradiation of poultry for consistency with HACCP and with the requirements proposed for meat food products. Significantly, FSIS is eliminating the minimum dosage requirements, certain packaging requirements, and the requirement that poultry establishments develop and implement PQC's addressing irradiation. All poultry establishments are required to develop and implement HACCP; the costs of HACCP will probably offset any benefits from the elimination of the PQC requirements. However, FSIS assumes that large and small poultry establishments will realize benefits from the reduction in the cost of compliance with some of the packaging requirements and the minimum dosage for irradiated poultry.

Executive Order 12898

Pursuant to Executive Order 12898 , ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' FSIS has considered potential impacts of this rule on environmental and health conditions in low-income and minority communities.

This rule allows the use of ionizing radiation for treating fresh or frozen uncooked meat, meat byproducts, and certain meat food products to reduce levels of pathogens. As explained in the economic impact analysis above, the regulations should generally benefit consumers and the regulated industry. The regulations would not require or compel meat or poultry establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low-income and minority communities. Further, this rule does not exclude any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin.

Establishments choosing to irradiate meat or meat products are required to comply not only with FSIS and FDA requirements regarding the safety of irradiated product, but also with NRC, EPA, OSHA, DOT, and State and local government requirements governing the operation of irradiation facilities. Compliance with these requirements ensures the maintenance of appropriate environmental, worker safety, and public health protections, thus further reducing the probability that this rule would have any disparate impact on low-income or minority communities. FSIS currently is investigating the possibility of developing stronger partnerships with these Federal, State, and local agencies so as to better ensure the maintenance of environmental, worker safety, and public health protections.

Public Notification and Request for Data

FSIS requests information regarding the impact of this final rule on minorities, women, and persons with disabilities, including information on the number of minority-owned meat and poultry establishments, the makeup of establishment workforces, and the communities served by official establishments.

Public involvement in all segments of rulemaking and policy development are important. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Paperwork Requirements

In response to comments and as part of an effort to make FSIS labeling requirements more consistent with those of FDA, FSIS will not require, as proposed, that the irradiation statement and the radura be any more prominent than the ingredients statement on the labeling of irradiated meat food and poultry products. Thus, the statement and the radura may appear somewhere other than on the principal display panel. Because of this change the 2-hour label development that FSIS included in the original paperwork analysis has been decreased to 1 hour. This change will decrease the overall burden estimate by 100 hours. Therefore, FSIS resubmitted an information collection request to OMB requesting approval for 2,601 burden hours, not 2,701.

The Office of Management and Budget (OMB) has approved the reporting and recordkeeping requirements associated with this final rule under OMB control number 0582–0115.

List of Subjects

9 CFR Part 381

Food labeling, Poultry and poultry products, Reporting and recordkeeping requirements, Signs and symbols.

9 CFR Part 424

Food additives, Food packaging, Meat inspection, Poultry and poultry products.

Accordingly, title 9, chapter III, of the Code of Federal Regulations is amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.19 [Removed]

2. Section 381.19 is removed.

§ 381.135 [Removed]

3. Section 381.135 is removed.

4. In § 424.22, paragraph (c) is added to read as follows:

§ 424.22 Certain other permitted uses.

* * * * *

(c) Irradiation of meat food and poultry products.

(1) *General requirements.* Meat food and poultry products may be treated to reduce foodborne pathogens and to extend product shelf-life by the use of sources of ionizing radiation as identified in 21 CFR 179.26(a). Official establishments must irradiate meat food and poultry products in accordance with 21 CFR 179.26(b), the Hazard Analysis and Critical Control Point (HACCP) system requirements in part 417 of this chapter, and the provisions of this section.

(2) *Dosimetry.* Official establishments that irradiate meat food and poultry products must have the following procedures in place:

(i) Laboratory operation procedures for determining the absorbed dose value from the dosimeter.

(ii) Calibration criteria for verifying the accuracy and consistency of any means of measurement (*e.g.*, time clocks and weight scales).

(iii) Calibration and accountability criteria for verifying the traceability and accuracy of dosimeters for the intended

purpose, and the verification of calibration at least every 12 months. To confirm traceability, establishments must relate, through documentation, the end point measurement of a dosimeter to recognized standards.

(iv) Procedures for ensuring that the product unit is dose mapped to identify the regions of minimum and maximum absorbed dose and such regions are consistent from one product unit to another of like product.

(v) Procedures for accounting for the total absorbed dose received by the product unit (e.g., partial applications of the absorbed dose within one production lot).

(vi) Procedures for verifying routine dosimetry, i.e., assuring each production lot receives the total absorbed dose. Establishments may either position one dosimeter at the regions of minimum and maximum absorbed dose (or at one region verified to represent such) on at least the first, middle, and last product unit in each production lot or use statistically based validation and dose mapping to determine the number and placement of dosimeters in each production lot.

(vii) Procedures for verifying the relationship of absorbed dose as measured by the dosimeter to time exposure of the product unit to the radiation source.

(viii) Procedures for verifying the integrity of the radiation source and processing procedure. Aside from expected and verified radiation source activity decay for radionuclide sources, the radiation source or processing procedure must not be altered, modified, replenished, or adjusted without repeating dose mapping of product units to redefine the regions of minimum and maximum absorbed dose.

(3) *Documentation.* Official establishments that irradiate meat food or poultry products must have the following documentation on premises, available to FSIS:

(i) Documentation that the irradiation facility is licensed or possesses gamma radiation sources registered with the Nuclear Regulatory Commission (NRC) or the appropriate State government acting under authority granted by the NRC.

(ii) Documentation that the machine radiation source irradiation facility is registered with the appropriate State government, if applicable.

(iii) Documentation that a worker safety program addressing OSHA regulations (29 CFR chapter XVII) is in place.

(iv) Citations or other documents that relate to incidences in which the establishment was found not to comply with Federal or State agency requirements for irradiation facilities.

(v) A certification by the operator that the irradiation facility personnel will only operate under supervision of a person who has successfully completed a course of instruction for operators of food irradiation facilities.

(vi) A certification by the operator that the key irradiation personnel, who monitor or control daily operations, have been trained in food technology, irradiation processing, and radiation health and safety.

(vii) Guarantees from the suppliers of all food-contact packaging materials that may be subject to irradiation that those materials comply with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*).

(4) *Labeling.*

(i) The labels on packages of meat food and poultry products irradiated in their entirety, in conformance with this section and with 21 CFR 179.26(a) and (b), must bear the logo shown at the end of this paragraph (c)(4)(i). Unless the word ''Irradiated'' is part of the product name, labels also must bear a statement such as ''Treated with radiation'' or ''Treated by irradiation.'' The logo must be placed in conjunction with the required statement, if the statement is used. The statement is not required to be more prominent than the declaration of ingredients required under § 317.2(c)(2). Any label bearing the logo or any wording of explanation with respect to this logo must be approved as required by Section 317.4. of this chapter or subparts M and N of part 381.

(ii) For meat food or poultry products that have been irradiated in their entirety, but that are not sold in packages, the required logo must be displayed to the purchaser with either the labeling of the bulk container plainly in view or a counter sign, card, or other appropriate device bearing the information that the product has been treated with radiation. In either case, the information must be prominently and conspicuously displayed to purchasers. Unless the word ''Irradiated'' is part of the product name, the labeling counter sign, card, or other device also must bear a statement such as ''Treated with radiation'' or ''Treated by irradiation.'' The logo must be placed in conjunction with the required statement, if the statement is used.

(iii) The inclusion of an irradiated meat food or poultry product ingredient in any multi-ingredient meat food or poultry product must be reflected in the ingredient statement on the finished product labeling.

(iv) Optional labeling statements about the purpose for radiation processing may be included on the product label in addition to the stated requirements elsewhere in this section, provided that such statements are not false or misleading. Statements that there has been a specific reduction in microbial pathogens must be substantiated by processing documentation.

Done in Washington, DC, on December 13, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–32660 Filed 12–22–99; 8:45 am]

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federal register

Thursday
December 23, 1999

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 310, et al.

Food Ingredients and Sources of Radiation Listed or Appproved for Use in the Production of Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310, 318, 319, 381 and 424

[Docket No. 88–026F]

RIN 0583–AB02

Food Ingredients and Sources of Radiation Listed or Approved for Use in the Production of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to harmonize and improve the efficiency of the procedures used by FSIS and the Food and Drug Administration (FDA) for reviewing and listing or approving the use of food ingredients and sources of radiation in the production of meat and poultry products. Except in very limited circumstances, FDA will list in its regulations in title 21 of the Code of Federal Regulations (CFR) food ingredients and sources of radiation that are safe for use in the production of meat and poultry products. Requests for approval to use food ingredients and sources of radiation not currently permitted under title 9 or title 21 of the CFR in the production of meat and poultry products will have to be submitted to FDA.

This action will eliminate the need for separate FSIS rulemakings. FSIS will limit substance-specific rulemakings under the authority of the Federal Meat Inspection Act (FMIA) or the Poultry Products Inspection Act (PPIA) to those necessary to establish specific prohibitions or limitations on the use of food ingredients and sources of radiation in the production of meat or poultry products. Such rulemakings might be necessary where a standard of identity or composition prohibits or limits the use of an ingredient, when use of the ingredient is not expected in the product, *e.g.,* adding milk to hamburger, or use of the ingredient would result in the product being adulterated or misbranded.

FSIS is also consolidating various existing regulations on food ingredients and sources of radiation into a single, new part, 9 CFR Part 424, applicable to both meat and poultry establishments. This will include combining the separate listings of food ingredients approved for use in meat and poultry products into a single table (9 CFR 424.22(c)) and eliminating unnecessary differences in the listings. FSIS has not made any substantive changes in the consolidated language.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Current FDA/FSIS Process for Listing Food Ingredients and Sources of Radiation for Use in the Production of Meat and Poultry Products

Food ingredients and sources of radiation used during the production of meat and poultry products are subject to regulation by FDA under the Federal Food, Drug, and Cosmetic Act (FFDCA). However, FSIS also has jurisdiction to regulate the use of those food ingredients and sources of radiation used in the production of meat and poultry products under the FMIA and the PPIA (*see* 21 U.S.C. 601(m)(2) and 21 U.S.C. 453(g)(2)).

Under the current system, someone interested in using a new food additive or color additive, or a new use or use level of a regulated food ingredient or source of radiation in the production of a meat or poultry product, must submit a petition to FDA requesting the listing of that use. The petition must contain data demonstrating the safety of the intended use of the food ingredient or source of radiation. FDA reviews the petition to determine the safety of the use of the food ingredient or source of radiation, and considers whether it has its intended technical effect at the requested level of use. After completing its review, FDA provides FSIS with an advisory opinion on whether the food ingredient or source of radiation is safe for the requested use in the production of meat or poultry products. At that point, FSIS reviews the suitability of the food ingredient or source of radiation for use in the production of meat or poultry products and conducts notice-and-comment rulemaking.

The process being adopted in this final rule will provide the same level of consumer protection without the delays inherent in the current system. It was in recognition of these delays that FSIS and FDA initiated this rulemaking and the companion FDA rulemaking.

Background

On December 29, 1995, FSIS published a proposed rule in the **Federal Register** titled ''Substances Approved for Use in the Preparation of Meat and Poultry Products'' (60 FR 67459). In it, FSIS proposed to amend the Federal meat and poultry products inspection regulations containing the procedures for reviewing the safety and suitability of substances used in meat and poultry products so they would correspond with the procedures used by FDA. Under the proposal, FSIS's regulations would have reflected the fact that it and FDA would simultaneously review petitions for the listing of substances for use in the production of meat and poultry products. In the same issue of the **Federal Register** (60 FR 67490), FDA proposed to make parallel changes to its regulations.

FSIS proposed to stop adding, in most cases, to its own regulations that list substances suitable for use in the production of meat and poultry products. Instead, the proposal envisioned that future FDA regulations would specify whether a substance listed or approved for use in foods under the FFDCA could be used in the production of meat or poultry products. In addition, under the proposal, current FDA regulations that list the use of a substance in foods generally, and that do not preclude meat and poultry product uses, would confer authority to use those substances in the production of meat and poultry products unless expressly prohibited by FSIS. In place of its own regulations, FSIS proposed to amend 9 CFR Parts 310, 318, 319, and 381 to include appropriate cross-references to the listings of substances permitted for use in the production of meat and poultry products in title 21 of the CFR.

FSIS stated that, as a matter of policy, all substances listed by FDA as Generally Recognized as Safe (GRAS) for general use in food in 21 CFR Parts 182 and 184 would be considered by USDA to be acceptable for use in meat and poultry products, unless restricted for such use by FSIS. For substances not listed by FDA as GRAS in 21 CFR Parts 182 or 184, FSIS proposed to continue to evaluate, in consultation with FDA, a manufacturer's basis for claiming that the food ingredient is GRAS and is suitable for use in meat or poultry products. FSIS also proposed to continue to offer advice to manufacturers regarding the suitability for specific uses of substances listed in title 21 of the CFR for general use in the production of foods or for use in meat or poultry products only. Except for formulation and processing procedure data for proprietary mixtures, which would be kept confidential, FSIS stated

that it intended to make its responses and related correspondence available to the public.

Under the proposal, all petitions for rulemaking to permit new substances or new uses or use levels of substances in the production of foods—including meat and poultry products—would be sent to FDA. The proposal reflected the fact that a petition needs to be submitted when a substance: (1) is not expressly listed for meat or poultry product uses in title 9 of the CFR, or in title 21 of the CFR, Parts 172–180; (2) is not a GRAS substance listed in Part 182 or 184 of title 21 of the CFR for general use in foods; or (3) cannot be demonstrated to FSIS, which consults with FDA as necessary, to be GRAS for particular meat or poultry product uses. It stated that FDA would evaluate the petitions in consultation with FSIS if any prospective use of a food additive, color additive, or GRAS substance, would be in meat or poultry products.

FSIS stated that it intended to review its listings in title 9 of the CFR of substances, within three to five years of a final rule in this proceeding, to eliminate those listings that duplicate FDA's listings in title 21 of the CFR. Because of current and anticipated resource constraints, FDA proposed to amend its regulations in title 21 of the CFR to provide that it would include meat and poultry product uses only in response to a petition, *i.e.,* a food additive, color additive, or GRAS affirmation petition, and that it would not move wholesale FSIS's listings of substances from title 9 of the CFR to title 21 of the CFR.

FSIS proposed to continue regulating the use of substances in meat and poultry products and to conduct the same reviews that it has been conducting, if and when necessary. For example, FSIS standards of identity or composition, in specific cases, could restrict uses of substances, or FSIS could determine that the use of a substance could adulterate a particular product or lead to a misbranded product. FSIS tentatively found that its ability to continue to regulate food ingredients was important so that it could prohibit or restrict the use of specific food ingredients in meat or poultry products. However, FSIS does not expect that it will have to take such action regularly because FDA's statutory authority, exercised according to the Memorandum of Understanding (MOU) between FDA and FSIS, will provide a means of imposing appropriate limitations on uses of food ingredients in meat and poultry products. (A draft version of the MOU was published as an appendix to the proposal. *See* 60 FR 67467.)

To provide direction to its inspection program personnel, FSIS proposed to maintain a comprehensive listing in its directive system of substances authorized for use in the production of meat and poultry products under title 9 or title 21 of the CFR. FSIS proposed to include in the listing:

a. Substances listed in title 9 of the CFR;

b. Substances listed for meat or poultry product uses in FDA food additive, color additive, GRAS, or prior-sanction listings;

c. Approved color additives in 21 CFR Parts 73, 74, and 82, food additives listed in 21 CFR Parts 172–173 and 180, prior-sanctioned substances approved by part 181, and GRAS substances approved by 21 CFR 182 and 184, if permitted for general use in or on foods (including meat and poultry products) in accordance with good manufacturing practice, unless meat or poultry product uses of these additives or substances are otherwise precluded; and

d. FDA food additive, color additive, GRAS, and prior-sanctioned substance listings that provide for meat and poultry product uses and are promulgated after the proposal becomes final.

FSIS also proposed to provide similar information to inspected establishments and other interested persons in the form of guidelines.

Memorandum of Understanding

FDA and FSIS have entered into an MOU establishing procedures to jointly respond to petitions to use food ingredients and sources of radiation in the production of meat and poultry products. Under the terms of the MOU, petitions to use a food or color additive or GRAS substance in the production of meat or poultry products will be evaluated for safety by FDA and for suitability by FSIS. FDA will be the submitter's regulatory contact. A copy of the MOU is appended to this final rule.

Discussion of Comments

FSIS received 22 comments in response to the proposed rule. Trade associations submitted eleven, industry eight, and a governmental organization, professional association, and consulting firm each submitted one. Most commenters generally favored the proposal and supported the efforts of FSIS and FDA to streamline the system to list or approve food ingredients used in meat and poultry products. Two commenters opposed the proposal. The following is a discussion of the relevant issues raised in the comments.

1. Despite the general support for the proposal, many commenters took issue with FSIS's proposal to prohibit the use of GRAS substances in meat and poultry products unless the substance is listed in parts 182 or 184 of title 21 of the CFR or in title 9 of the CFR. They stated that FSIS's prohibition of the use of unlisted GRAS substances in meat and poultry products is unreasonable because FDA has said that it is impractical to list all such substances in FDA regulations. The commenters maintained that all GRAS food substances, whether or not listed in FDA or FSIS regulations, should be permitted in meat and poultry products, provided that they are used in accordance with good manufacturing practice. One commenter requested that the policy currently in place for the self-determination of GRAS status of substances used in FDA-regulated foods be applied to food ingredients used in FSIS-regulated meat and poultry products. Another commenter expressed concern that permitting firms to make GRAS self-determinations would allow the use of unknown food ingredients in meat and poultry products.

Self-determinations of GRAS status present significantly different problems for FSIS than FDA. FDA's regulatory authority over products that contain an ingredient that a manufacturer views as GRAS begins when such products enter commerce and requires that FDA find that such products are adulterated. In contrast, FSIS must be able to find that a product is not adulterated *before* it will apply the mark of inspection that is necessary for the product to enter commerce. Thus, while a manufacturer of an FDA-regulated product may determine that use of a substance is GRAS, taking a calculated risk that FDA will not disagree, the manufacturer of an FSIS-regulated product which uses the same substance will not be eligible for the mark of inspection if FSIS has no basis for concluding that use of the substance would not adulterate the product. To be eligible for the mark of inspection for its products, a manufacturer must show that the use of the ingredients in its products has been shown to be safe under some provision of FDA law or has a history of safe use.

On April 17, 1997, FDA published in the **Federal Register** a proposal to replace the current GRAS affirmation petition process with a notification procedure. Under the proposed notification procedure, any person may notify FDA that he/she has determined that a particular use of a substance is GRAS. Upon receiving such a notification, FDA will evaluate whether the submitted notice provides a sufficient basis for a determination that

the use is GRAS, and whether information in the notice or otherwise available to FDA raises issues that lead FDA to question whether use of the substance is GRAS. If FDA elects not to question the determination, it will send the person a letter to that effect.

In the near future, FSIS intends to publish a proposal that will reflect FDA's GRAS notification proposal as it implicates GRAS food ingredients permitted for use in meat and poultry products. If both proposals are adopted, FSIS will accept self-determinations of GRAS status if an establishment that relies on the determination has on file in the establishment a copy of a letter from FDA that states that FDA does not question the determination, and the establishment makes the letter available to FSIS inspection program personnel. However, FSIS is retaining the right to evaluate self-determinations of GRAS status for suitability and will do so if it deems such an evaluation is required for any reason. FSIS is currently continuing to perform evaluations of self-determined GRAS substances to ascertain that the substances are suitable for use in meat and poultry products.

2. Many commenters asserted that food ingredients listed or approved for general food use under FDA regulations should be permitted for use in meat and poultry products unless otherwise restricted by other FDA or FSIS regulations.

FSIS agrees. As stated in the proposal, color additives approved by 21 CFR Parts 73, 74, and 82; food additives listed in 21 CFR Parts 172–173 and 180; prior-sanctioned substances approved by part 181; and GRAS substances approved in 21 CFR 182 and 184 may be used in meat and poultry products provided that the food ingredient is permitted for general use in or on foods (which includes meat and poultry products) and is used in accordance with good manufacturing practice, unless the meat or poultry product uses of the food ingredient are otherwise specifically precluded or not specifically allowed by product standards.

3. Many commenters that supported the efforts of FSIS and FDA to streamline the system for listing or approving food ingredients used in meat and poultry products stated that FSIS should participate in FDA's process to regulate food ingredients to ensure that such ingredients listed or approved for use in or on meat and poultry products are appropriate for such use. However, a few felt that FSIS should be completely eliminated from this process. One commenter stated that FSIS is not equipped to perform a separate safety evaluation for food ingredients, and that FSIS's review would be inconsistent with the goal of streamlining the review process. Others felt that dual evaluations would significantly lengthen the review process, and therefore, one agency or the other should conduct evaluations entirely, but not both.

Most commenters felt that FDA, not FSIS, should be responsible for reviewing food ingredient petitions, despite concerns that ''the FDA petition process system is burdensome and slow, because FDA is required to evaluate all substances for use in food, including meat and poultry products.'' One commenter lamented the loss of a quick response by FSIS to submitters, while another suggested that FSIS accept ''informal advisory letters'' from FDA. This commenter suggested that FSIS could use these letters, which prescribe the appropriate use of food ingredients, to determine the appropriate use of such ingredients without requiring a rulemaking proceeding to be completed before the ingredient may be used in meat and poultry products.

FDA has broad jurisdiction over all food, except to the extent exceptions have been created by statute, and primary authority for determining the safety of food ingredients for use in meat and poultry products. FSIS's jurisdiction is more specific: It is limited to regulating the production and distribution of meat, poultry, and egg products. Because of its extensive statutory authority to regulate the safety of food ingredients and sources of radiation that may be used the production of food, FDA has developed the scientific staff, the institutional expertise, and the regulatory structure to ensure that food ingredients and sources of radiation that may be used in the production of foods are safe. Therefore, FDA and FSIS have agreed that FDA is the agency to whom manufacturers should submit petitions for the use of food ingredients and sources of radiation.

Requiring petitions to be submitted to FDA will not delay the listing of food ingredients or sources of radiation for use in meat and poultry products. Instead, the single petition, joint review, and single rulemaking procedure should decrease the time it takes to list or approve a food ingredient or source of radiation for use in meat or poultry products by eliminating the current time-consuming, duplicative, sequential rulemaking process.

Currently, food additives, as defined in 21 U.S.C. 321(s), may not be used in meat or poultry products unless they are listed for use under the FFDCA. A manufacturer is first required to petition FDA to list the food additive for its intended conditions of use or for use in food in general. In response to the petition, FDA amends its regulations in title 21 of the CFR to provide for the use of the substance. Once FDA has acted, the manufacturer must then petition FSIS for approval of the food additive for use specifically in meat or poultry products, unless the manufacturer has submitted data supporting its use in such products in its original petition to FDA (*see* 9 CFR 318.7(a)(2)). In such a case, use is generally permitted unless a standard of identity or other regulation precludes it. After FSIS has completed its evaluation and approved the food additive for use in meat and poultry products, FSIS must amend its regulations in title 9 to include the permitted use before the food additive can actually be used in a meat or poultry product.

Sometimes, however, a manufacturer does not submit a food additive petition to FDA for use of a substance in meat or poultry products. Instead, it contacts FSIS directly, asking that FSIS approve the use of the food additive in meat or poultry products. When this happens, FSIS, rather than the submitter, is put in the position of having to approach FDA to obtain approval for the use of the food additive in food generally under the FFDCA. Therefore, though FSIS, and not the submitter, approaches FDA, FDA still conducts a safety evaluation of the food additive and amends its regulations as necessary under the FFDCA before FSIS begins its own process. Duplicative reviews and rulemaking cannot be avoided under the current system.

The new system will eliminate the need for a manufacturer to submit two petitions, one to each agency, for the listing or approval to use a food additive or color additive, or source of radiation, in the production of meat or poultry products. Manufacturers will tender only one petition, to FDA, as they have always had to do under the tenets of the FFDCA. After FDA has completed its general food safety evaluation, it will inform FSIS of its determination. Consistent with the requirements that FDA's statutory authority has always necessitated, FDA, not FSIS, will amend its regulations to provide for the use of the food or color additive or other substance, when such regulation is necessary. FSIS will, as indicated, modify its directive and guidelines to reflect the new food ingredient or source of radiation or its new use or level. These new procedures will speed up the review process and eliminate the need

for duplicative listings in FSIS's regulations.

4. One commenter asked why inquiries regarding substances that are not affirmed or listed as GRAS in title 21 of the CFR should be sent to FSIS if FDA will ultimately be required to issue a GRAS regulation before the substance may be used.

At the time of the proposal, FDA and FSIS determined that FSIS is best suited to provide advice regarding whether a substance could be used in meat or poultry products. Therefore, the agencies tentatively decided that inquiries about the use of unlisted or unaffirmed GRAS substances in meat and poultry products should be directed to FSIS.

After further discussions with FDA, the two agencies have decided that because the statutes under which FDA operates require FDA approval of ingredients whose use is not GRAS, FDA is better suited than FSIS to provide advice regarding whether a substance not listed as GRAS is safe for use in meat or poultry products. Therefore, inquiries concerning the use in specific meat or poultry products of substances that are not affirmed by FDA as GRAS or otherwise listed in 21 CFR Part 182 or 184, or of food and color additives listed or approved in title 21 regulations for general use in foods, or for use in meat or poultry products generally, including mixtures of such food and color additives, should be addressed in writing to FDA.

5. In the proposed rulemaking, FSIS stated that it would review its lists of food ingredients and sources of radiation approved for use in meat and poultry products in title 9 of the CFR over the next three to five years and eliminate those that duplicate FDA's listing in title 21 of the CFR. However, FSIS also declared its intention to retain those regulations that prohibit uses of specific food ingredients to protect the public health and consumers from product adulteration and misbranding under the FMIA and PPIA; and to promulgate new prohibitions or limitations as necessary.

While one commenter favored this dual approach, five others felt that FDA should cover all past, present, and ''future ingredient approvals and restrictions'' for use in meat and poultry products in title 21 of the CFR. A third group of commenters requested that FSIS maintain a comprehensive listing of food ingredients approved for use in meat and poultry products either under title 9 of the CFR or in another FSIS publication as guidance to inspection program personnel and industry. One commenter who opposed the proposal stated that while the ''new food additive approval system'' might decrease the bureaucracy involved in getting food ingredients listed for use in meat and poultry products, it could also negatively affect traditional products produced by smaller processors because such processors rely on FSIS staff to guide them in properly using FDA-approved food ingredients in their products.

FSIS generally agrees with those commenters who stated that FSIS's tables of approved substances in title 9 of the CFR should be eliminated because they are not as complete as FDA's food ingredient listings. FSIS has decided, however, to retain them in title 9 of the CFR until FDA completes the amendments of its regulations in title 21 of the CFR to include all food ingredient and sources of radiation uses in meat and poultry products. While this may not happen for some time, due to current and anticipated resource constraints within FDA, FSIS believes it is the best way to ensure that food ingredients not listed or approved for use in meat and poultry products will not be used. FSIS will also publish a directive for inspection program personnel, and a set of guidelines for members of both the meat and poultry industry and the public, that will contain the food ingredients listed or approved for use in meat and poultry products.

6. One commenter recommended that FSIS conduct a total review of all existing ''food additive'' limitations and restrictions before the proposal is finalized, to determine their efficacy. All current food additive limitations and restrictions are based on scientific data that were reviewed by FSIS and FDA before each additive was listed or approved for use in meat and poultry products. The commenter presented no basis for concern about the reviews that were done. Therefore, there is no basis for changes to the limitations or restrictions unless new data are presented that support modifying a listed or approved use. It would take years of effort to review all of the actual data supporting each limitation or restriction, and FSIS has no intention of conducting a total review of existing substance limitations and restrictions.

7. A commenter stated that it was unclear whether FSIS's review process for processing chemicals not regulated under the FFDCA, such as sanitizing and cleaning agents for food-contact equipment and utensils, will continue once this final rule is adopted.

It will not. On February 13, 1998, FSIS announced in the **Federal Register** that it is eliminating its prior approval requirements for nonfood compounds and proprietary substances. ''Proprietary substances'' contain a combination of ingredients, some of which are not identified on the containers by common or chemical name, or by some other means. While approval of nonfood compounds and proprietary substances before their intended use provides some assurance to meat and poultry product processors that the use of these compounds and substances would not result in the adulteration of food products, provided they are properly used, this type of prior approval program is inconsistent with the new food safety strategy and approach set forth in the ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38806).

Under these regulations, meat and poultry establishments are responsible for developing and implementing HACCP plans incorporating the controls necessary and appropriate to produce safe meat and poultry products. Consequently, establishments, not FSIS, will be responsible for ensuring that the nonfood compounds and proprietary substances they use are lawful, safe, and effective.

FSIS intends to maintain a small staff with expertise in nonfood compounds and proprietary substances. This staff will be responsible for issuing technical guidance, particularly to small and very small meat and poultry establishments, as the need arises. FSIS began eliminating the prior approval system for nonfood compounds and proprietary substances in autumn 1998.

8. A commenter suggested that FSIS eliminate the Proprietary Mix Committee (PMC) and set up third-party review of ''food additives.'' The PMC provides a voluntary identification service to ingredient manufacturers. The PMC evaluates the proprietary formula and process for making an ingredient mix, confirms the identity and regulatory use status of the ingredients, and identifies appropriate labeling and use requirements for the mix. The PMC then sends the information, in writing, back to the requestor. This ''PMC letter,'' which is used during the prior label approval process by meat and poultry product processors manufacturing products containing proprietary mixes, provides verification of the appropriate ingredient labeling information to FSIS.

Ingredient manufacturers are not required by the meat and poultry regulations to have a PMC letter before getting meat and poultry product labels approved by FSIS. It is a voluntary service offered by FSIS. For this reason, and because the PMC works in

conjunction with the prior label approval system, it will continue to function as long as FSIS has a prior label approval system. If, and when, FSIS eliminates that system and replaces it with a generic label approval system (which was discussed in the final rule on prior label approval, 60 FR 67443), FSIS will also consider eliminating the PMC.

9. One commenter, who provided qualified support for the proposal, felt that 9 CFR 318.1(d), which would require labels for preparations containing ''chemicals'' limited by 21 CFR 73, etc., or by 9 CFR Chapter III, Subchapter A, to show the percentage of the ''chemical'' in the preparation, was unnecessary and should be deleted. The commenter contended that such a requirement conflicts with FDA's regulations for labeling GRAS substances (21 CFR 184.1(f)(2)), which permit proprietary composition information to be excluded from the label if other information on the label will enable the user to comply with the given regulatory limitations. According to the commenter, proposed 9 CFR 318.1(d) would require the manufacturer to reveal confidential information to FSIS-inspected establishments or to decline to sell the preparation to them. The commenter asserted that if the information on the label instructs the user how to properly use the product and to comply with the regulatory limits, then public health and safety are not compromised. Therefore, the commenter contended, the regulation is not necessary. The commenter suggested that deletion of 9 CFR 318.1(d) will make FDA's and FSIS's regulations consistent and will allow manufacturers to use the same label on identical products destined for both FSIS-inspected establishments and FDA-regulated establishments.

To some extent, FSIS agrees with the commenter. Contrary to the commenter's assertion, however, section 318.1(d) does *not* require the ingredient manufacturer to disclose proprietary information to FSIS-inspected establishments. It requires that labels on containers of preparations used in hog scalding water or the denuding of tripe bear the common or chemical name of the preparation. If the preparation contains a chemical that is specifically limited by current section 318.7(c)(4), the label must show the percentage of the chemical in the preparation.

After further consideration, FSIS believes that 9 CFR 318.1(d), as currently written, is a command-and-control provision because it tells chemical manufacturers what information they must provide on the labels of their products. This is inconsistent with FSIS's announced policy of removing command-and-control provisions wherever feasible.

Therefore, FSIS has decided to amend section 318.1(d) to require that labels or labeling on containers of hog scald water or tripe denuding preparations bear adequate directions to ensure use in compliance with any limitations prescribed in 9 CFR or 21 CFR. This action will make FDA's and FSIS's regulations consistent and will allow manufacturers to use the same label on identical products destined for both FSIS-inspected establishments and FDA-regulated establishments.

10. The commenters that did not support the proposal expressed concern that FDA's petition system is more complicated and confusing than FSIS's system. One commenter stated that it would be confusing and time-consuming to have to search through five parts of title 21 of the CFR to find the status of a food ingredient.

While FDA and FSIS acknowledge that some confusion may arise from the placement of listed or approved food ingredients and sources of radiation in different parts of title 21 of the CFR, the public will be better served by having the permitted uses consolidated in one title of the CFR. Rather than searching through two separate titles of the CFR, 9 *and* 21, to find the permitted uses of a food ingredient or source of radiation, interested parties will only have to survey one, title 21.

Combined Language

For the past several years, FSIS has been reviewing its regulatory procedures and requirements to determine which are still needed and which ought to be modified, streamlined or eliminated (*see* FSIS Docket No. 95–008A, ''FSIS Agenda for Change: Regulatory Review''; 60 FR 67469). This review is an integral part of FSIS's initiative to modernize its food safety regulations and reflects FSIS's commitment to achieving its goal of having fewer, clearer, and user-friendly regulations.

In the course of drafting this final rule, FSIS identified various meat and poultry regulations that, within the context of FSIS's regulatory streamlining initiative, need revision. FSIS decided to consolidate some of those regulations. The consolidation did not involve any substantive changes.

FSIS added a new Part 424, titled Preparation and Processing Operations. This new part, to the extent possible, combines the meat and poultry products inspection regulations affected by this rule. As a result, these rules are the same for both meat and poultry products, unless there is a specific reason for having different rules or language.

The Final Rule

Under this final rule, FSIS is ending duplicative rulemaking activities regarding the use of food ingredients and sources of radiation in the production of meat and poultry products. FSIS is amending the Federal meat and poultry products inspection regulations in 9 CFR Parts 310, 318, 319, and 381 to include appropriate cross-references to title 21 (Chapter I, Subchapter A and Subchapter B) listings of food additives, GRAS substances, color additives, and prior-sanctioned substances permitted for use in meat and poultry products.

As amended, 9 CFR 310.20 includes appropriate references to food ingredient listings and approvals in title 21 of the CFR. The requirements governing the saving of livestock blood have not been changed. The new amendment to 9 CFR 318.1 eliminates the requirement that labels on hog scalding or tripe denuding preparation containers show the percentage of chemicals in the preparations that are specifically limited as to amount permitted to be used, if any, by 21 CFR or 9 CFR. The labels will need to bear only adequate use directions to ensure that such use is in compliance with all provisions of 21 CFR or 9 CFR.

Section 318.7(d)(2) of 9 CFR is amended to add a reference to title 21 of the CFR. In addition, this section has now been transferred to a new part and renumbered. (*See* Part 424, Preparation and Processing Operations, section 424.23, Prohibited uses, paragraph (a)(3).) As in the proposal, the paragraph does not change the prohibitions of and restrictions on the food ingredient uses in meat.

Proposed 9 CFR 318.7(a)(4) and 381.147(f)(2)(iv) listed addresses for inquiries concerning the status of food ingredients intended for use in or in contact with meat or poultry products. Proposed 9 CFR 318.7(a)(5) and 381.147(f)(2)(v) listed addresses for inquiries concerning the use in meat or poultry products of food ingredients not listed in the title 21 regulations. In this final rule, these provisions have been combined and moved to section 424.21, Use of substances, paragraphs (b)(5) and (b)(6). No substantive changes have been made to these provisions.

Proposed 9 CFR 318.7(a)(1)–(3) and 9 CFR 381.147(f)(1) and (2) have also been combined in this final rule and placed in section 424.21, paragraphs (b)(1)–(3).

Again, no substantive changes have been made.

Section 318.7(b), Use of nitrite and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon, has been moved in its entirety to section 424.22, Certain other permitted uses, paragraph (b), while section 318.7(c) has been moved in its entirety to section 424.22(c) and combined with section 381.147(f)(4) to create one list of food ingredients approved for use in meat and poultry products. Where possible, FSIS has combined meat and poultry listings for a specific chemical into one listing. No substantive changes have been made to these provisions.

New part 424 prescribes the rules for the preparation or processing of meat and poultry products (*see* section 424.1, Purpose and Scope). The rules are intended to prevent the adulteration and misbranding of meat and poultry products at official establishments. The statements contained in section 424.1 merely advise the public of the purpose and scope of the rules FSIS administers.

FSIS is also including in Part 424 section 424.22 (formerly 9 CFR 318.7(b) and (c), and 9 CFR 381.147(f)(4)), which covers certain other permitted uses of ingredients in meat, and section 424.23, which lists prohibited uses of ingredients in meat and poultry products (formerly 9 CFR 318.7(d)).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different from, those imposed by the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are within their jurisdiction and outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect.

Under this rule, administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be significant and has been reviewed by OMB under Executive Order 12866. In accordance with 5 U.S.C. 603, FSIS has also conducted a regulatory flexibility analysis regarding the impact of the rule on small entities.

This final rule will replace the current government process for listing or approving the use of food ingredients and sources of radiation in meat and poultry products, which involves consecutive rulemakings by FDA and FSIS, with a ''one-stop'' procedure under which sponsors of new food or color additives, other substance uses, or sources of radiation in meat and poultry products will have to petition only FDA under the requirements of the FFDCA. FDA has always had the statutory authority for approving ingredients. FDA will conduct any required rulemaking on the matter in consultation with FSIS. FDA's rule will specify any uses or use restrictions unique to meat or poultry products.

This final rule modifies existing FSIS regulations concerning the listing or approval of food ingredients and sources of radiation used in the production of meat and poultry products that needlessly duplicate effort and expenditures by government and the regulated industry. These existing regulations require sequential rulemakings by FDA and FSIS to permit a new food ingredient and source of radiation, or a new use of a previously approved food ingredient or source of radiation to be used in meat or poultry products. The cost to industry and government of these rulemaking procedures includes the costs to industry arising from the delay in the introduction of new ingredients, or new food products. These costs create a disincentive for technological innovation and new product development. The existing process, therefore, negatively affects economic growth.

Benefit-Cost Assessment

The public benefits conferred by this rulemaking include, principally, those associated with the more timely regulatory listing or approval of food ingredients and sources of radiation used in the production of foods and those associated with having the ingredients themselves available for use more quickly. The benefits of ingredients added to meat and poultry products include the technical effects on the characteristics of food products, the uses of the ingredients in food processing, and a greater variety of foods in the marketplace. Public health benefits include the greater availability of food through preservation techniques and improved food safety through, for example, antimicrobial treatments of raw product and the use of curing solutions in processed products. The benefits conferred by the availability of ingredients and this rulemaking will marginally increase the ingredients' uses.

The public benefits of regulating food ingredients and sources of radiation, generally, will not change. These include, principally, the prevention of adulteration or misbranding of food products. Consumers are provided assurances that the products they buy do not contain food ingredients whose use(s) ought, for various reasons, to be prohibited, and food ingredients that have been listed or approved have not been used improperly in foods. This final rulemaking will not affect such benefits because (1) FDA will continue to approve food ingredients and sources of radiation, and conduct safety reviews (when required by the FFDCA) of food ingredients and sources of radiation proposed for use in the production of foods, including—in consultation with FSIS—meat and poultry products, and (2) FSIS will continue to exercise its in-plant inspection and other regulatory authorities to prevent the marketing of adulterated or misbranded meat and poultry products. Therefore, elimination of the duplicative FSIS rulemaking process involved in listing or approving food ingredients or sources of radiation for use in meat and poultry products will probably save the regulated industry between $400,000 and $600,000 a year over and above the savings the government itself will realize in administrative costs. (According to industry representatives, the cost of filing one food ingredient petition is approximately $100,000. This includes research and administrative costs.)

Other less calculable benefits arise through the removal of a disincentive to innovate. With the potential expansion of uses of listed or approved food ingredients that will result from the easing of the current regulatory burden, new product development and marketing are encouraged.

This final rule will not have a significant economic impact on a substantial number of small entities. Obtaining approval for the use in the production of meat and poultry products of new food ingredients or sources of radiation, or for new uses of previously listed or approved food ingredients or sources of radiation, will

be simpler, faster, and less costly for both industry and the Federal government than under the current system.

Under the final rule, separate petitions to FSIS will no longer have to be submitted. FSIS will permit food ingredients and sources of radiation to be used in products under its jurisdiction based on FDA's title 21 regulations permitting such uses. Those food additives and color additives *not* approved for meat and poultry product use under current FDA regulations will require only one petition for rulemaking—to FDA.

FSIS currently receives only four to six petitions per year for the listing or approval of food ingredients for use in meat and poultry products. Approximately 75 percent of these petitions are from large commercial entities. Therefore, the final rule will not have a significant effect on a substantial number of small entities. Furthermore, all users of the Federal regulations concerning the addition of food ingredients to foods will benefit by having fewer, clearer regulations. Thus, there will be a reduction in the duplication of effort and attendant costs for all concerned.

Public Notification and Request for Data

The public is asked to provide additional information on the effect of this final rule on minority ownership and operation of affected establishments, employment, and consumers, and other related impacts. The information being requested includes professional journal articles, research reports, industry data, and other similarly reliable information. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce the publication of this final rule in the **Federal Register** in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Paperwork Requirements

No new paperwork requirements are associated with this final rule. The effect of the rulemaking will be to substantially reduce the information collection from private sources concerning proposed uses of food ingredients in meat or poultry products. Persons seeking Federal government listing or approval of food additives and color additives for use in the production of meat or poultry products will have to petition only FDA, rather than both FDA and FSIS, as they now do. Thus, the current, duplicative information collection requirement will be eliminated.

List of Subjects

9 CFR Part 310

Meat inspection.

9 CFR Part 318

Food additives, Food packaging, Meat inspection.

9 CFR Part 381

Food additives, Food packaging, Poultry and poultry products.

9 CFR Part 424

Food additives, Food packaging, Meat inspection, Poultry and poultry products.

For the reasons set out in the preamble, 9 CFR parts 310, 318, 319 and 381, are amended, and part 424 is added, to read as follows:

PART 310—POST-MORTEM INSPECTION

1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 310.20 is revised to read as follows:

§ 310.20 Saving of blood from livestock as an edible product.

Blood may be saved for edible purposes at official establishments provided it is derived from livestock, the carcasses of which are inspected and passed, and the blood is collected, defibrinated, and handled in a manner so as not to render it adulterated under the Federal Meat Inspection Act and regulations issued pursuant thereto. The defibrination of blood intended for human food purposes shall not be done with the hands. Anticoagulants may be used in accordance with 21 CFR Chapter I, Subchapter A and Subchapter B, or by regulation in 9 CFR Chapter III, Subchapter A or Subchapter E.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

4. Section 318.1(d) is revised to read as follows:

§ 318.1 Products and other articles entering official establishments.

* * * * *

(d) To ensure the safe use of preparations used in hog scalding water or in the denuding of tripe, the label or labeling on containers of such preparations shall bear adequate directions to ensure use in compliance with any limitations prescribed in 21 CFR Chapter I, Subchapter A or Subchapter B, or 9 CFR Chapter III, Subchapter A or Subchapter E.

* * * * *

§ 318.7 [Removed]

5. Section § 318.7 is removed.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

6. The authority citation for 9 CFR Part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 319.100 [Amended]

7. The first sentence of § 319.100 is amended by removing ''§ 318.7(c)(1) and (4) of this subchapter'' and adding in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

§ 319.106 [Amended]

8. Paragraph (d)(2) of § 319.106 is amended by removing ''in accordance with § 318.7(c)(4) of this subchapter'' and adding in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

§ 319.140 [Amended]

9. The second and third sentences of § 319.140 are amended by removing ''§ 318.7(c)(4) of this subchapter'' and adding in its place ''a regulation permitting that use in this subchapter or in 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

§ 319.145 [Amended]

10. Section 319.145 is amended as follows:

A. In paragraph (a)(4), remove ''in the chart following § 318.7(c)(4),'' and add in its place ''in a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B'';

B. In paragraph (b)(6), remove ''the chart of substances in § 318.7(c)(4) of this subchapter.'' and add in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

§ 319.180 [Amended]

11. Section 319.180 is amended as follows:

A. In the first sentence of paragraph (a), remove ''§ 318.7(c)(4) of this chapter,'' and add in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.'';

B. In the first sentence of paragraph (b), remove ''§ 318.7(c)(4) of this chapter,'' and add in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.'';

C. In the first sentence of paragraph (e), remove ''§ 318.7(c)(4) of this subchapter.'' and add in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

§ 319.303 [Amended]

12. The second sentence of paragraph (a)(3) of § 319.303 is amended by removing ''§ 318.7(c)(4) of this subchapter'' and adding in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

§ 319.700 [Amended]

13. Section 319.700 is amended as follows:

A. In paragraphs (a)(4), (a)(5), and (a)(6), remove ''§ 318.7(c)(4) of this chapter'' and add in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.'';

B. In the first sentence of paragraph (a)(7), remove ''§ 318.7(c)(4) of this chapter,'' and add in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Parts 73, 74, 81, or 82,'';

C. In the first sentences of paragraphs (a)(9) and (a)(10), remove ''§ 318.7(c)(4) of this chapter,'' and add in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

14. The authority citation for 9 CFR Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.120 [Amended]

15. The fourth and sixth sentences of § 381.120 are amended by removing ''§ 381.147'' and adding in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

16–17. Section 381.145, paragraph (i), is revised to read as follows:

§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.

* * * * *

(i) To ensure the safe use of preparations used in poultry scald water, the label or labeling on containers of such preparations shall bear adequate directions to ensure use in compliance with any limitations prescribed in 21 CFR Chapter I, Subchapter A or Subchapter B or 9 CFR Chapter III, Subchapter A or Subchapter E.

§ 381.147 [Removed]

18. Section 381.147 is removed.

§ 381.171 [Amended]

19. The first and second sentences of § 381.171, paragraph (b), are amended by removing ''§ 381.147 of this part'' and adding in its place ''a regulation permitting that use in this subchapter or 9 CFR Chapter III, Subchapter E, or in 21 CFR Chapter I, Subchapter A or Subchapter B.''

SUBCHAPTER E—REGULATORY REQUIREMENTS UNDER THE FEDERAL MEAT INSPECTION ACT AND THE POULTRY PRODUCTS INSPECTION ACT

20. Subchapter E is amended by adding a new Part 424 to read as follows:

PART 424—PREPARATION AND PROCESSING OPERATIONS

Subpart A—General

Sec.
424.1 Purpose and scope.

Subpart C—Food Ingredients and Sources of Radiation

424.21 Use of food ingredients and sources of radiation.
424.22 Certain other permitted uses.
424.23 Prohibited uses.

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

Subpart A–General

§ 424.1 Purpose and scope.

This part of the regulations prescribes rules for the preparation of meat and the processing of poultry products. The rules in this part further the purposes of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) by, among other things, preventing the adulteration or misbranding of meat and poultry products at official establishments. 9 CFR Chapter III, Subchapter A, Parts 318 and 319, Subpart C of this part, and 21 CFR Chapter I, Subchapter A or Subchapter B, specify rules for the use of certain food ingredients (e.g., food additives and color additives) and sources of radiation that may render meat or poultry products adulterated or misbranded.

Subpart C—Food Ingredients and Sources of Radiation

424.21 Use of food ingredients and sources of radiation.

(a)(1) *General.* No meat or poultry product shall bear or contain any food ingredient that would render it adulterated or misbranded, or which is not approved in this part, part 318 or part 319 of this chapter, or by the Administrator in specific cases.

(2)(i) Poultry products and poultry broth used in the processing of poultry products shall have been processed in the United States only in an official establishment or imported from a foreign country listed in § 381.196(b), and have been inspected and passed in accordance with the regulations. Detached ova and offal shall not be used in the processing of any poultry products, except that poultry feet may be processed for use as human food in

a manner approved by the Administrator in specific cases and detached ova may be used in the processing of poultry products if the processor demonstrates that such ova comply with the requirements of the Federal Food, Drug, and Cosmetic Act.

(ii) Liquid, frozen, and dried egg products used in the processing of any poultry product shall have been prepared under inspection and be so marked in accordance with the Egg Products Inspection Act.

(3)(i) Carcasses, parts thereof, and products of cattle, sheep, swine, goats, or equines may be used in the processing of poultry products only if they were prepared in the United States in an official meat packing establishment or imported from a foreign country listed in § 327.2(b), were inspected and passed in accordance with the Federal Meat Inspection Act and the regulations under such Act (subchapter A of this chapter), and are so marked.

(ii) Pork from carcasses or carcass parts used as an ingredient in poultry products that has been found free of trichinae, as described under § 318.10 (a)(2), (e) and (f) of the Federal meat inspection regulations (9 CFR 318.10 (a)(2), (e) and (f)), is not required to be treated for the destruction of trichinae.

(iii) Poultry products containing pork muscle tissue which the Administrator determines at the time the labeling for the product is submitted for approval in accordance with part 381 of the regulations in subchapter A or upon subsequent reevaluation of the product would be prepared in such a manner that the product might be eaten rare or without thorough cooking because of the appearance of the finished product or otherwise, shall be effectively heated, refrigerated, or cured to destroy any possible live trichinae, as prescribed in § 318.10(c) of this chapter, at the official establishment where such products are prepared. In lieu of such treatment of poultry products containing pork, the pork ingredient may be so treated.

(b)(1) *Food ingredients and sources of radiation.* Food ingredients and sources of radiation listed or approved for use in the production of meat or poultry products in 21 CFR Chapter I, Subchapter A or Subchapter B, shall be listed for such use under this chapter, subject to declaration requirements in parts 316 and 317, or Subparts M and N, of Part 381 of this chapter, unless precluded from such use or further restricted in parts 318 or 319, or Subparts O and P, of Part 381 of this chapter, or unless such use otherwise results in the adulteration or misbranding of meat or poultry products. Food ingredients and sources of radiation listed or approved for use in the production of meat or poultry products in 21 CFR Chapter I, Subchapter A or Subchapter B, may be listed or approved for such use under this chapter by the Administrator in § 424.21, subject to declaration requirements in parts 316 and 317, or Subparts M and N, of Part 381 of this chapter.

(2) No food ingredients or sources of radiation may be used in the preparation of any meat or poultry product, for any purpose, unless the use is listed or approved in 21 CFR Chapter I as a direct food additive (21 CFR Part 172), a secondary direct food additive (21 CFR Part 173), indirect food additive (21 CFR Parts 174–178), radiation source (21 CFR Part 179), an interim-listed direct food additive (21 CFR Part 180), a prior-sanctioned substance (21 CFR Part 181), a Generally Recognized As Safe (GRAS) substance (21 CFR Parts 182 or 184), or by a regulation in this chapter. Part 319 of this chapter also specifies other food ingredients that are acceptable in preparing specified products.

(3) No food ingredient, the intended use of which is to impart color in any meat or poultry product, shall be used unless such use is approved in 21 CFR Chapter I as a color additive (21 CFR Parts 73, 74, 81, and 82) or in a regulation in this chapter.

(4) Petitions to amend 21 CFR Chapter I to provide for uses of food additives, or other substances or sources of radiation necessary in the preparation of meat or poultry products, or food ingredients used to impart color to product, should be sent to the Food and Drug Administration, in accordance with the provisions of 21 CFR Parts 71 or 171, as appropriate.

(5) Inquiries concerning the regulatory status under the Federal Food, Drug, and Cosmetic Act of any articles intended for use as components of, or in contact with, meat or poultry products, may be addressed to the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 200 C Street, SW, Washington, DC 20204, or the Department of Agriculture, Food Safety and Inspection Service, Office of Policy, Program Development and Evaluation, Washington, DC 20250–3700.

(6) Inquiries concerning the use in specific meat or poultry products of substances that are not affirmed by the Food and Drug Administration as Generally Recognized as Safe (GRAS) or otherwise listed in 21 CFR Part 182 or Part 184, or of food or color additives listed in 21 CFR regulations for general use in foods or for use in meat, or poultry products, generally, including mixtures of such substances or additives, should be addressed to the Department of Agriculture, Food Safety and Inspection Service, Office of Policy, Program Development and Evaluation, Washington, DC 20250–3700.

(c) The food ingredients specified in the following chart are approved for use in the preparation of meat products, provided they are used for the purposes indicated, within the limit of the amounts stated, and under other conditions specified in this part and Part 317 of this chapter. Part 319 of this chapter specifies other food ingredients that are acceptable in preparing specified meat products. This chart also contains food ingredients that are acceptable for use in poultry products, provided they are used for the purpose indicated, within the limits of the amounts stated and under other conditions specified in this part. No meat or poultry product shall bear or contain any food ingredient that would render it adulterated or misbranded, or which is not approved in this part, or by the Administrator in specific cases.

Class of substance	Substance	Purpose	Products	Amount
Acidifiers	Acetic acid	To adjust acidity	Various meat and poultry products [2].	Sufficient for purpose.[3]
	Citric acid	...do	...do	Do.
	Glucono delta-lactone	...do	...do	Do.
	Lactic acid	...do	...do	Do.
	Phosphoric acid	...do	...do	Do.
	Tartaric acid	...do	...do	Do.

Class of substance	Substance	Purpose	Products	Amount	
Anti-coagulants	Citric acid	To prevent clotting	Fresh blood of livestock	0.2 percent with or without water. When water is used to make a solution of citric acid added to the blood of livestock, not more than 2 parts of water to 1 part of citric acid shall be used.	
	Sodium citrate	.....do	.....do	Not to exceed 0.5 percent based on the ingoing weight of the product. When water is used to make a solution of sodium citrate added to livestock blood, not more than 2 parts of water to 1 part of sodium citrate shall be used.	
Antifoaming agent	Methyl polysilicone	To retard foaming	Soups (meat and poultry)	10 ppm.	
		.....do	Rendered fats (meat and poultry).	Do.	
		.....do	Curing pickle (meat and poultry).	50 ppm.	
Antimicrobial agents	Trisodium phosphate	To reduce microbial levels	Raw, chilled poultry carcasses	8 to 12 percent; solution to be maintained at 45 °F. to 55 °F. and applied by spraying or dipping carcasses for up to 15 seconds when used in accordance with 21 CFR 182.1778.	
Antioxidants and oxygen interceptors.	Ascorbyl palmitate	To retard rancidity	Margarine or oleomargarine	0.02 percent (by wt. of finished product) individually or in combination with other antioxidants approved for use in margarine.	
	Ascorbyl stearate.				
	BHA (butylated hydroxyanisole)	.....do	Dry sausage	0.003 based on total weight.	0.006 percent in combination with other antioxidants for use in meat.
		.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
		.....do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination with other antioxidants for use in meat, based on fat content.
		.....do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination with other antioxidants for use in meat.
		.....do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	

	.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry) based on fat content.	
BHT (butylated hydroxytoluene)	.....do	Dry sausage	0.003 percent based on total weight.	0.006 percent in combination with other antioxidants for use in meat.
	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
	.....do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination with other antioxidants for use in meat, based on fat content.
	.....do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination with other antioxidants for use in meat.
	.....do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
	.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry) based on fat content.	
Dodecyl gallate	.....do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
Glycine	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
Octyl gallate	.....do	Margarine or oleomargarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
Propyl gallate	.....do	Dry sausage	0.003 percent based on total weight.	0.006 percent in combination with other antioxidants for use in meat.

	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
	.....do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination with other antioxidants for use in meat, based on fat content.
	.....do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination with other antioxidants for use in meat.
	.....do	Margarine or oleo-margarine	0.02 percent (by wt. of the finished product) individually or in combination with other antioxidants approved for use in margarine.	
	.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry, except TBHQ, based on fat content).	
Resin guaiac	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination with other antioxidants for use in meat.
TBHQ (tertiary butylhydroquinone).	.....do	Dry sausage	0.003 percent based on weight.	0.006 percent in combination only with BHA and/or BHT.
	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 percent	0.02 percent in combination only with BHA or BHT.
	.....do	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausage made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content.	0.02 percent in combination only with BHA and/ or BHT, based on fat content.
	.....do	Dried meats	0.01 percent based on total weight.	0.01 percent in combination only with BHA and/or BHT.
	.....do	Margarine or oleo-margarine	0.02 percent alone or in combination only with BHA and/or BHT, based on oil or fat content.	
	.....do	Various poultry products	0.01 percent based on fat content (0.02 percent in combination only with BHA and/or BHT, based on fat content).	

	Tocopherols	.....do	Rendered animal fat or a combination of such fat and vegetable fat.	0.03 percent. A 30 percent concentration of tocopherols in vegetable oils shall be used when added as an antioxidant to products designated as ''lard'' or ''rendered pork fat.''
		.....do	Dry sausage, semidry sausage, dried meats, uncooked or cooked fresh sausage made with beef and/or pork, uncooked or cooked Italian sausage products, uncooked or cooked meatballs, uncooked or cooked meat pizza toppings, brown and serve sausages, pregrilled beef patties, and restructured meats.	Not to exceed 0.03 percent based on fat content. Not used in combination with other antioxidants.
		.....do	Various poultry products	0.03 percent based on fat content (0.02 percent in combination with any other antioxidant for use in poultry, except TBHQ, based on fat content).
Artificial Sweeteners	Saccharin	To sweeten product	Bacon	0.01 percent.
Binders and Extenders	Agar-agar	To stabilize and thicken	Thermally processed canned and jellied meat food products.	0.25 percent of finished product.
	Algin	To extend and stabilize product.	Breading mix; sauces (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
	A mixture of sodium alginate, calcium carbonate and calcium lactate/lactic acid (or glucono delta lactone).	To bind meat pieces	Restructured meat food products.	Sodium alginate not to exceed 1.0 percent; calcium carbonate not to exceed 0.2 percent; and lactic acid/calcium lactate (or glucono delta-lactone) not to exceed 0.3 percent of product formulation. Added mixture may not exceed 1.5 percent of product at formulation. Mixture ingredients must be added dry.
	A mixture of sodium alginate, calcium carbonate, lactic acid, and calcium lactate.	To bind poultry pieces	Ground and formed raw or cooked poultry pieces.	Sodium alginate not more than 0.8 percent, calcium carbonate not more than 0.15 percent; lactic acid and calcium lactate, in combination, not more than 0.6 percent of product formulation. Added mixture may not exceed 1.55 percent of product at formulation. The mixture must be added in dry form.
	Bread	To bind and extend product	Bockwurst	3.5 percent individually or collectively with other binders for use in meat.
		.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
		.....do	Spaghetti with meat balls and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders for use in meat.
	Carboxymethyl cellulose (cellulose gum).	To extend and stabilize product.	Baked pies (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
	Carrageenan	To extend and stabilize product.	Breading mix; sauces (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
		To prevent purging of brine solution.	Cured pork products as provided in 9 CFR 319.104(d).	Not to exceed 1.5 percent of product formulation; permitted in combination only with soy protein concentrate, combination not to exceed 1.5 percent of product formulation; in accordance with 21 CFR 172.620, 172.623, and 172.626.

Carrageenan, Locust bean gum, and Xanthan gum blend.	.....do	.....do	In combination, not to exceed 0.5 percent of formulation; not permitted in combination with other binders approved for use in cured pork products; in accordance with 21 CFR 172.620, 172.623, 172.626, 184.1343, and 172.695.
Cereal	To bind and extend product ...	Sausages as provided in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders for use in meat.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
Dried milk	.....do	Sausages as provided for in 9 CFR Part 319.	3.5 percent individually or collectively with other binders for use in meat
Dried skim milk, calcium reduced.	.....do	Sausages as provided in 9 CFR 9 CFR Part 319.	Do.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
Enzyme (rennet) treated with calcium reduced dried skim milk and calcium lactate.	.....do	Sausages as provided for in 9 CFR Part 319.	3.5 percent total finished product (calcium lactate required at rate of 10 percent of binder.)
	.....do	Imitation sausages; nonspecific loaves; soups, stews (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5 (calcium lactate required at a rate of 10 percent of binder).
Enzyme (rennet) treated with sodium caseinate and calcium lactate.	.....do	Imitation sausages; nonspecific loaves; soups, stews (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5 (calcium lactate required at a rate of 25 percent of binder).
Food starch modified	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 2 percent of product formulation in ''Ham Water Added'' and ''Ham with Natural Juices'' products; not to exceed 3.5 percent of product formulation in ''Ham and Water Product—X percent of Weight is Added Ingredients'' products; permitted in combination only with soy protein concentrate, with combination of modified food starch at 3 percent of product formulation and soy protein concentrate at 0.5 percent of product formulation; in accordance with 21 CFR 172.892.
Gelatin	To bind and extend product ...	Various poultry products	Sufficient for purpose in accordance with 21 CFR 172.5.
Gums, vegetable	.....do	Egg roll (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
Isolated soy protein	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	2 percent.
	.....do	Imitation sausages; nonspecific loaves; soups; stews (meat only) and various poultry products.	Sufficient for purpose in accordance with 21 CFR 172.5.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat.
	.....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat.
	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 2 percent of product formulation, not permitted in combination with other binders approved for use in cured pork products.

Methyl cellulose	To extend and stabilize product (also carrier).	Meat and vegetable patties; various poultry products.	0.15 percent.
Sodium caseinate	To bind and extend product	Imitation sausages, nonspecific loaves, soups, stews (meat only).	Sufficient for purpose in accordance with 21 CFR 182.1748 and 21 CFR 172.5.
	do	Sausages as provided for in 9 CFR Part 319.	2 percent in accordance with 21 CFR 182.1748.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat in accordance with 21 CFR 182.1748.
	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat in accordance with 21 CFR 182.1748.
	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 2 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products, in accordance with 21 CFR 182.1748.
	To bind and extend product	Various poultry products	3 percent in cooked product, 2 percent in raw product, in accordance with 21 CFR 172.5 and 182.1748.
Soy flour	do	Sausages as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.
	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat.
Soy protein concentrate	do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.
	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat.
	To prevent purging of brine solution.	Cured pork products as provided for in 9 CFR 319.104(d).	Not to exceed 3.5 percent of product formulation; permitted in combination only with modified food starch, with combination of modified food starch at 3 percent of product formulation and soy protein concentrate at 0.5 percent of product formulation; in combination only with carrageenan, combination not to exceed 1.5 percent of product formulation.
Starchy vegetable flour	To bind and extend product	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.

Tapioca dextrin	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1277.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1277.
	.....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1277.
	.....do	Various poultry products	Sufficient for purpose in accordance with 21 CFR 184.1277.
Vegetable starch	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders for use in meat.
Wheat gluten	To bind and extend product	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1322.
	.....do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders for use in meat, in accordance with 21 CFR 184.1322.
	.....do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1322.
	.....do	Various poultry products	Sufficient for purpose in accordance with 21 CFR 184.1322.
Whey, Dry or dried	To bind or thicken	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Imitation sausages, nonspecific loaves, soups, stews (meat only).	8 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Various poultry products	Sufficient for purpose in accordance with 21 CFR 184.1322.
Whey, Reduced lactose	To bind or thicken	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Imitation sausages, nonspecific loaves, soups, stews (meat only).	Sufficient for purpose in accordance with 21 CFR 172.5.
	.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat.
Whey, Reduced minerals	.....do	Sausage as provided for in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat.
	.....do	Imitation sausages, nonspecific loaves, soups, stews (meat only).	Sufficient for purpose in accordance with 21 CFR 172.5.
	.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat.

	Whey protein concentrate	.....do	Sausage as provided in 9 CFR Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1979c.
		.....do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose in accordance with 21 CFR 184.1979c.
		.....do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1979c
		To bind meat pieces	Restructured meat food products, whole muscle meat cuts.	3.5 percent individually or collectively with other binders and extenders for use in meat, in accordance with 21 CFR 184.1979c.
	Xanthan gum	To maintain: uniform viscosity; suspension of particulate matter, emulsion stability; freeze-thaw stability.	Meat sauces, gravies or sauces and meats, canned or frozen and/or refrigerated meat salads, canned or frozen meat stews, canned chili or chili with beans, pizza topping mixes and batter or breading mixes.	Sufficient for purpose in accordance with 21 CFR 172.5.
		.....do	Various poultry products, except uncooked products or sausages or other products with a moisture limitation established by Subpart P of Part 381.	Sufficient for purpose
Bleaching Agent	Hydrogen peroxide	To remove color	Tripe (substance must be removed from product by rinsing with clear water).	Sufficient for purpose.
Catalysts (substances must be eliminated during process).	Nickel	To accelerate chemical reaction.	Rendered animal fats or a combination of such fats and vegetable fats.	Do.
	Sodium amide	Rearrangement of fatty acid radicals.	.....do	Do.
	Sodium methoxide	.....do	.....do	
Chilling Media	Salt (NaCl)	To aid in chilling	Raw poultry products	700 lbs. to 10,000 gallons of water.
Coloring Agents (artificial)	Coal tar dyes (FD&C certified)	To color products	Various poultry products	Sufficient for purpose.
	Color additives listed in 21 CFR Part 74, Subpart A of Part 82, Subpart B (operator must furnish evidence to inspector in charge that color additive has been certified for use in connection with foods by the Food and Drug Administration).	To color casings or rendered fats; marking and branding product.	Sausage casings, oleomargarine, shortening, marking or branding ink on product (meat only).	Sufficient for purpose (may be mixed with approved natural coloring matters or harmless inert material such as common salt and sugar).
	Titanium oxide	To whiten	Canned ham salad spread and creamed-type canned meat products. Poultry salads and poultry spreads.	0.5 percent.
Coloring Agents (natural)	Alkanet, annatto, carotene, cochineal, green chlorophyll, saffron and tumeric.	To color casings or rendered fats; marking and branding product.	Sausage casings, oleomargarine, shortening, marking or branding ink on product (meat only).	Sufficient for purpose (may be mixed with approved artificial dyes or harmless inert material such as common salt and sugar).
	Annatto, carotene	To color products	Various poultry products	Sufficient for purpose.
Curing accelerators (must be used only in combination with curing agents).	Ascorbic acid	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured poultry, cured comminuted poultry and meat food products.	75 oz to 100 gal pickle at 10 percent pump level; ¾ oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product).

	Citric acid or sodium citrate ...	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured comminuted meat food product, cured comminuted poultry or poultry products.	May be used in cured meat products or in 10 percent solution used to spray surfaces of cured meat cuts prior to packaging to replace up to 50 percent of the ascorbic acid, erythorbic acid, sodium ascorbate, or sodium erythorbate that is used. May be used in cured poultry products to replace 50 percent of the ascorbic acid or sodium ascorbate that is used.
	Erythorbic acid	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured poultry, cured comminuted poultry and meat food products.	75 oz to 100 gal pickle at 10 percent pump level; 3/4 oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product).
	Fumaric acid	.....do	Cured, comminuted meat, poultry or meat and poultry products.	0.065 percent (or 1 oz to 100 lb) of the weight of the meat, poultry or the meat or poultry byproducts before processing.
	Glucono delta lactone	.....do	Cured, comminuted meat or meat food product.	8 oz to each 100 lb of meat or meat byproduct.
		.....do	Genoa salami	16 oz to 100 lb of meat (1.0 percent).
	Sodium acid pyrophosphate ...	.....do	Frankfurters, wieners, vienna, bologna, garlic bologna, knockwurst and similar products.	Not to exceed alone or in combination with other curing accelerators for use in meat the following: 8 oz in 100 lb of meat, or meat and meat byproducts, content of the formula; nor 0.5 percent in the finished product.
	Sodium ascorbate	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured comminuted meat food product, cured comminuted poultry or poultry products.	87.5 oz to 100 gal pickle at 10 percent pump level; 7/8 oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product).
	Sodium erythorbate	To accelerate color fixing or preserve color during storage.	Cured pork and beef cuts, cured comminuted meat food products, cured comminuted poultry or poultry products.	87.5 oz to 100 gal pickle at 10 percent pump level; 7/8 oz to 100 lb meat, meat byproduct or poultry product; 10 percent solution to surfaces of cured meat cuts or poultry products prior to packaging. (The use of such solution shall not result in the addition of a significant amount of moisture to the product.)
Curing Agents	Sodium or potassium nitrate ..	Source of nitrite	Cured meat products other than bacon. Nitrates may not be used in baby, junior, and toddler foods. Cured, comminuted poultry or poultry products.	7 lb to 100 gal pickle; 3 1/2 oz to 100 lb meat or poultry product (dry cure); 2 3/4 oz to 100 lb chopped meat or poultry.

	Sodium or potassium nitrite (supplies of sodium nitrite and potassium nitrite and mixtures containing them must be kept under the care of a responsible employee of the establishment. The specific nitrite content of such supplies must be known and clearly marked accordingly).	To fix color	Cured meat and poultry products. Nitrites may not be used in baby, junior, or toddler foods.	2 lb to 100 gal pickle at 10 percent pump level; 1 oz to 100 lb meat or poultry product (dry cure); ¼ oz to 100 lb chopped meat, meat byproduct or poultry product. The use of nitrites, nitrates or combination shall not result in more than 200 ppm of nitrite, calculated as sodium nitrite in finished product, except that nitrites may be used in bacon only in accordance with paragraph (b) of this section.
Denuding Agents (may be used in combination. Must be removed from tripe by rinsing with potable water.).	Lime (calcium oxide, calcium hydroxide).	To denude mucous membranes.	Tripe	Sufficient for purpose.
	Sodium carbonate	.....do	.....do	Do.
	Sodium citrate	.....do	.....do	Do.
	Sodium gluconate	.....do	.....do	Do.
	Sodium hydroxide	.....do	.....do	Do.
	Sodium persulfate	.....do	.....do	Do.
	Sodium silicates (ortho, meta, and sesqui).	.....do	.....do	Do.
	Trisodium phosphate	.....do	.....do	Do.
Emulsifying Agents	Actylated monoglycerides	To emulsify product	Shortening and various poultry products.	Sufficient for purpose.
	Diacetyl tartaric acid esters of mono-and diglycerides.	.....do	.....do	Do.
	Glycerol-lacto stearate, oleate, or palmitate.	.....do	.....do	Do.
	Lecithin	To emulsify product (also as an antioxidant).	Oleomargarine, shortening, various meat and poultry products.	0.5 percent in oleomargarine, use in other products—sufficient amount for emulsification.
	Mono and diglycerides (glycerol palmitate, etc.).	To emulsify product	Rendered animal fat or a combination of such fat with vegetable fat; oleomargarine.	Sufficient for purpose in lard and shortening; 0.5 percent in oleomargarine.
		.....do	Various poultry products	Sufficient for purpose.
	Mono and diglycerides of fatty acids esterified with any of the following acids: acetic, acetyltartaric, citric, lactic, tartaric, and their sodium and calcium salts; the sodium sulfoacetate derivatives of these mono and diglycerides.	.....do	Margarine or oleomargarine	0.5 percent.
	Polyglycerol esters of fatty acids (polyglycerol esters of fatty acids are restricted to those up to and including the decaglycerol esters and otherwise meeting the requirements of § 172.854(a) of the Food Additive Regulations).	.....do	Rendered animal fat or a combination of such fat with vegetable fat when use is not precluded by standards of identity of composition; oleomargarine.	Sufficient for purpose for rendered animal fat or combination with vegetable fat; 0.5 percent for oleomargarine.
	Polysorbate 60 (polyoxyethylene (20) sorbitan monostearate).	.....do	Shortening for use in nonstandardized baked goods, baking mixes, icings, fillings, and toppings and in the frying of foods (meat only). Rendered poultry fat or a combination of such fat with vegetable fat.	1 percent when used alone. If used with polysorbate 80 the combined total shall not exceed 1 percent.
	Polysorbate 80 (polyoxyethylene (20) sorbitan monooleate).	.....do	Shortening for use in nonstandardized baked goods, baking mixes, icings, fillings, and toppings and in the frying of foods (meat only). Various poultry products.	1 percent when used alone. If used with polysorbate 60 the combined total shall not exceed 1 percent.
	1,2-propylene glycol esters of fatty acids.	.....do	Margarine or oleomargarine	2.0 percent.
	Propylene glycol mono and diesters of fats and fatty acids.	.....do	Rendered animal or poultry fat or a combination of such fat with vegetable fat.	Sufficient for purpose.
	Stearyl-2-lactylic acid	.....do	Shortening to be used for cake icings and fillings (meat only).	3.0 percent.

	Stearyl monoglyceridyl citrate	.....do	Shortening	Sufficient for purpose
Film Forming Agents	A mixture consisting of water, sodium alginate, calcium chloride, sodium carboxymethyl-cellulose, and corn syrup solids.	To reduce cooler shrinkage and help protect surface.	Freshly dressed meat carcasses. Such carcasses must bear a statement ''Protected with a film of water, corn syrup solids, sodium alginate, calcium chloride and sodium carboxymethyl-cellulose.''.	Formulation may not exceed 1.5 percent of hot carcass weight when applied. Chilled weight may not exceed hot weight.
Flavoring Agents; Protectors and Developers.	Artificial smoke flavoring	To flavor product	Various (meat and poultry)[2]	Sufficient for purpose.
	Autolyzed yeast extract	.....do	.....do	Do.
	Benzoic acid (sodium, potassium and calcium salts).	To retard flavor reversion	Margarine or oleomargarine	0.1 percent individually, or if used in combination with other flavoring agents for use in meat or with sorbic acid and its salts, 0.2 percent (expressed as the acids in the wt. of the finished foods).
	Calcium lactate	To protect flavor	Cooked semi-dry and dry products including sausage, imitation sausage, and nonspecific meat food sticks.	0.6 percent in product formulation.
	Citric acid	.....do	Various poultry products	Sufficient for purpose.
		Flavoring	Chili con carne	Do.
	Corn syrup solids; corn syrup; glucose syrup.	To flavor product	Various poultry products, sausage, hamburger, meat loaf, luncheon meat, chopped or pressed ham.	Do.
	Dextrose	.....do	Sausage, ham and cured products.	Do.
	Diacetyl	.....do	Oleomargarine	Do.
	Disodium guanylate	.....do	Various meat and poultry products.[2]	
	Disodium inosinate	.....do	.....do	Do.
	Harmless bacteria starters of the acidophilus type, lactic acid starter or culture of *Pediococcus cerevisiae*.	To develop flavor	Dry sausage, pork roll, thuringer, lebanon bologna, cervelat, and salami.	0.5 percent.
	Harmless lactic acid producing bacteria.	To prevent the growth of *Clostridium botulinum*.	Bacon	Sufficient for purpose.
	Hydrolyzed plant protein	To flavor product	Various meat and poultry products.[2]	Do.
	Isopropyl citrate	To protect flavor	Oleomargarine	0.02 percent.
	Malt syrup	To flavor product	Cured meat products	2.5 percent.
		.....do	Various poultry products	Sufficient for purpose.
	Milk protein hydrolysate	.....do	Various meat and poultry products.[2]	Do.
	Monoammonium glutamate	.....do	.....do	Do.
	Monosodium glutamate	.....do	.....do	Do.
	Potassium lactate	.....do	Various meat and meat food products, poultry and poultry food products, except infant formula and infant food.[2]	Not to exceed 2 percent of formulation; in accordance with 21 CFR 184.1639.
	Smoke flavoring	To flavor product	Various meat and poultry products.	Sufficient for purpose.
	Sodium acetate	.....do	Various meat and poultry products.	Not to exceed 0.12 percent of formulate in accordance with 21 CFR 184.1721.
	Sodium diacetate	.....do	.....do	Not to exceed 0.1 percent of formulate in accordance with 21 CFR 184.1754.
	Sodium lactate	.....do	Various meat and meat food products, poultry and poultry food products, except infant formula and infant food.[2]	Not to exceed 2 percent of formulation in accordance with 21 CFR 184.1768.
	Sodium sulfoacetate derivative of mono and diglycerids.	.....do	Various meat and poultry products.[2]	0.5 percent.
	Sodium tripolyphosphate	To help protect flavor	''Fresh Beef,''[2] ''Beef for further cooking, ''Cooked Beef,'' Beef Patties, Meat Loaves, Meat Toppings, and similar products derived from pork, lamb, veal, mutton, and goat meat which are cooked or frozen after processing.	0.5 percent of total product.

	Sodium tripolyphosphate and sodium mixtures, metaphosphate, insoluble; and sodium polyphosphates, glassy.	.....do	.....do	Do.
	Sorbitol	To flavor, to facilitate the removal of casings from product, and to reduce caramelization and charring.	Cooked sausage labeled frankfurter, frank, furter, wiener, and knockwurst; cured pork and pork products, as provided for in 9 CFR Part 319.	Not to exceed 2 percent of the weight of the formula excluding the formula weight of water or ice, when used in accordance with 21 CFR 184.1835.
	Starter distillate	To help protect flavor	Oleomargarine	Sufficient for purpose.
	Stearyl citrate	.....do	.....do	0.15 percent.
	Sugars (sucrose and dextrose)	To flavor product	Various meat and poultry products.	Sufficient for purpose.
Gases	Carbon dioxide liquid	Contact freezing	Various poultry products	Do.
	Carbon dioxide solid (dry ice)	To cool product	Chopping of meat, packing of product.	Sufficient for purpose.
		To cool product or facilitate chopping or packaging.	Various poultry products	Do.
	Nitrogen	To exclude oxygen from sealed containers.	Various meat and poultry products.	Do.
	Nitrogen, liquid	Contact freezant	.....do	Do.
Hog Scald Agents (must be removed by subsequent cleaning operations).	Caustic soda	To remove hair	Hog carcasses	Sufficient for purpose.
	Dicotyl sodium sulfosuccinate	.....do	.....do	Do.
	Dimethylpolysiloxane	.....do	.....do	Do.
	Disodium-calcium ethylenediaminetetra-acetate.	.....do	.....do	Do.
	Disodium phosphate	.....do	.....do	Do.
	Ethylenediaminetetra-acetic acid (sodium salts).	.....do	.....do	Do.
	Lime (calcium oxide, calcium hydroxide).	.....do	.....do	Do.
	Potassium hydroxide			Do.
	Propylene glycol	.....do	.....do	Do.
	Soap (prepared by the reaction of calcium, potassium, or sodium with rosin or fatty acids of natural fats and oils).	.....do	.....do	Do.
	Sodium acid pyrophosphate	.....do	.....do	Do.
	Sodium carbonate	.....do	.....do	Do.
	Sodium dodecylbenzene sulfonate.	.....do	.....do	Do.
	Sodium gluconate	.....do	.....do	Do.
	Sodium hexametaphosphate	.....do	.....do	Do.
	Sodium lauryl sulfate	.....do	.....do	Do.
	Sodium mono and dimethylnaphthalene sulfonate (molecular weight 245–260).	.....do	.....do	Do.
	Sodium n-alkylbenzene sulfonate (alkyl group predominantly C12 and C13 and not less than 95 percent C10 and C16).	.....do	.....do	Do.
	Sodium pyrophosphate	.....do	.....do	Do.
	Sodium silicates (ortho, meta, and sesqui).	.....do	.....do	Do.
	Sodium sulfate	.....do	.....do	Do.
	Sodium tripolyphosphate	.....do	.....do	Do.
	Sucrose	.....do	.....do	Do.
	Triethanolamine dodecylbenzene sulfonate.	.....do	.....do	Do.
	Trisodium phosphate	.....do	.....do	Do.
Miscellaneous	Adipic acid	To acidify	Margarine or oleomargarine	Sufficient for purpose.

Ascorbic acid, erythorbic acid, citric acid, sodium ascorbate and sodium citrate singly or in combination, under quality control.	To delay discoloration	Fresh beef cuts, fresh lamb cuts, fresh pork cuts.	Not to exceed, singly or in combination, 500 ppm or 1.8 mg/sq. inch of product surface of ascorbic acid (in accordance with 21 CFR 182.3013), erythorbic acid (in accordance with 21 CFR 182.3041) or sodium ascorbate (in accordance with 21 CFR 182.3731); and/or not to exceed, singly or in combination, 250 ppm or 0.9 mg/sq. inch of product surface of citric acid (in accordance with 21 CFR 182.6033), or sodium citrate (in accordance with 21 CFR 182.6751).
Calcium disodium, EDTA (calcium disodium ethylenediaminetetraacetate.	To preserve product and to protect flavor.	Margarine or oleomargarine	75 ppm by weight of the finished oleomargarine or margarine.
Calcium propionate	To retard mold growth	Pizza crust	0.32 percent alone or in combination based on weight of the flour brace used.
	do	Fresh pie dough (poultry only)	0.3 percent of calcium propionate or sodium propionate alone, or in combination, based on weight of flour used.
Citric acid	To preserve cured color during storage.	Cured pork cuts	Not to exceed 30 percent in water solution used to spray surfaces of cured cuts, prior to packaging, in accordance with 21 CFR 184.1033. (The use of such solution shall not result in the addition of a significant amount of moisture to the product and shall be applied only once to product).
Citric acid (sodium and potassium salts).	To acidify	Margarine and oleomargarine	Sufficient for purpose.
d- and dl-alpha-tocopherol	To inhibit nitrosamine formation.	Pump-cured bacon	500 ppm; by injection or surface application.
Dipotassium phosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry food products, 0.5 percent of total product.
Disodium phosphate	do	do	Do.
Glycerine	Humectant	Shelf stable meat snacks	Not to exceed 2 percent of the formulation weight of the product in accordance with 21 CFR 182.1320.
Hydrochloric acid	To acidify	Margarine or oleomargarine	Sufficient for purpose.
Lactic acid (sodium and potassium salts).	do	do	Do.
L-Tartaric acid (sodium and sodium potassium salts).	do	do	Do.
Monopotassium phosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
Monosodium phosphate	do	do	Do.
Phosphoric acid	To acidify	Margarine or oleomargarine	Sufficient for purpose.
Potassium bicarbonate	To alkalize	Margarine or oleomargarine	Sufficient for purpose.
Potassium carbonate	do	do	Do.

Potassium pyrophosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry food products, 0.5 percent of total product.
Potassium sorbate	To retard mold growth	Dry sausage	10 percent in water solution may be applied to casings after stuffing or casings may be dipped in solution prior to stuffing.
Potassium tripolyphosphate ...	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations.	5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry food products, 0.5 percent of total product.
Propyl paraben (propyl p-hydroxy-benzoate).	To retard mold growth	Dry sausage	3.5 percent in water solution may be applied to casings after stuffing or casings may be dipped in solution prior to stuffing.
Silicon dioxide	Processing aid/dispersant	Tocopherol containing bacon curing mixes.	At level not to exceed 4.0 percent in the dry mix.
Sodium acid pyrophosphate ...	To decrease the amount of cooked out juices.	Meat food products except where other prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations..	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
Sodium bicarbonate	To neutralize excess acidity, cleaning vegetables.	Rendered fats, soups, curing pickle (meat and poultry).	Sufficient for purpose.
	To alkalize	Margarine or oleomargarine	Do.
Sodium carbonate	.....do	.....do	Do.
Sodium citrate buffered with citric acid to a pH of 5.6.	To inhibit the growth of micro-organisms and retain product flavor during storage.	Cured and uncured, processed whole muscle meat and poultry food products, e.g., ham, chicken breasts.	Not to exceed 1.3 percent of the formulation weight of the product in accordance with 21 CFR 184.1751.
Sodium hydroxide	To alkalize	Margarine or oleomargarine	Sufficient for purpose.
	To decrease the amount of cooked out juices.	Poultry food products containing phosphates.	May be used only in combination with phosphate in a ratio not to exceed one part sodium hydroxide to four parts phosphate.
	.....do	Meat food products containing phosphates.	May be used only in combination with phosphates in a ratio not to exceed one part sodium hydroxide to four parts phosphate; the combination shall not exceed 5 percent in pickle at 10 percent pump level; 0.5 percent in product.
Sodium metaphosphate, insoluble.	.....do	Meat food products except where other prohibited by the meat inspection regulations, and poultry food products except where otherwise prohibited by the poultry products inspection regulations.	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
Sodium polyphosphate, glassy	.....do	.....do	Do.
Sodium proprionate	To retard mold growth	Pizza crust	0.32 percent alone or in combination based on weight of the flour brace used.

		.....do	Fresh pie dough (poultry only)	0.3 percent of calcium proprionate or sodium proprionate alone, or in combination, based on weight of flour used.
	Sodium pryophosphate	To decrease the amount of cooked out juices.	Meat food products except where otherwise prohibited by the meat inspection regulations and poultry food products except where otherwise prohibited by the poultry products inspection regulations.	For meat food products, 5 percent of phosphate in pickle at 10 percent pump level; 0.5 percent of phosphate in meat food product (only clear solution may be injected into meat food product). For poultry products, 0.5 percent of total product.
	Sodium tripolyphosphate	.....do	.....do	Do.
	Sorbic acid (sodium, potassium, and calcium salts).	To preserve product and to retard mold growth.	Margarine or oleomargarine	0.1 percent individually, or if used in combination or with benzoic acid or its salts, 0.2 percent (expressed as the acids in the wt. of the finished foods).
	Tricalcium phosphate	To preserve product color during dehydration process.	Mechanically deboned chicken to be dehydrated.	Not to exceed 2 percent of the weight of the mechanically deboned chicken prior to dehydration, in accordance with 21 CFR 182.1217.
Poultry scald agents (must be removed by subsequent cleaning operations).	Alpha-hydro-omega-hydroxy-poly (oxyethylene) poly (oxypropylene) (minimum 15 moles) poly (oxyethylene) block copolymer (poloxamer).	To remove feathers	Poultry carcasses	Not to exceed 0.05 percent by weight in scald water.
	Dimethylpolysiloxane	.....do	.....do	Sufficient for purpose.
	Dioctyl sodium sulfosuccinate	.....do	.....do	Do.
	Dipotassium phosphate	.....do	.....do	Do.
	Ethylenediaminetetra-acetic acid (sodium salts).	.....do	.....do	Do.
	Lime (calcium oxide, calcium hydroxide).	.....do	.....do	Do.
	Polyoxyethylene (20) sorbitan monooleate.	.....do	.....do	Not to exceed 0.0175 percent in scald water.
	Potassium hydroxide	.....do	.....do	Sufficient for purpose.
	Propylene glycol	.....do	.....do	Do.
	Sodium acid phosphate	.....do	.....do	Do.
	Sodium acid pyrophosphate ...	.....do	.....do	Do.
	Sodium bicarbonate	.....do	.....do	Do.
	Sodium carbonate	.....do	.....do	Do.
	Sodium dodecylbenzene-sulfonate.	.....do	.....do	Do.
	Sodium-2-ethylhexyl sulfate ...	.....do	.....do	Do.
	Sodium hexametaphosphate ...	.....do	.....do	Do.
	Sodium hydroxide	.....do	.....do	Do.
	Sodium lauryl sulfate	.....do	.....do	Do.
	Sodium phosphate (mono-, di-, tribasic).	.....do	.....do	Do.
	Sodium pyrophosphate	.....do	.....do	Do.
	Sodium sesquicarbonate	.....do	.....do	Do.
	Sodium sulfate	.....do	.....do	Do.
	Sodium tripolyphosphate	.....do	.....do	Do.
	Tetrasodium pyrophosphate ...	.....do	.....do	Do.
Proteolytic Enzymes	Aspergillus flavus oryzae group.	To soften tissue	Raw poultry muscle tissue of hen, cock, mature turkey, mature duck, mature goose, and mature guinea, and raw meat cuts.	Solutions consisting of water and approved proteolytic enzyme applied or injected into raw meat or poultry tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Aspergillus oryzae	.....do	.....do	Do.
	Bromelin	.....do	.....do	Do.
	Ficin	.....do	.....do	Do.
	Papain	.....do	.....do	Do.
Refining Agents (must be eliminated during process of manufacturing).	Acetic acid	To separate fatty acids and glycerol.	Rendered fats (meat only)	Sufficient for purpose.
	Bicarbonate of soda	.....do	.....do	Do.
	Carbon (purified charcoal)	To aid in refining of animal fats.	.....do	Do.
	Caustic soda (sodium hydroxide).	To refine fats	.....do	Do.
	Diatomaceous earth; Fuller's earth.	.....do	.....do	Do.

	Sodium carbonate	.....do	.....do	Do.
	Tannic acid	.....do	.....do	Do.
Rendering agents	Tricalcium phosphate	To aid rendering	Animal fats	Do.
	Trisodium phosphate	.....do	.....do	Do.
Synergists (used in combination with antioxidants).	Citric acid	To increase effectiveness of antioxidants.	Any meat product permitted to contain antioxidants as provided for in this part.	Not to exceed 0.01 percent based on fat content.
		.....do	Poultry fats	0.01 percent alone or in combination with antioxidants in poultry fats.
	Malic acid	.....do	Lard and shortening	0.01 percent based on total weight in combination with antioxidants for use in meat products only.
		.....do	Poultry fats	0.01 percent alone or in combination with antioxidants in poultry fats.
	Monoglyceride citrate	.....do	Lard, shortening, fresh pork sausage, dried meats and poultry fats.	0.02 percent.
	Monoisopropyl citrate	.....do	Lard, shortening, oleomargarine, fresh pork sausage, dried meats.	Do.
		.....do	Poultry fats	0.01 percent poultry fats.
	Phosphoric acid	.....do	Lard, shortening, and poultry fats.	0.01 percent.
Tenderizing agents	Aspergillus flavus oryzae group.	To soften tissue	Raw poultry muscle tissue of hen, cock, mature turkey, mature duck, mature goose, and mature guinea, and raw meat cuts.	Solutions consisting of water and approved proteolytic enzyme applied or injected into raw meat or poultry tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Aspergillus oryzae	.....do	.....do	Not more than 3 percent of a of a 0.8 molar solution.
	Bromelin	.....do	.....do	Do.
	Calcium chloride	.....do	.....do	Do.
	Magnesium chloride	.....do	.....do	Do.
	Papain	To soften tissue	Raw poultry muscle tissue of hen, cock, mature turkey, mature duck, mature goose, and mature guinea, and raw meat cuts.	Solutions consisting of water and approved proteolytic enzyme applied or injected into raw meat or poultry tissue shall not result in a gain of more than 3 percent above the weight of the untreated product.
	Potassium chloride	.....do	.....do	Not more than 3 percent of a 2.0 molar solution.
	Potassium, magnesium or calcium chloride.	.....do	.....do	A solution of approved inorganic chlorides injected into or applied to raw meats or poultry cuts shall not result in a gain of more than 3 percent above the weight of the untreated product.

[1] [RESERVED]

[2] Information as to the specific products for which use of this additive is approved may be obtained upon inquiry addressed to the Labeling and Additives Policy Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[3] Provided, that its use is functional and suitable for the product and it is permitted for use at the lowest level necessary to accomplish the desired technical effect as determined in specific cases prior to label approval under §§ 317.4 or 381.32.

[4] Special labeling requirements are prescribed in 381.120 for raw poultry chilled in a medium with more than 70 lbs. of salt to 10,000 gals. of water.

§ 424.22 Certain other permitted uses.

(a) Under appropriate declaration as required in parts 316 and 317 of this chapter, the following substances may be added to meat:

(1) *General.* Common salt, approved sugars (sucrose, cane or beet sugar), maple sugar, dextrose, invert sugar, honey, corn syrup solids (corn syrup, glucose syrup and fructose), wood smoke, vinegar, flavorings, spices, sodium nitrate, sodium nitrite, potassium nitrate, potassium nitrite, and other food and color additives specified in the chart in paragraph (c) of this section may be added to meat under conditions, if any, specified in this part or in part 317 of this chapter.

(2) *Artifical flavorings.* Other harmless artificial flavorings may be added to meat, with the approval of the Administrator in specific cases.

(3) *Coloring matter and dyes.* Coloring matter and dyes, other than those specified in a regulation permitting that use in this chapter or in 21 CFR Chapter I, Subchapter A and Subchapter B, may be applied to meat mixed with rendered fat, applied to natural and artificial casings, and applied to such casings enclosing products, if approved by the Administrator in specific cases. When any coloring matter or dye is applied to casings, there shall be no penetration of coloring into the product.

(b) *Use of nitrite and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon.*

(1) *Pumped bacon.* With respect to bacon injected with curing ingredients and massaged bacon, sodium nitrite shall be used at 120 parts per million (ppm) ingoing or an equivalent amount of potassium nitrite shall be used (148 ppm ingoing); and 550 ppm of sodium

ascorbate or sodium erythorbate (isoascorbate) shall be used. Sodium ascorbate or sodium erythorbate have a molecular weight of approximately 198. Hydrated forms of these substances shall be adjusted to attain the equivalent of 550 ppm of sodium ascorbate or sodium erythorbate.

(i) The Department shall collect samples of pumped bacon from producing plants and analyze them for the level of nitrosamines by the Thermal Energy Analyzer (TEA). In the event that a TEA analysis indicates that a confirmable level of nitrosamines might be present, additional samples shall be collected and analyzed by gas chromatography. Presumptive positive results must be confirmed by mass spectrometry before being considered positive. If during the interval required for the Department to analyze the confirmatory samples by gas chromatography and mass spectrometry, changes are made in processing procedures which are expected to result in no confirmable levels of nitrosamines in pumped bacon produced by these new procedures, an establishment may submit samples to USDA for analysis upon prior notification and arrangements with USDA. If, however, an establishment furnishes USDA with laboratory results from testing five consecutive lots of pumped bacon produced under the new procedures and the testing is performed by the USDA methodology and procedures, those results will be utilized in making the determination concerning the product produced under the new procedures. Should the results of these tests reveal that confirmable levels of nitrosamines are not indicated in any of the five consecutive lots, the confirmation analysis by USDA shall be terminated and the establishment shall revert to normal monitoring status. In the event the test results continue to indicate nitrosamines, however, USDA shall proceed in its confirmation analysis on the original samples taken for confirmation. If any one of the original samples collected by USDA for confirmation is found to contain confirmable levels of nitrosamines, all pumped bacon in the producing establishment and all future production will be retained. The Department shall sample and analyze such retained pumped bacon for nitrosamines on a lot by lot basis. A production lot shall be that pumped bacon produced by the establishment in any single shift. Samples from any lot of pumped bacon under retention found to contain nitrosamines at a confirmable level shall cause the lot of pumped bacon to be disposed of in a manner to ensure it will not form nitrosamines when cooked. Such disposal may include incorporation of the uncooked pumped bacon as an ingredient of another meat provided it is processed for eating without further preparation in a manner to preclude the formation of nitrosamines. Bacon subsequently produced shall not be retained because of nitrosamines if the operator of the establishment makes adjustments in the processing of the product and laboratory results obtained by TEA analysis of samples from five consecutive normal sized lots of pumped bacon indicates that the product being produced contains no confirmable levels of nitrosamines. These tests from five consecutive normal sized lots of pumped bacon shall be conducted by the Department. However, if the establishment furnishes the Department with the results of tests conducted under the methodology and procedures used by the Department, such test results will be utilized in making the determination concerning the nitrosamine content of the product. All tests of pumped bacon for nitrosamines under this paragraph (b)(1)(i) shall be made on pumped bacon cooked at 340 degrees F. for 3 minutes on each side. In order to determine that no confirmable levels of nitrosamines are present in a sample tested, the testing must be performed by methodology and procedures that would detect the presence of any nitrosamines at 10 ppb.

(ii) Notwithstanding the provisions of paragraph (b)(1)(i) of this section, sodium nitrite may be used at:

(A) 100 ppm ingoing (potassium nitrite at 123 ppm ingoing); and 500 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used, provided the establishment has a partial quality control program as provided in Sec. 318.4(d) that results in compliance with this provision, or

(B) A predetermined level between 40 and 80 ppm (potassium nitrite at a level between 49 and 99 ppm); 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); and additional sucrose or other similar fermentable carbohydrate at a minimum of 0.7 percent and an inoculum of lactic acid producing bacteria such as *Pediococcus acetolactii* or other bacteria demonstrated to be equally effective in preventing the growth of botulinum toxin at a level sufficient for the purpose of preventing the growth of botulinum toxin, provided the establishment has a partial quality control program as provided in Sec. 318.4(d) that results in compliance with this provision.

(C) The Department shall collect samples of bacon from establishments producing under paragraph (b)(1)(ii) of this section and analyze them for the level of nitrosamines. Samples shall be randomly selected throughout the production of a lot. The actual sampling plans and methods of analysis that are used will result in approximately the same likelihood as under paragraph (b)(1)(i) of this section of having a presumptive positive result when the true mean level of nitrosamines in a production lot is 10 ppb. In the event of a presumptive positive result, the establishment shall become subject to the provisions of paragraph (b)(1)(i) of this section.

(2) *Immersion cured bacon.* Immersion cured bacon may be placed in a brine solution containing salt, nitrite and flavoring material or in a container with salt, nitrite and flavoring material. Sodium nitrite shall not exceed 120 ppm ingoing or an equivalent amount of potassium nitrite (148 ppm ingoing) based on the actual or estimated skin-free green weight of the bacon bellies.

(3) *Bacon made with dry curing materials.* With respect to bacon made with dry curing materials, the product shall be cured by applying a premeasured amount of cure mixture to the bacon belly surfaces, completely covering the surfaces. Sodium nitrite shall not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

§ 424.23 Prohibited uses.

(a) *Substances that conceal damage or inferiority or make products appear better or of greater value.* No substance may be used in or on any meat if it conceals damage or inferiority or makes the product appear to be better or of greater value than it is. Therefore:

(1) Paprika or oleoresin paprika may not be used in or on fresh meat, such as steaks, or comminuted fresh meat, such as chopped and formed steaks or patties; or in any other meat consisting of fresh meat (with or without seasoning).

(2) Paprika or oleoresin paprika may be used in or on chorizo sausage and other meat in which paprika or oleoresin paprika is permitted as an ingredient in a standard of identity or composition in part 319 of this subchapter.

(3) Sorbic acid, calcium sorbate, sodium sorbate, and other salts of sorbic acid shall not be used in cooked sausages or any other meat; sulfurous acid and salts of sulfurous acid shall not be used in or on any meat; and niacin

or nicotinamide shall not be used in or on fresh meat product; except that potassium sorbate, propylparaben (propyl p-hydroxybenzoate), calcium propionate, sodium propionate, benzoic acid, and sodium benzoate may be used in or on any product, only as provided in 9 CFR Chapter III.

(b) *Nitrates.* Nitrates shall not be used in curing bacon.

Done at Washington, DC, on December 13, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–32659 Filed 12–22–99; 8:45 am]

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Thursday
December 23, 1999

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

RIN 0584–AC45

Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Food and Nutrition Service (FNS) proposes to amend its regulations to implement several work-related provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This proposed rule makes significant changes to current work rules, including requirements for the Food Stamp Employment and Training Program and the optional workfare program. These changes streamline Food Stamp Program work requirements, simplify the disqualification requirements for failure to comply with work rules, and provide greater flexibility for States to operate their employment and training programs.

DATES: Send your comments to reach us by February 22, 2000.

ADDRESSES: You may mail comments to Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, attention Program Design Branch. You may FAX comments to us at (703) 305–2486, attention Program Design Branch. You may also hand-deliver comments to us on the 7th floor at the above address. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under Electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Program Design Branch, Program Development Division, Food Stamp Program, FNS, at (703) 305–2519. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at http://www.fns.usda.gov/fsp/. You may also comment via the Internet at the same address. Please include ''Attention: RIN 0584–AC45'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your message, contact us directly at (703) 305–2519.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section of paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 7th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays. We will also post all comments on the Internet at http://www.usda.gov/fsp at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Since 1971, able-bodied food stamp recipients have been required to register for work and accept suitable jobs as a condition for receiving benefits. In 1982 Congress passed legislation creating workfare, a food stamp work-for-benefits program. States and local jurisdictions were afforded the option of requiring most able-bodied recipients to work in public service jobs in exchange for their food stamps. In 1987 States implemented the Food Stamp Employment and Training (E&T) Program, designed to improve food stamp recipients' ability to gain employment, increase earnings, and reduce their dependency on public assistance.

In August 1996, President Clinton signed into law ''The Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' or PRWORA (Pub. L. 104–193). PRWORA—popularly known as ''welfare reform''—contained several Food Stamp Program (FSP) work-related provisions that strengthen work requirements, promote personal responsibility, streamline E&T requirements, and greatly increase State flexibility.

Section 815 of PRWORA revised FSP work requirements by amending section 6(d)(1) of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2015(d)(1)). It dealt with disqualification for noncompliance with FSP work requirements. It added to the list of ineligible individuals at section 6(d)(1)(A) those who: (1) refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability; (2) voluntarily and without good cause quit their job (previously limited to heads of households); (3) voluntarily and without good cause reduce their work effort and, after the reduction, work less than 30 hours a week; and (4) fail to comply with the workfare rules in section 20 of the Act (7 U.S.C. 2029). Section 815 deleted, as an explicit good cause for refusal to accept an offer of employment, the lack of adequate child care for children above age five and under age 12. The provision removed the requirement that the entire food stamp household be disqualified if the head of the household is disqualified. Instead, it provided States the option to disqualify the entire household if the head of the household is disqualified. Section 815 established new mandatory minimum disqualification periods for individuals who fail to comply with work requirements. It required the Secretary of Agriculture (the Secretary) to determine the meanings of good cause, voluntary quit, and reduction of work effort. It required States to determine: (1) the meaning of other terms related to FSP work requirements; (2) the procedures for determining compliance with work requirements; and (3) whether an individual is actually complying with work requirements. Lastly, Section 815 specified that States may not use meanings, procedures, or determinations that are less restrictive on food stamp recipients than comparable meanings, procedures, or determinations are on recipients of assistance under State programs funded

under part A of title IV of the Social Security Act (title IV–A), 42 U.S.C. 601 *et seq.*

Section 817 of PRWORA amended Act language at section 6(d)(4) relating to the E&T Program. It streamlined administrative requirements for States by: (1) requiring E&T components to be delivered through a statewide workforce development system, if available; (2) expanding the existing State option to apply E&T requirements to applicants (previously limited to job search); (3) eliminating the requirement that job search components be comparable with those operated under title IV–A; (4) removing requirements for work experience components that mandated they serve a useful public service and that they use a participant's prior training, experience, and skills; (5) removing specific Federal rules as to States' authority to exempt categories of individuals and individuals from E&T requirements, as well as removing the requirement that such exemptions be evaluated no less often than at each certification or recertification of the affected food stamp case; (6) deleting outdated language concerning applications by States to provide priority service to volunteer E&T participants; (7) removing the requirement that States permit, to the greatest practicable extent, work registrants exempted from E&T, as well as E&T participants who comply with or are in the process of complying with program requirements, to participate in E&T, while maintaining the States' option to permit voluntary participation; (8) removing the requirement for conciliation procedures to resolve disputes involving participation in E&T; (9) removing the requirement that States' limits for payments or reimbursements of dependent care expenses to E&T participants must be at least as high as the FSP dependent care deduction cap; (10) removing the requirements for E&T performance standards; (11) adding the provision that the amount of funds States use to provide E&T services to participants receiving benefits under a State program funded under title IV–A cannot exceed the amount of funds, if any, States used in fiscal year 1995 to provide E&T services to participants who were receiving benefits under title IV–A; and (12) removing the Secretary's authority to withhold funds from States for failure to comply without good cause with E&T requirements.

PRWORA also contained major changes in the requirements for Federal financial participation in the E&T program. Subsequently, the Balanced Budget Act of 1997 (Pub. L. 105–33) further amended those requirements. Federal financial participation is addressed in a separate rulemaking.

Three other PRWORA provisions added new language to the Act. Section 816 permitted certain States to lower the age at which a child exempts a parent/caretaker from food stamp work rules. Section 849 provided States the option of using a household's food stamp benefits to subsidize a job for a household member participating in a work supplementation program. Section 852 permitted qualifying States to provide certain households with cash in lieu of food stamps.

Additionally, PRWORA made significant changes to the workfare provisions at section 20 of the Act. It removed the States' ability to comply with section 20 by operating a workfare program under title IV–A. It removed the provision that permitted States to combine the value of a household's food stamp allotment with the value of assistance received by the household from a program under title IV–A in order to determine the number of monthly hours of participation required of those households in a title IV–A community work experience program. Lastly, it eliminated disqualification provisions specific to the optional workfare program and incorporated noncompliance with workfare into the disqualification provisions governing noncompliance with FSP work requirements.

Lastly, as part of the Department's ongoing regulation streamlining and reform initiative, this rule proposes to consolidate the workfare regulations at 7 CFR 273.22 with FSP work requirements contained in 7 CFR 273.7.

III. Discussion of Proposed Rule

Program Work Requirements

Current regulations at 7 CFR 273.7 require that all physically and mentally fit food stamp recipients over the age of 15 and under the age of 60 who are not otherwise exempted be registered for work by the State agency at the time of application and once every 12 months thereafter. Work registrants are required to participate in an E&T program if assigned by the State agency, provide information regarding employment status and availability for work, report to an employer if referred, and accept a bona fide offer of suitable employment at a wage no less than the applicable State or Federal minimum wage, whichever is highest.

Failure to meet these requirements without good cause results in a two-month disqualification. If the noncompliant individual is the head of the household, the entire household is disqualified for two months. Otherwise, only the individual is disqualified.

Additionally, if the head of the household voluntarily quits a job of 20 or more hours a week without good cause 60 days or less prior to applying for food stamps, or at any time thereafter, the entire household is disqualified for 90 days.

Eligibility may be reestablished by the household during a disqualification period if the head of the household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the requirement in question. Disqualified individuals may reestablish eligibility by becoming exempt from the work registration requirement or by complying with the requirement in question.

Certain food stamp recipients are exempt from work registration requirements. Among these exempt individuals are those currently subject to and complying with a work registration requirement under title IV–A or the Federal-State unemployment compensation system. If these individuals fail to comply with any work requirement to which they are subject that is comparable to a FSP work requirement, they are subject to disqualification.

In accordance with section 815 of PRWORA, which contains amendments to section 6(d)(1) of the Act, this rulemaking proposes the following changes to current regulations.

Work Registrant Requirements

The current regulation at 7 CFR 273.7(a) contains the work registration requirement for nonexempt food stamp household members.

Current regulations at 7 CFR 273.7(e) list the responsibilities and requirements for work registrants.

Section 815 of PRWORA amended section 6(d)(1) of the Act by adding to the list of reasons for disqualification the refusal without good cause by an individual to provide a State agency with sufficient information to determine his or her employment status or job availability. Note, however, that 7 CFR 273.7(e) already contains the requirement that a work registrant respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work. Therefore, no action is required to amend current regulations in this regard.

Current regulations at 7 CFR 273.22 contain FSP workfare participation requirements for households. 7 CFR

273.22(f)(6) provides for penalties for failure to comply with workfare requirements.

Section 815 aligned workfare penalties with other work penalties. It amended section 20 of the Act by removing workfare disqualification provisions, and further amended section 6(d)(1) by including refusal without good cause to comply with section 20 of the Act as a reason for disqualification.

Therefore, this rule proposes to amend 7 CFR 273.22(f) by removing paragraph (6), Failure to Comply, and to amend 7 CFR 273.7(e) by adding as a work registrant requirement participation in a workfare program if assigned.

This rule further proposes to incorporate the work registrant requirements listed in 7 CFR 273.7(e) into 7 CFR 273.7(a), which will be redesignated 7 CFR 273.7(a)(1) and renamed *work requirements.*

This rule also proposes to incorporate the participation requirements for strikers listed in 7 CFR 273.7(j); the requirements for registration of certain PA, GA, and refugee households listed in 7 CFR 273.7(k); and the provisions for applicants applying for SSI and food stamps under § 273.2(k)(1)(i), listed in 7 CFR 273.7(l), into 7 CFR 273.7(a). They will be redesignated 7 CFR 273.7(a)(4), (a)(5), and (a)(6) respectively.

Lastly, this rule proposes to make the following changes to 7 CFR 273.7: (1) the current provisions at 7 CFR 273.7(f), (g), (h), (i), (m), and (n) will be redesignated 7 CFR 273.7(e), (f), (g), (h), (i), and (j) respectively; (2) the current provisions at 7 CFR 273.7(o) and (p) will be deleted and new provisions, designated 7 CFR 273.7(k) and (l) will be added; (3) the provisions for the optional workfare program at 273.22 will be redesignated 7 CFR 273.7(m); and (4) 7 CFR 273.22 will be removed.

Administrative Responsibilities

Current regulations at 7 CFR 273.7(m) assign to State agencies the responsibility for determining the existence of good cause in instances when an individual fails or refuses to comply with FSP work requirements. 7 CFR 273.7(n) assigns to State agencies the responsibility for determining whether or not a voluntary quit occurred.

Section 815 of PRWORA amended the Act by adding a new provision, section 6(d)(1)(D), Administration. While assigning to the Secretary responsibility for determining the meanings of good cause, voluntary quit, and reduction of work effort, section 6(d)(1)(D) assigns to State agencies the responsibility for determining: (1) the meaning of all other terms relating to work requirements; (2) the procedures for determining whether an individual is in compliance with work requirements; and (3) whether an individual is actually in compliance with work requirements.

However, section 6(d)(1)(D) prohibits State agencies from assigning a meaning, procedure, or determination that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under a State program funded under title IV–A.

This rule proposes to amend 7 CFR 273.7(a) by assigning to the State agency responsibility for determining the meaning of all terms related to FSP work requirements (other than good cause, voluntary quitting, and reducing work effort); for establishing the procedures for determining whether an individual is in compliance with FSP work requirements; and for determining whether an individual is in actual compliance with FSP work requirements. The State agency may not use a meaning, procedure, or determination that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination is on recipients of a State program funded under title IV–A. These provisions will be incorporated in a new paragraph, 7 CFR 273.7(a)(2).

Household Ineligibility

Current regulations at 7 CFR 273.7(g)(1) require that an individual, other than the head of household, who fails or refuses without good cause to comply with FSP work requirements be disqualified from FSP participation. However, if the head of household fails or refuses without good cause to comply, the entire household must be disqualified.

Section 815 of PRWORA amended section 6(d)(1)(B) of the Act by removing the requirement that the entire household be disqualified if the head of the household fails or refuses without good cause to comply. Instead, section 815 provided State agencies the option to disqualify the entire household if the head of household fails or refuses without good cause to comply with FSP work requirements. It limited the length of such an optional household disqualification to the duration of the disqualification period applied to the individual or 180 days, whichever is shorter.

This rule proposes to amend redesignated 7 CFR 273.7(f) by eliminating the requirement in paragraph (1) that the entire household be disqualified if the head of the household fails to comply, and by adding a new paragraph (4), *Household Ineligibility.* 7 CFR 273.7(f)(4) will provide that a State agency has the option to disqualify the entire household if the head of the household becomes ineligible to participate in the FSP for failure to comply with work requirements. If the State agency chooses this option, it may disqualify the household for the duration of ineligibility of the head of the household, or for 180 days, whichever is less.

Disqualification Periods

Current regulations at 7 CFR 273.7(g)(1) establish a two-month disqualification period to be imposed for failure or refusal without good cause to comply with FSP work requirements.

Section 815 of PRWORA amended sections 6(d)(1) (a) and (b) of the Act to establish mandatory disqualification periods—based on the frequency of the violation—for individuals who fail to comply with FSP work requirements. For the first violation, the individual is disqualified until he or she complies with the requirement, one month, or, at State agency option, up to three months, whichever is later. For the second violation, until the later of the date the individual complies, two months, or a period—determined by the State agency—not to exceed six months. For the third or subsequent violation, until the later of the date the individual complies with the requirement; six months; a date determined by the State agency; or, at the option of the State agency, permanently.

This rule proposes to amend redesignated 7 CFR 273.7(f) by deleting reference to a 2-month disqualification period and by inserting a new paragraph, 7 CFR 273.7(f)(2), *Disqualification Periods.* The new paragraph (2) will provide for minimum mandatory disqualification periods for individuals who fail or refuse without good cause to comply with FSP work requirements. State agencies are free to elect which disqualification period they institute for each level of noncompliance. However, each State agency must apply its disqualification policy uniformly, statewide.

We further propose to add a new paragraph (d)(xiii) under 7 CFR 272.2, *Plan of operation.* Paragraph (d)(xiii) will contain the requirement for each State agency's disqualification policies.

Ending Disqualification

Current regulations at 7 CFR 273.7(h) provide that, at the end of the 2-month disqualification period, participation may resume if the disqualified individual or household reapplies for benefits and is determined eligible.

Eligibility may be reestablished by a household during the disqualification period if the head of household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the appropriate work requirement. A disqualified individual may resume participation during the disqualification period by becoming exempt from work registration or by complying with the appropriate requirement.

As discussed previously, section 815 of PRWORA assigned to State agencies responsibility for establishing the procedures for determining whether an individual is in compliance with work requirements, as well as the actual determination of compliance.

The Department believes that Congress intended for State agencies to have maximum flexibility in implementing and administering their disqualification policies. Thus, when determining whether a disqualified individual or household has complied with the FSP work requirement in question, a State agency may use its established procedures, as long as these procedures are no less restrictive than the State agency's title IV–A process.

Since section 815 of PRWORA called for mandatory disqualification periods (the *later* of the date of compliance or end of disqualification), a disqualified individual will no longer be able to comply with the requirement during the disqualification period and end or ''cure'' the disqualification early.

Congress clearly intended to end this practice of curing of a disqualification. Section 815 amended section 6(d)(1)(B)(ii) of the Act by deleting the following provision: ''Any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated.''

Thus, PRWORA removed a policy that provoked criticism in the past: the possibility of reestablishing eligibility during a disqualification by complying with a work requirement. This ability to cure a disqualification was viewed as providing a ''revolving door'' through which noncompliant participants could continuously reenter the FSP to avoid serious penalty.

In light of this prohibition against curing a disqualification, several State agencies have asked whether PRWORA also changed the previous policy of ending a disqualification when, during the disqualification period, a disqualified individual became exempt from FSP work requirements. This policy is unchanged.

Section 6(d)(2) of the Act provides that a person who must otherwise comply with the FSP work requirements in section 6(d)(1), and who is subject to the penalties for noncompliance, is exempt from those requirements if he or she is: (1) subject to and complying with a title IV–A or Federal–State unemployment compensation work requirement; (2) a parent or other household member caring for a dependent child under age six or an incapacitated person; (3) a student; (4) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (5) working 30 hours a week or earning the minimum wage equivalent; or (6) between the age of 16 and 18 and not head of a household, or between 16 and 18 and attending school or training on a half-time basis. Also exempt are those under 16 or 60 and over and those who are physically or mentally unfit.

In the Department's view, the language of section 6(d)(2) must be interpreted to include disqualified individuals who meet one of the exemption criteria. In such cases, that individual is no longer subject to the work requirements or to the attendant penalties for noncompliance. For instance, if a disqualified individual gains responsibility for the care of a dependent child under six during his or her disqualification period, that individual is no longer subject to FSP work requirements. The disqualification must terminate and the individual, if otherwise eligible, must be allowed to resume participation.

Therefore, this rule proposes to amend redesignated 7 CFR 273.7(g) by deleting reference to a 2-month disqualification period and by providing that, at the end of the applicable minimum mandatory disqualification period (except in cases of permanent disqualification), participation may resume if the disqualified individual reapplies for food stamps and is determined by the State agency to be in compliance with work requirements. This rule proposes to further amend redesignated 7 CFR 273.7(g) by removing the provision for curing a disqualification.

Good Cause

The current regulations at 7 CFR 273.7(m) assign to State agencies responsibility for determining good cause when an individual fails to comply with FSP work registration, E&T, and voluntary quit requirements. The regulations include as good cause circumstances beyond the individual's control. One example cited is the lack of adequate child care for children ages 6 to 12.

The current regulations at 7 CFR 273.7(n)(3) contain the good cause requirements specifically concerning voluntary quit, as well as the procedures for verifying questionable information concerning voluntary quit.

Section 815 of PRWORA amended section 6(d)(1) of the Act by deleting language that included the lack of adequate child care for children between 6 and 12 as good cause for refusing to accept an offer of employment, and by assigning to the Secretary specific authority to define the meaning of good cause. We believe that Congress did not intend to eliminate lack of adequate child care as a valid good cause reason, thereby forcing parents to choose between the well-being of their children and the demands of FSP work requirements. Instead, by deleting this reference to a very specific, single instance of noncompliance, we believe Congress intended to eliminate any confusion about applying good cause criteria equitably across-the-board to all FSP work requirements. Therefore, lack of adequate child care remains as a good cause reason for noncompliance.

Although current good cause regulations remain basically unchanged, we propose to take this opportunity to amend redesignated 7 CFR 273.7(i) and redesignated 7 CFR 273.7(j) by combining the provisions under the specific heading ''Good Cause'' at redesignated 7 CFR 273.7(i). We also propose to add language to redesignated 7 CFR 273.7(i) reminding State agencies that it is not possible for the Department to enumerate each individual circumstance that should or should not be considered good cause. State agencies must consider all facts and circumstances in each individual case concerning the determination of good cause.

Voluntary Quit

Current regulations at 7 CFR 273.7(n) contain the procedures for disqualifying a household whose head voluntarily quits a job without good cause 60 days or less before applying for food stamps, or at any time thereafter. For purposes of establishing voluntary quit, a ''job'' is considered employment of 20 or more hours per week, or employment that provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. A Federal, State or local government employee dismissed from employment because of participation in a strike is considered to have voluntarily quit without good cause.

In the case of applicant households, if the State agency determines that a voluntary quit by the head of household was without good cause, the household's application for benefits will be denied and it will not be eligible for benefits for 90 days, starting with the date of the quit.

In the case of participating households, if the State agency determines that a head of household voluntarily quit a job while participating in the FSP, or discovers that a quit occurred within 60 days prior to application or between application and certification, the household will be disqualified from participation for 90 days, beginning with the first of the month after all normal adverse action procedures are completed.

Following the end of a voluntary quit disqualification, a household may reapply and, if otherwise eligible, begin participation in the FSP. Eligibility may be reestablished during a disqualification period and the household may, if otherwise eligible, resume participation if the head of household secures new employment comparable to the job that was quit, or leaves the household. Eligibility may also be reestablished if the head of household becomes exempt from work registration. If the disqualified household splits, the disqualification follows the head of household. If that individual becomes head of a new household, that household must serve out the balance of the disqualification period.

If a disqualified household applies for participation in the third month of its disqualification, it does not have to reapply in the next month. The State agency must use the same application to deny benefits in the remaining month of disqualification and to certify the household for any subsequent month(s) if it is otherwise eligible.

Section 815 of PRWORA amended section 6(d)(1) of the Act by removing the requirement that only the head of household is subject to voluntary quit. As with all the other sanctionable actions listed in section 6(d)(1)(A), each individual household member was made subject to disqualification for a voluntary quit. The State agency was afforded the option of disqualifying the entire household if the quitter is the head of household.

Section 6(d)(1) was further amended by eliminating the 90-day disqualification period for voluntary quit. Penalties for voluntary quit are based on the minimum mandatory disqualification provisions contained in PRWORA.

Lastly, section 815 of PRWORA amended section 6(d)(1) by adding the provision that an individual who voluntarily and without good cause reduces work effort and, after the reduction, works less than 30 hours per week, must be disqualified.

We propose to retain the 60-day pre-application period for establishing voluntary quit and to apply the same standard when determining reduction of work effort for applicants. The voluntary quit and reduction in work effort provisions aim to deter individuals with reasonable income from intentionally ending or reducing that income to qualify for food stamps or to increase coupon allotments. We believe that 60 days is a reasonable time span to use to gauge intent.

We also propose to increase the 20 hour/equivalent Federal minimum wage figure used in defining voluntary quit to 30 hours. Increasing the number of hours to 30 provides a logical connection between voluntary quit and the reduction of work effort threshold mandated by Congress. The 30 hour figure also conforms to the number of hours of work required to exempt an employed recipient from Program work requirements. The Department welcomes comments on this issue.

Lastly, Congress clearly stated that any reduction in hours of employment to less than 30 hours a week without good cause must be penalized. We do not believe Congress intended that a minimum wage equivalent of 30 hours be considered when establishing voluntary reduction in work hours. The Department proposes to make this clear in the rule. We also propose to incorporate good cause for reduction of work effort into the good cause provision at redesignated 7 CFR 273.7(i).

Accordingly, the following amendments to redesignated 7 CFR 273.7(j) are proposed. Any individual who, 60 days or less before applying for food stamps, or at any time after application, without good cause quits a job of 30 hours or more a week or a job that provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours, or who is employed 30 or more hours per week but without good cause reduces his or her work effort to less than 30 hours, must be disqualified for a period specified by the State agency's minimum mandatory disqualification provisions. The disqualified individual must be considered an ineligible household member. The individual's income and resources must continue to be counted to determine eligibility and level of benefits for the remaining household members. If the individual who voluntarily quit his or her job, or who reduced his or her work effort without good cause, is the head of household the State agency may, at its option, disqualify the entire household. Because the ability to cure a disqualification was eliminated, the provision for reestablishing eligibility during a disqualification if the individual secures new, comparable employment is removed.

Failure To Comply With a Title IV–A or Unemployment Compensation Work Requirement

Current regulations at 7 CFR 273.7(g)(2) provide that an individual who is exempt from FSP work requirements because he or she is registered for work under title IV–A or unemployment compensation but fails to comply with a title IV–A or unemployment compensation requirement *comparable* to a food stamp work requirement must be treated as though the individual failed to comply with the corresponding food stamp requirement. Comparability exists if the title IV–A or unemployment compensation requirement places responsibilities on the individual similar to food stamp work requirements.

In the past, this comparability issue created controversy and confusion among State agencies. How can a requirement in one program be ''comparable'' to one in another program with different rules, different caseloads, and different operating procedures? The ''similar responsibilities'' explanation only added to the confusion. If a title IV–A work program contained a training component not available to food stamp work registrants, did this mean that participation in that component placed a greater responsibility on the title IV–A household than on the food stamp household, even if the food stamp household had another component available; one that, while not the same, provided opportunities for training?

A conforming amendment to section 819 of PRWORA deleted the comparability language in section 6(d)(2)(A) of the Act relating to failure to comply with a title IV–A or unemployment compensation work requirement.

With the striking of the comparability requirement, State agencies are now able to impose FSP disqualifications on individuals (and-optionally-households) who fail to comply with title IV–A or unemployment compensation work requirements, without regard to the existence of ''similar responsibilities'' among programs.

The regulation continues to make it clear that the noncomplying individual will not be subject to FSP disqualification if he or she meets one of the other exemption criteria listed at 7 CFR 273.7(b) (excluding participation in title IV–A work activities or receipt of unemployment compensation). For example, an individual responsible for the care of a child under six who is disqualified under a title IV–A program for failure to comply with its work requirements would not be subject to a FSP disqualification because that individual remains exempt under another FSP criteria.

Note: Section 819 of PRWORA, titled ''Comparable Treatment for Disqualification,'' added a new paragraph (i) to section 6 of the Act. Section 6(i) provided that, if a food stamp recipient is disqualified for failure to comply with a requirement of a Federal, State, or local means-tested public assistance program, the State agency may opt to impose the same disqualification on the recipient under the FSP. Thus, in the example above, the State agency could, under the comparable disqualification provision of section 6(i), disqualify the individual who is responsible for the care of a child under six, using title IV–A rules and procedures. It is important to note that the language of section 6(i) specifically limits this option to individuals. Therefore, State agencies may not impose comparable treatment for disqualification on the entire household.

The Department is proposing to amend redesignated 7 CFR 273.7(f)(6) accordingly by deleting the comparability requirement for imposing FSP disqualifications on individuals who are not otherwise exempt FSP work requirements and who fail to comply with the work registration requirements of title IV–A or of the Federal-State unemployment compensation system. The Department further proposes to add the option of allowing State agencies to disqualify individuals who meet other FSP exemption criteria by using the same rules and procedures that apply under title IV–A for failure to comply with a title IV–A work requirement. Such a disqualification must be in accordance with the comparable disqualification provisions at 7 CFR 273.11(l).

Caretaker Exemption

Current regulations at 7 CFR 273.7(b)(iv), pursuant to section 6(d)(2)(B) of the Act, exempt from FSP work requirements a parent or other household member who is responsible for the care of a dependent child under six. Prior to the enactment of PRWORA, Eight State agencies had submitted requests to waive this regulation to require caretakers of children less than six years old to participate in their proposed welfare reform demonstration projects. The purpose of these waivers was to conform FSP and title IV–A work requirements in order to provide the State agencies maximum flexibility in the operation of their demonstrations. The Department believed that the States' requests violated section 17(b) of the Act, which prohibited the approval of a waiver that would lower or further restrict the benefit levels of food stamp recipients. The Department concluded that the approval of these waivers would subject food stamp recipients to work requirements and possible sanctions that they would not be subject to under regular program rules. Therefore, the waivers were denied.

Section 816 of PRWORA amended section 6(d)(2) of the Act by adding an option to allow State agencies that previously requested a waiver to lower the age of the qualifying dependent child to less than six. Under this option, State agencies that had requested such a waiver, but were denied before August 1, 1996, may lower the age of a qualifying dependent child to between one and six years. This option may be exercised for a period of not more than three years.

This rule proposes to amend 7 CFR 273.7(b)(iv) to include a provision offering this option to the State agencies of Alabama, Kansas, Maryland, Michigan, North Dakota, Virginia, Wisconsin, and Wyoming. According to FNS records, these were the State agencies that were denied the exemption waivers before August 1, 1996. These State agencies, upon submission of written notification to the Department, may, for a maximum of three years, lower the age of a dependent child that qualifies a parent or other household member for an exemption to between one and six.

Employment and Training Program

Since April 1987 State agencies have been required to operate a Food Stamp Employment and Training Program. The E&T program seeks to improve food stamp recipients' ability to obtain regular employment, increase earnings, and reduce their dependency on public assistance.

State agencies may choose to operate one or more of a variety of E&T components. The components may vary from State to State, and may include job search, job search training, workfare, work experience, self-employment activities, and vocational and basic education components. Job search has by far been the most prevalent activity, because of its relatively low cost.

The Department funds the E&T Program in three categories. An annual 100% Federal grant is allocated to State agencies to operate their programs. The Department matches allowable operational E&T costs that exceed the 100% Federal grant. USDA also matches 50% of the costs incurred by participants in fulfilling their E&T obligations by contributing half of the costs for dependent care (within certain limits), and half of up to $25 per month for transportation and other costs. All funding passes from USDA directly to State agencies.

Prior to the enactment of PRWORA, the Department allocated an annual 100% Federal grant of $75 million to State agencies. In accordance with section 16(h) of the Act, $60 million was distributed according to each State's proportion of work registrants nationwide, and the remaining $15 million was distributed based on State agency performance in placing people into E&T activities.

The Food Security Act of 1985 (Pub. L. 99–198), which created the E&T Program, mandated that the Department establish performance standards requiring State agencies to place at least 50 percent of their mandatory participants into E&T programs. Mandatory participants are work registrants not exempted from E&T by a State agency. Congress lowered the 50 percent performance requirement to 10 percent, effective FY 1992, to encourage State agencies to begin utilizing more substantive interventions or to target service to certain groups.

Each State agency must have in place conciliation procedures for the resolution of disputes involving the participation of individuals in the E&T Program.

In accordance with section 817 of PRWORA, which contains amendments to section 6(d)(4) of the Act, this rulemaking proposes the following changes to current regulations.

Statewide Workforce Development System

Section 817 of PRWORA amended section 6(d)(4) of the Act to require that each component of a State agency's E&T program be delivered through a statewide workforce development system, unless the component is not available locally through such a system.

A statewide workforce development system is an interconnected strategy for providing comprehensive labor market and occupational information to jobseekers, employers, providers of one-stop delivery of core services, providers of other workforce employment activities, and providers of workforce education activities.

This rule proposes to add, at 7 CFR 273.7(c), a new paragraph (5), which will contain the requirement that each component of a State agency's E&T program be delivered through its statewide workforce development system. If the component is not available locally through such a system, the State agency may use another source.

Acceptable Level of Effort of E&T Components

Current regulations at 7 CFR 273.7(f)(1) require that any E&T component offered by a State agency entail a certain level of effort on the part of participants. The Department established a minimum level of effort that is comparable to spending 12 hours a month for two months (or less in workfare or work experience components) making job contacts. The Department based this level on the pre-E&T food stamp job search requirement that a participant contact 24 employers in an eight-week period in an effort to locate suitable employment. The Department intends to maintain this level as the acceptable level of component effort.

Section 824 of PRWORA established a new work requirement under which nonexempt ABAWDs become ineligible if, during a 36-month period, they receive benefits for three months in which they do not meet specific conditions. One such condition is participation for 20 or more hours a week in a work program, such as E&T—excluding job search or job search training activities. The 20-hour requirement does not apply to workfare or work experience components of E&T programs. Participation in those components is limited to the number of monthly hours equal to the result obtained by dividing a household's food stamp allotment by the higher of the applicable Federal or State minimum wage.

The Department urges State agencies to plan their E&T component participation requirements with the ABAWD provisions in mind. By establishing sufficient levels of effort for their non-work, non-job search/job search training E&T program components, or by judicious scheduling of simultaneous participation in a combination of components to meet the ABAWD provisions, State agencies can contribute significant—and valuable—resources to permit ABAWDs to maintain their food stamp eligibility. State agencies must keep in mind, however, the maximum individual or household participation requirements specified in section 6(d)(4)(F) of the Act. The total monthly work hours in an E&T program required of a household, together with the hours of work in a optional workfare program, may not exceed the number of hours equal to the household's food stamp allotment divided by the higher of the applicable Federal or State minimum wage. The total hours of individual participation in E&T, together with any hours worked for compensation in cash or in kind (including workfare), cannot exceed 120 hours per month.

Applicant Work Requirements

Current regulations at 7 CFR 273.7(f)(1) allow a State agency to require an individual to conduct a job search from the time an application is filed for an initial period of up to eight consecutive weeks. This State agency option was provided to conform FSP policy with title IV–A applicant job search requirements.

Section 817 of PRWORA amended section 6(d)(4) of the Act by expanding this existing State agency option. In addition to job search, a State agency may require non-exempt food stamp applicants to participate in any of its E&T program components as a condition of eligibility.

This rulemaking proposes to amend redesignated 7 CFR 273.7(e)(1) to authorize a State agency to require FSP applicants, at its option, to participate in and comply with any component it offers in its E&T program for an initial period beginning at the time of application. In order to assure the maximum success of applicant participation, the Department further proposes to remove the eight-week time limit for this initial period of applicant participation. Thus, a State agency may require applicant participation for any initial period it determines to be adequate to meet program goals. However it was not the intent of Congress to permit State agencies to delay the determination of an individual's eligibility for benefits or the issuing of benefits to an otherwise eligible household until initial participation is completed. Therefore, the Department proposes to maintain the requirement at redesignated 7 CFR 273.7(e)(1)(i) that, as long as the applicant is complying with the E&T requirement, the State agency not delay the determination of the individual's eligibility for benefits or the issuance of benefits to an otherwise eligible household pending completion of an applicant E&T requirement.

Job Search

Current regulations at 7 CFR 273.7(f)(1)(i) authorize a State agency to offer a job search component comparable to that required of a program under title IV–A. Aside from the initial applicant job search period, discussed above, the work registrant can be required to conduct a job search of up to eight weeks (or an equivalent period) in any consecutive 12-month period. The first such 12-month period begins at any time following the close of the initial period.

Section 817 of PRWORA amended section 6(d)(4)(B) of the Act by deleting the title IV–A comparability requirement for job search.

Therefore, we propose to amend redesignated 7 CFR 273.7(e)(1)(i) by deleting the requirement that a State agency's E&T job search component must be comparable to its title IV–A job search component.

The legislative history of the Act indicates that, while Congress did not place a minimum or maximum limit on job search, it did expect the Department to develop and implement reasonable requirements. The only limitation Congress placed on the Department was that it not initiate a mandatory continual job search. Congress did not intend that work registrants actively engage in a systematic and sustained effort to obtain work every month and provide tangible evidence to the State agency of such effort. It feared that such a system would create administratively complex and cumbersome reporting systems that would flood State agency offices with paperwork, but would not produce jobs. At the time of the publication of the original job search rule in January 1981, the Department chose the eight-week job search period to conform with the requirements of the Aid to Families with Dependent Children (AFDC) Program. Job search under AFDC's Work Incentive Program (WIN) was mandated to be no more than eight weeks a year.

In keeping with the State agency flexibility offered under PRWORA, the Department further proposes to amend redesignated 7 CFR 273.7(e)(1)(i) by removing the annual eight week job search limitation. Each State agency will be free to conform its E&T job search to that of its title IV–A work program, or to establish job search requirements that, in the State agency's estimation, will provide participants a reasonable opportunity to find suitable employment. However, the Department believes that Congress' initial concern about the length of job search still applies. If a reasonable period of job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive.

The Department welcomes comments on this issue.

Lastly, the Department proposes to amend redesignated 7 CFR 273.7(e)(1)(i) by adding that, in accordance with section 6(o)(1)(A) of the Act and 7 CFR 273.24 of the regulations, a job search program operated as a component of a State's E&T program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. This same notice will be added at redesignated 7 CFR 273.7(e)(1)(ii), which describes job search training programs. These additions will also specify that the prohibitions against E&T job search and job search training do not apply to such programs operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*) (the WIA), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) (the Trade Act). Further, we propose to amend redesignated 7 CFR 273.7(e)(1) to add that job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the required time spent in the other components.

Workfare

Current regulations at 7 CFR 273.7(f)(1)(iii) authorize assignment to workfare components operated in accordance with section 20 of the Act and 7 CFR 273.22. As part of a workfare program, the Act permits operating agencies to establish a job search period of up to 30 days following certification prior to making a workfare assignment. During this period, the participant is expected to look for a job. The job search period may only be conducted at certification, not at recertification. This job search activity is part of the workfare assignment and not a job search ''program.'' Therefore, participants are to be considered as participating in and complying with the requirements of workfare, thereby satisfying the ABAWD work requirement.

We propose to amend redesignated 7 CFR 273.7(e)(1)(iii) to include a statement that makes clear that the job search period authorized by State agencies for workfare components does meet the work requirement for able-bodied adults.

Work Experience Programs

Current regulations at 7 CFR 273.7(f)(1)(iv) authorize assignment to a work experience component to improve the employability of participants through training and/or actual work experience. In accordance with sections 6(d)(4)(B)(i)(I) and (II) of the Act, assignments are limited to ones that serve a useful public purpose in fields such as health, social service, environmental protection, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. Additionally, assignments are to use, to the greatest extent possible, a participant's prior training, experience, and skills.

Section 817 of PRWORA amended section 6(d)(4) by deleting the above limitations imposed on work experience assignments. In taking this action, the Department believes that Congress meant to expand State agency flexibility to place individuals not only in public or private non-profit assignments, but also in work experience positions with private sector, for-profit employers. However, the Act and other Federal laws—including the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, *et seq.*)—govern the rights of participants assigned to positions with for-profit employers as well as those in non-profit positions. State agencies must exercise great caution to comply with those laws and to ensure those rights when establishing and operating private sector work experience components.

This flexibility does not extend to workfare assignments, in which participants are required to work off the value of their household's monthly food stamp allotment. Workfare assignments may only be in public or private non-profit agencies.

We propose to amend redesignated 7 CFR 273.7(e)(1)(iv) by deleting the requirements that work experience assignments serve a useful public purpose, and that they use, to the greatest extent possible, a participant's prior training, experience, and skills. Thus, assignments can be made to any available public or private non-profit project, as well as with any private, for-profit employer, regardless of prior training, experience, or skills, as long as such assignments, pursuant to section 6(d)(4)(B)(iv), do not serve to replace a worker not participating in the program; and as long as they provide the same benefits and working conditions to E&T participants as those provided to regular employees performing comparable work for comparable hours.

''Other Programs, Projects, and Experiments''

In accordance with section 16(h)(4) of the Act, the Federal 100 percent E&T grant may only be used by State agencies to operate an E&T program under section 6(d)(4). Section 6(d)(4)(B)(vii) of the Act includes as an allowable component of an E&T program other employment, educational and training programs, projects, and experiments aimed at accomplishing the purpose of the E&T program. Such components must be approved by the Secretary, or by the State under regulations issued by the Secretary. These components include work programs under section 824 of PRWORA that allow ABAWDs to maintain eligibility for food stamps. These work programs are defined as (1) a program under the WIA; (2) a program under section 236 of the Trade Act; and (3) a program of employment and training operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under subsection (d)(4), other than a job search program or a job search training program. Therefore, in order to qualify for Federal financial participation, all WIA, Trade Act and State/local employment and training programs must be fully described in the State E&T plan; must guarantee all the rights and meet all the requirements of regular E&T program components; and must be approved by the Secretary.

Exemptions

Current regulations at 7 CFR 273.7(f)(2) permit State agencies, subject to approval by the Department, to exempt from E&T certain individual work registrants or categories of work registrants for which participation is impracticable. Factors listed which may lead to the impracticability of participation in some geographic areas, for some groups of work registrants, include availability of job opportunities and the cost-effectiveness of participation. For individuals, personal circumstance such as lack of job readiness, the remote location of work opportunities, physical condition, and the unavailability of dependent care are listed. Additionally, with approval from the Secretary, persons who have participated in the FSP for 30 days or less may be exempted from participation.

Although State agencies are afforded a certain amount of flexibility in determining who will or will not participate in E&T, they are required to justify proposed exemptions in their E&T State plans. The Department can accept or reject the proposed exemptions, based on the validity of the State agency's claim.

Individual exemptions must be reevaluated at each recertification.

Categorical exemptions should be reviewed no less frequently than annually to determine whether they remain valid.

Current regulations at 7 CFR 273.7(c)(4) detail the State agency's responsibilities for preparing and submitting an E&T plan. Paragraph (c)(4)(iii) requires the State agency to list the categories and types of individuals it seeks to exempt from E&T participation, the basis used to determine these exemptions, including any cost information, and the estimated percentages of work registrants the State plans to exempt.

Section 817 of PRWORA amended section 6(d)(4)(D) of the Act to remove the requirements that: (1) individual and categorical exemptions from E&T be based on impracticability; (2) State agencies require the approval of the Secretary to exempt household members that have participated in the FSP for 30 days or less; and (3) individual exemptions be reevaluated no less often than at each certification or recertification.

Accordingly, the Department proposes to amend redesignated 7 CFR 273.7(e)(2) by removing restrictions on State agency flexibility in determining E&T exemptions. The State agency may, at its discretion, exempt individual work registrants and categories of work registrants. Although the validity of exemptions must be periodically reevaluated, each State agency may establish the frequency of its evaluation.

The Department also proposes to amend 7 CFR 273.7(c)(6)(iii) by removing the requirement that the State agency list the basis, including cost information, it uses to determine its exemptions; and by adding the requirement that it include the frequency with which it plans to reevaluate the validity of its exemptions.

Voluntary Participation

Current regulations at 7 CFR 273.7(f)(4) contain two provisions for volunteers. First, that a State agency ''may operate program components in which individuals elect to participate.'' Second, a State agency ''shall permit, to the extent it deems practicable, persons exempt from the work registration or employment and training requirements,'' as well as those who have complied or are in the process of complying with E&T requirements, to participate in any E&T component it offers.

While the purpose of the two provisions appears to be similar but contradictory—one is an option, the other a mandate—they were based on Congressional intent to provide for two different circumstances.

The term volunteer must first be defined. A volunteer is an individual who is exempt from FSP work requirements or who is a work registrant exempted by the State agency from participation who elects to participate in E&T. A mandatory participant who elects to participate in an E&T component while or after completing a required component is considered a volunteer in the subsequent component.

In the first instance, Congress, recognizing its potential effectiveness, permitted State agencies to allow any individual food stamp recipient who elected to participate to volunteer. For example, persons with a child under 6—and therefore exempt from work registration—who wished to receive training and assistance in finding a full-time job would benefit, and long term Federal costs might be lowered.

In the second instance, Congress required State agencies to allow, to the greatest practicable extent, work registrants exempted from E&T, as well as E&T participants who had complied with or were in the process of complying with program requirements, access to any E&T program component available.

Section 817 of PRWORA amended section 6(d)(4)(G) by removing the requirement that State agencies shall—to the extent deemed practicable—permit both exempt and nonexempt work registrants to participate in any E&T component offered. State agencies retain, however, the option to operate E&T components in which individuals volunteer to participate.

This rule proposes to amend redesignated 7 CFR 273.7(e)(4) by removing the requirement placed on State agencies to permit exempt work registrants and participants to take part in any component offered. While the Department encourages and supports such participation in E&T activities, it believes State agencies should be afforded maximum flexibility in determining who may participate in their programs and to what degree. State agencies continue to have the option to offer E&T components in which volunteers may participate. We do not believe, however, that volunteers should be subjected to the same penalties for noncompliance as mandatory participants. We also do not believe that a distinction should be drawn between volunteer and regular E&T participants concerning maximum hour restrictions on participation. Accordingly, the Department proposes that the current regulatory requirements concerning disqualification and hours of work or participation for volunteers continue to apply.

Conciliation

Current regulations at 7 CFR 273.7(g)(ii) contain requirements for a State agency to establish conciliation procedures to be used when an individual fails to comply with an E&T Program requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide him or her with an opportunity to comply prior to issuing a notice of adverse action. The conciliation period begins the day after the State agency learns of the noncompliance and continues for at least 30 days. In this time the State agency is expected to contact the noncompliant individual to determine the reason for the noncompliance, establish whether good cause exists, and advise the individual on what actions need to be taken to avoid disqualification. The noncompliant individual must perform a verifiable act of compliance within the 30-day period to avoid receiving a notice of adverse action.

Current regulations at 7 CFR 273.7(g)(iv) and (v) detail the adverse action procedures that a State agency must follow as soon as it learns about an act of noncompliance with a FSP work requirement other than an E&T Program requirement. First, the State agency must establish if good cause for the noncompliance exists. Then, within 10 days of establishing that good cause does not exist, the State agency must issue the noncompliant individual a notice of adverse action.

The notice of adverse action details the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may reapply at the end of the disqualification period. Information must be included on or with the notice describing the action that can be taken to avoid the sanction. The disqualification period begins the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

Section 817 of PRWORA amended section 6(d)(4)(H) of the Act by deleting the conciliation requirement.

Accordingly, we propose to amend redesignated 7 CFR 273.7(f) by removing the requirements imposed on State agencies to establish and operate a conciliation procedure for the resolution of disputes involving the participation of an individual in E&T. However, a State agency may opt to incorporate an informal conciliation process into its E&T program. In such cases the State

agency must comply with the adverse action procedures at the end of the conciliation period.

Performance Standards and State Compliance With Employment and Training Requirements

Current regulations at 7 CFR 273.7(o) set forth the requirements for State agencies to meet an annual performance standard for the minimum number of participants that a State agency must place in its E&T program. Since FY 1992 the performance standard has been set at 10 percent of a State agency's mandatory E&T participants plus volunteers.

In order to calculate its performance standard at the end of the fiscal year, a State agency is required to collect information on its total work registrants, the number of work registrants it exempts from E&T, and the number of non-exempt work registrants (mandatory participants) and volunteers it places in E&T components during the fiscal year.

The current regulation at 7 CFR 273.7(p)(2) provides that if a State agency fails to meet the required performance standard without good cause, the Department may disallow administrative funding for the State agency's E&T program, as well as withholding the State agency's performance-based allocation. Further, the current regulation at 7 CFR 273.7(p)(1) applies the provisions of § 276.1(a)(4) to State agencies that fail to efficiently and effectively administer their E&T programs. That regulation authorizes FNS to seek injunctive relief and/or suspension or disallowance of the Federal share of a State agency's administrative funds if the State agency fails to efficiently and effectively administer any part of the Food Stamp Program, including E&T.

Section 817 of PRWORA amended section 6(d) of the Act by removing paragraph (K), which directed the Secretary to establish performance standards to measure the extent of State implementation of E&T. Section 817 further amended section 6(d) by removing paragraph (L)(ii), which authorized the Secretary—in cases where a State agency fails, without good cause, to comply with E&T requirements, including failing to meet performance standards—to withhold administrative funding, including the 100 percent Federal E&T grant.

Accordingly, we propose to amend 7 CFR 273.7 by removing paragraph (o), Performance Standards. It is possible that Congress will, in the future, mandate some type of performance measurement system—either process or outcome based—for the E&T Program. In the interim, State agencies are free to use the resources of their E&T programs to serve their at-risk populations in the most effective manner possible.

We also propose to amend 7 CFR 273.7 by deleting paragraph (p), State noncompliance with Employment and Training requirements. The former paragraph (p)(1), which, as explained above, details the consequences of States not complying with E&T requirements, will be redesignated as paragraph (c)(14).

Federal Financial Participation

Current regulations at 7 CFR 273.7(d) require the Department to allocate an annual 100 percent Federal E&T grant to States, based in part on the number of work registrants in each State compared to the number of work registrants nationwide; and in part on each State agency's program performance. Each State agency must receive at least $50,000 in unmatched Federal funds. The State agency is required to use the E&T grant to fund the administrative costs of planning, implementing and operating its E&T program. The Department will pay 50 percent of all other administrative costs above those covered by the 100 percent Federal grant that the State agency incurs in operating its E&T program.

The Department matches half the amount State agencies spend to reimburse E&T participants for the actual costs of transportation and other costs (excluding dependent care) that are determined by the State agency to be necessary and directly related to E&T participation, up to $25 per month. Thus, the Department will pay up to $12.50 a month of each participant's costs. The State agency may supplement this amount, but without Federal matching funds.

State agencies must also provide payments or reimbursements to E&T participants for dependent care expenditures, up to a statewide limit set by the State agency. This statewide limit may not be less than the limit set for the dependent care deduction at 7 CFR 273.9(d)(4), that is, $200 per month for each dependent under age 2 and $175 per month for each other dependent. However, the reimbursement may not exceed the applicable local market rate as determined by procedures consistent with the JOBS Program. Thus, the State agency must reimburse actual costs of dependent care up to either the local market rate or the statewide limit set by the State agency, whichever is lower. The Department matches State agency expenditures for reimbursements at the 50 percent level.

Section 817 of PRWORA amended sections 6(d)(4) and 16(h) of the Act concerning the funding of, and Federal financial participation in, the E&T Program. Subsequently, the Balanced Budget Act of 1997 (Pub. L. 105–33) substantially amended those requirements. Therefore, the majority of amendments dealing with funding are addressed in a separate rule. However, section 817 amended section 6(d)(4) of the Act in two significant areas that will be addressed in this proposed rule.

Section 817 of PRWORA amended section 6(d)(4) of the Act by removing the requirement that reimbursements for dependent care expenses incurred due to participation in E&T must equal at least the amount of the dependent care deduction established for determining household eligibility and benefit amounts. We propose to amend 7 CFR 273.7(c), *State agency responsibilities,* by removing the provision that requires State agencies, in their State plans, to include a statewide limit for dependent care reimbursements established by the State agency that must not be less than the dependent care deduction amounts specified under § 273.9(d)(4).

Section 817 of PRWORA further amended section 6(d) of the Act by adding the provision that limits the amount of money State agencies may spend to provide E&T program services to food stamp recipients who also receive benefits under a State program funded under title IV–A. The limit is the amount of Federal E&T funds the State agency spent on E&T services for the same category of recipients in fiscal year 1995. This rule proposes, therefore, to add, at 7 CFR 273.7(d)(1)(i)(F), the provision that, notwithstanding any other provision of the paragraph, the amount of E&T funds, including participant and dependent care reimbursements, a State agency uses to serve participants who are receiving benefits under a State program funded under title IV–A may not exceed the amount of funds the State agency used in FY 1995 to serve participants who were receiving benefits under a State program funded under title IV–A.

Based on information provided by each State agency, the Department established claimed Federal E&T expenditures on this category of recipients in fiscal year 1995 for the State agencies of Colorado ($318,613), Utah ($10,200), Vermont ($1,484,913), and Wisconsin ($10,999,773). These State agencies may spend a like amount each fiscal year to serve food stamp recipients who also receive title IV–A assistance, if they choose. Other State agencies are prohibited from expending

any Federal E&T funds on title IV–A recipients.

Employment Initiatives Program

Section 852 of PRWORA amended section 17 of the Act (7 U.S.C. 2026) to add provisions for an employment initiatives program under which an eligible household in a qualifying State may elect to receive the cash equivalent of its food stamp coupon allotment.

This rule proposes to add, at 7 CFR 273.7, a new paragraph (k), containing the following requirements for the employment initiatives program.

A State agency qualifies to operate an employment initiatives program if, during the summer of 1993, at least half of its food stamp households also received benefits from a State program funded under title IV–A. Qualified State agencies are Alaska, California, Connecticut, the District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia, and Wisconsin.

A food stamp household in one of the 10 qualified State agencies may receive cash benefits if it elects to participate and an adult member of the household (1) has worked in regular (i.e., unsubsidized) employment for the last 90 days, earning a minimum of $350 per month; (2) is receiving cash benefits under a State program funded under title IV–A; or (3) was receiving cash benefits from the State program but, while participating in the employment initiatives program, became ineligible because of earnings and continues to earn at least $350 a month from unsubsidized employment.

As required by section 852, A qualifying State agency operating an employment initiatives program must agree to pay for an increase in cash benefits to compensate participating households for any State or local sales taxes on food purchases.

Also as required by section 852, a State agency that operates an employment initiatives program for two years must evaluate the impact of providing cash assistance in lieu of a food stamp coupon allotment to participating households. The State agency must provide the Department with a written report of its evaluation findings. The State agency, with the concurrence of the Department, will determine the content of the evaluation. The Department expects the evaluation to address, at a minimum, questions concerning the effects of providing cash assistance on household food expenditures, food use, and nutrient availability. Additionally, related issues such as households' experiences in running out of food and expenditure shifts from food to other goods and services should be addressed.

Work Supplementation Program

Section 849 of PRWORA amended section 16(b) of the Act (7 U.S.C. 2025(b)) to give State agencies the option to implement work supplementation (or support) programs. In these programs the cash value of public assistance benefits, plus FSP benefits, is provided to an employer as a wage subsidy to be used for hiring and employing public assistance recipients. The goal of work supplementation is to promote self-sufficiency by providing public assistance recipients with work experience to help them move into non-subsidized jobs.

Prior to the enactment of PRWORA, about a dozen States were approved to operate demonstration projects in local jurisdictions that included a work supplementation component. In July 1997, FNS sent a letter to all States about the work supplementation program including a set of questions and answers. These guidelines were provided to facilitate the implementation of these programs under PRWORA. These guidelines placed no requirements on States beyond those of federal law and other federal regulations governing reporting on and accounting for financial and participation data. Because of the limited experience with the work supplementation programs, the Department does not intend to propose additional requirements or restrictions. The Department hopes that this flexibility encourages more States to develop partnerships with private employers in an environment that supports innovation and experimentation within the limits of the law.

This rule proposes to add, at 7 CFR 273.7, a new paragraph (l), containing the following requirements for the work supplementation or support program.

We further propose to add a new paragraph (d)(1)(xiv) under 7 CFR 272.2, *Plan of operation.* Paragraph (d)(1)(xiv) will contain the requirement for a planning document from each State agency that operates a work supplementation program.

A State agency that proposes to implement a work supplementation program must submit its plan for FNS approval. This plan must address the requirements for a work supplementation or support program listed this proposed rule. Once its plan is approved, FNS will provide the State agency with the cash value of recipients' food stamp benefits to be used as wage subsidies for work supplementation programs and to reimburse the State for related administrative costs.

PRWORA established the following parameters for work supplementation programs:

- The individual must be receiving public assistance, but must not be employed by the employer at the time the individual enters the work supplementation program.
- The wage subsidy received under the work supplementation program must be excluded from household income and resources during the time the individual is participating in work supplementation.
- The household must not receive a separate food stamp allotment while participating in the work supplementation program.
- An individual participating in a work supplementation program must be excused from meeting any other work requirements.
- The work supplementation program must not displace any persons currently employed who are not supplemented or supported.
- The wage subsidy must not be considered income or resources under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, or public assistance programs, and the household's food stamp allotment must not be effectively decreased due to taxation or any other reason because of its use as a wage subsidy.
- The earned income deduction must not be applied to the subsidized portion of wages earned in a work supplementation program.
- State agencies must specify how public assistance recipients in the proposed work supplementation and support program will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

The Department solicits comments in the following areas that are not mandated by PRWORA but are necessary to comply with other laws or for accounting and reporting purposes.

- States must ensure that work supplemented or supported employees are treated the same as other non-subsidized employees and that all subsidized positions comply with the Fair Labor Standards Act.
- States must outline State agency, employer and recipient obligations and responsibilities in the proposed work supplementation program. They must also describe procedures for providing wage subsidies to participating employers and for monitoring the use of the funds.

• At the same time the plan is submitted for approval, the State must also submit an operating budget for the proposed program. Additionally, before the plan is approved, the State must agree to comply with certain reporting and monitoring requirements. State agencies operating work supplementation and support programs are required to comply with all FNS reporting requirements, including reporting the amount of benefits contributed to all employers as a wage subsidy on the FNS 388. State Issuance and Participation Estimates; FNS–388A, Participation and Issuance Project Area; FNS–46. Issuance Reconciliation Report; and SF–269, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS–366A, Budget Projection and SF–269, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

• The proposed rule asks States to include in their plan amendments whether food stamp allotments and public assistance grants will be frozen at the time a recipient begins a subsidized job. The Department is particularly interested in public comments on the desirability of a Federal standard for issuing supplemental allotments when earnings unexpectedly fall and, secondly, whether there should be a time limit on freezing benefit levels (i.e., not counting any unsubsidized wages from the employer).

• Once the work supplementation program plan is approved, the State agency must incorporate it into the State Plan of Operation and include its operating budget in the State agency budget. After approval, the Department will pay the cash value of a recipient's food stamp benefits to the State agency so they may be paid directly to an employer as a wage subsidy. The State agency will also be reimbursed for administrative costs related to the operation of the work supplementation program as provided by Section 16 of the Food Stamp Act.

• For Quality Control purposes, cases in which a household member is participating in a work supplementation program will be coded as not subject to review.

Workfare

Since 1982 the Department has afforded State agencies and political subdivisions the option to establish a workfare program. In Workfare, nonexempt food stamp household members are required to accept public service job offers and work in return for the household's food stamp allotment. The number of hours of work required of household member is calculated by dividing the household's monthly benefit by the higher of the applicable Federal or State minimum wage. Workfare helps ensure that only those who are willing to work receive benefits; it provides useful public services; and it provides valuable work experience.

Under current rules, household members subject to the work registration requirements of 7 CFR 273.7(a) are also subject to workfare. Additionally, recipients of benefits under title IV–A are subject to workfare if they are currently involved less than 20 hours a week in title IV–A work activities and are not otherwise exempt. Applicants for, or recipients of, unemployment compensation are also subject to workfare.

Workfare is a household responsibility. Legislative history (Conference Report No. 97–290 on the Agriculture & Food Act of 1981, December 10, 1981, page 226) established Congressional intent that the household's workfare responsibility be shared by all nonexempt members: ''Upon a household member's failure to comply with workfare requirements, the household would be ineligible for food stamps * * *, unless someone in the household satisfies all outstanding workfare obligations. * * *'' Failure of a household to comply with workfare requirements without good cause results in the disqualification of the entire household until the workfare obligation is met, or for two months, whichever is less.

The workfare provisions of section 20 (7 U.S.C. 2029) of the Act entitle a political subdivision operating a workfare program to share in the benefit reductions that occur when a workfare participant begins employment while engaged in workfare for the first time, or within 30 days of ending the first participation in workfare. This provision is available only for workfare programs operated under section 20.

Workfare may also be offered as a component of a State agency's E&T program. However, workfare savings are not available for E&T workfare components.

State agencies and political subdivisions may also operate workfare programs in which participation by food stamp recipients is voluntary. In a voluntary program, disqualification for failure to comply does not apply. The number of hours of work will be negotiated between the volunteer household and the agency operating the workfare program.

Section 815 of PRWORA amended section 20 of the Act to: (1) eliminate the requirement for conformance with workfare programs under title IV–A ; (2) eliminate the provision for combining the food stamp and title IV–A assistance grants to determine the number of hours a title IV–A food stamp household can be required to participate in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609); and (3) conform disqualification penalties for failure to comply with workfare requirements with those under section 6(d)(1) of the Act. Thus, while still a household responsibility, State agencies have the option of disqualifying the individual or, if the individual is a head of household, the entire household.

This rulemaking proposes to amend 7 CFR 273.22 to incorporate PRWORA changes as well as making other technical corrections. Lastly, in keeping with the Department's ongoing regulation streamlining and reform initiative, and to create a more logical union of food stamp work requirements and the optional workfare program, we propose to move the amended 7 CFR 273.22 to 7 CFR 273.7, *Work provisions,* and to designate it paragraph (m), *Optional workfare program.*

Comparable Workfare

Section 824 of PRWORA established the provision that non-exempt individuals will become ineligible if, in the preceding 36-month period, they receive food stamps for three months during which they do not meet a required work or training obligation. One of the qualifying activities is to ''participate in and comply with the requirements of a [workfare] program under section 20 or a comparable program established by a State or political subdivision of a State * * *''

Several State agencies are operating—or have expressed an interest in operating—programs that, while comparable to workfare in that they require the participant to work for his or her household's food stamp allotment, vary greatly from the requirements of workfare under section 20 of the Act. The purpose of these comparable programs is to assist ABAWDs in fulfilling their work requirement and maintaining eligibility for benefits. Although there are variations, these comparable programs, for the most part, provide that the ABAWDs voluntarily participate and find their own public service placements. They are also responsible for arranging to have their participation reported to their

caseworkers and for verifying their workfare hours. Participation requirements range from three hours a week to 25 hours per month. Additionally, these ''self-inititated'' programs may or may not offer reimbursement for transportation or other costs of participation. The work site is responsible for providing work benefits and/or protections.

The Department initially determined that, since self-initiated programs do not meet the requirements of section 20 of the Act, they are not eligible for Federal financial participation. However, the Balanced Budget Act of 1997 contained a ''use of funds'' requirement for 100 percent Federal E&T grant allocations. State agencies must use at least 80 percent of their E&T grants to serve nonexempt ABAWDs who are placed in and comply with the requirements of an approved work program, a workfare program under section 20 or a comparable workfare program established by a State or political subdivision. Thus comparable self-initiated workfare programs are now eligible for Federal financial participation.

This rule proposes to add a new paragraph (10) to the newly designated paragraph 273.7(m). The new paragraph, (m)(10), will contain the provisions relating to comparable workfare programs.

IV. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice to (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley Watkins, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and recipients who are subject to FSP work requirements. The rulemaking also affects State and local welfare agencies that administer the Food Stamp Program.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) which impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Regulatory Impact Analysis

Need for Action

This action is needed to implement the work provisions of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). These provisions would: (1) establish new disqualification penalties for noncompliance with Food Stamp Program work requirements; (2) permit certain States to lower the age at which a child exempts a parent or caretaker from food stamp work rules; (3) revise and streamline the Food Stamp Employment and Training (E&T) Program; (4) provide States the option of using a household's food stamp benefits to subsidize a job for a household member participating in a work supplementation or support program; and (5) permit qualifying States to provide certain households with cash in lieu of food stamps.

Benefits

State agencies will benefit from the provisions of this rule because they streamline Food Stamp Program work requirements, simplify the disqualification requirements for failure to comply with work rules, and provide greater flexibility for State agencies to operate their employment and training programs.

Costs

Changes brought about by this rule will reduce Program costs for the five-year period FY 99 through FY 03 by approximately $101.7 million. The savings are realized from section 815, disqualification. They are the result of new disqualification penalties for noncompliance with Food Stamp Program work requirements. For FY 1999–2003, the estimated yearly dollar savings (in millions) are $30.9, $25.9, $19.5, $13.3, and $12.1 respectively. The costs/savings of the other four provisions cannot be determined because they either do not affect eligibility for food stamps or their effect on eligibility cannot be determined. They will not be discussed in this analysis.

Section 815—Disqualification. This provision deals with disqualification for noncompliance with Food Stamp Program work requirements. It adds to the list of ineligible individuals those who refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability; voluntarily and without good cause quit their job (previously limited to heads of households); voluntarily and without good cause reduce their work effort to less than 30 hours a week; and fail to comply with the workfare rules in section 20 of the Food Stamp Act.

The disqualification provision deletes the lack of adequate child care for children above age five and under age 12 as an explicit good cause for refusal to accept a job offer and removes the requirement that the entire food stamp household be disqualified if the head of

the household is disqualified. Instead, if the head of the household is disqualified, States have the option of disqualifying the entire household for the duration of the head of the household's disqualification, or for 180 days, whichever is less.

The provision establishes new mandatory minimum disqualification periods for individuals who fail to comply with work requirements. The length of the disqualification is based on the frequency of the occurrence. The State agency has the option to choose the length for each occurrence: (1) for the first violation, one to three months; (2) for the second violation, two to six months; and (3) for the third or subsequent violation, six months, a date determined by the State agency, or—at State agency option—permanently. In each instance, the individual must complete the disqualification period before he or she is allowed to comply with the work requirement and establish eligibility.

The disqualification provision requires the Secretary to determine the meaning of: (1) good cause; (2) voluntarily quitting; and (3) reducing work effort; requires States to determine: (1) The meaning of other terms; (2) the procedures for establishing compliance; and (3) whether individuals are complying; and requires that none of such determinations be less restrictive than comparable determinations under title IV–A of the Social Security Act.

This provision affects participants who fail to comply with Program work requirements by requiring minimum disqualification periods, with no provision to ''cure'' or end the disqualification by complying. It affects households whose heads fail to comply, if the State agency opts to disqualify the entire household. It also affects households in which a member is disqualified because the disqualified individual's income is considered available to the household in calculating household benefits.

We estimate FY 99 savings to be $30.9 million and the five-year savings for FY 99 through FY 03 to be $101.7 million. The provisions in this section vary only slightly from the work requirements that PRWORA imposed on ABAWDs (for example, age ranges varied only slightly—from 16–60 as opposed to the 18–50 year old range specified for ABAWDs). We derived our estimates using a percentage of FSP participants (mostly ABAWDs) who may be required to meet PRWORA work requirements but who would turn down qualifying work or training opportunities and be sanctioned. We estimate that 22,000 persons will be sanctioned in FY 99 for refusing a work opportunity of some sort. We multiplied this number by the average monthly food stamp benefit level for this group (estimated to be $118.68 in 1999) times 12.

Paperwork Reduction Act

Sections 272.2 and 273.7 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Food and Nutrition Service is submitting a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Operating Guidelines, Forms, and Waivers.

The regulations at 7 CFR 272.2 require that State agencies plan and budget program operations and establish objectives for each year. Section 273.7 contains requirements for the State Employment and Training (E&T) Plan, one of the required planning documents. In the interest of State flexibility, the PRWORA provisions addressed in this rule deleted State E&T planning requirements for describing the intensity of E&T services, conciliation procedures, and Statewide limits for dependent care reimbursements, while adding the requirement that State agencies provide a description of their mandatory disqualification procedures and periods for noncompliance with Food Stamp Program work requirements.

The respondents are 53 State agencies and they are required to respond once a year. It is estimated that the total annual reporting burden is 3,768 hours.

The PRWORA provisions addressed in this rule deleted reporting burdens in the interest of State flexibility, while adding a new burden associated with each State agency's mandatory disqualification procedures. Thus, the overall reporting and recordkeeping burden for this proposed information collection is unchanged.

PRWORA provided State agencies the option of implementing work supplementation or support programs. In these programs the cash value of public assistance benefits, plus food stamps, is provided to an employer as a wage subsidy to be used for hiring and employing public assistance recipients. This rule proposes to add the work supplementation or support plan, as required at § 273.7(l)(1), to the planning requirements at 7 CFR 272.2.

The potential respondents are any of the 53 State agencies that may opt to initiate a work supplementation or support program. The one-time burden associated with a State agency creating a plan for a work supplementation or support program is estimated to be 100 hours. However, since no State agency has opted to initiate a work supplementation or support program since the enactment of PRWORA, it is anticipated that this provision will not change the burden associated with this information collection.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention Desk Officer for the Food and Nutrition Service.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and the information to be collected; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs-social programs.

7 CFR Part 272

Administrative practice and procedures, Food stamps, Grant programs-social programs.

7 CFR Part 273

Administrative practice and procedures, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping.

Accordingly, 7 CFR Parts 271, 272, and 273 are proposed to be amended as follows:

1. The authority citation for parts 271, 272, and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. Remove the definition of ''Base of eligibles''.

b. Amend the definition of ''Exempted'' by removing the reference to ''§ 273.7(f)'' and adding in its place a reference to ''§ 273.7(e)''.

c. Revise the definition of ''Placed in an employment and training (E&T) program'' to read as follows:

§ 271.2 Definitions.

* * * * *

Placed in an employment and training (E&T) program means a State agency may count a person as ''placed'' in an E&T program when the individual commences a component.

* * * * *

PART 272–REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.2, new paragraphs (d)(1)(xiii) and (d)(1)(xiv) are added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) *Planning documents.* * * *

(1) * * *

(xiii) The State agency's disqualification plan, in accordance with § 273.7(f)(3) of this chapter.

(xiv) If the State agency chooses to implement the provisions for a work supplementation or support program, the work supplementation or support program plan, in accordance with § 273.7(l)(1) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. Revise § 273.7 to read as follows:

§ 273.7 Work Provisions.

(a) *Work requirements.* (1) As a condition of eligibility for food stamps, each household member not exempt under paragraph (b)(1) of this section must comply with the following Food Stamp Program work requirements:

(i) Register for work or be registered by the State agency at the time of application and every 12 months after initial registration. The registration form need not be completed by the member required to register.

(ii) Participate in an employment and training (E&T) program if assigned by the State agency, to the extent required by the State agency;

(iii) Participate in a workfare program if assigned by the State agency, to the extent required by the State agency;

(iv) Provide the State agency or its designee with sufficient information regarding employment status or availability for work;

(v) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (h) of this section;

(vi) Accept a bona fide offer of suitable employment, as defined in paragraph (h) of this section, at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the Federal or State minimum wage or 80 percent of the wage that would have governed had the minimum hourly rate under section 6(a)(1) of the Fair Labor Standards Act of 1938 (U.S.C. 206(a)(1)) been applicable to the offer of employment.

(vii) Do not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week.

(2) The Food and Nutrition Service (FNS) will determine the meaning of ''good cause,'' ''voluntary quit,'' and ''reduction of work effort'' as used in paragraph (a)(1) of this section.

(3) Each State agency will determine the meaning of any other terms used in paragraph (a)(1) of this section; the procedures for establishing compliance with Food Stamp Program work requirements; and whether an individual is complying with Food Stamp Program work requirements. A State agency must not use a meaning, procedure, or determination that is less restrictive on food stamp recipients than is a comparable meaning, procedure required to comply with, or determination under the State agency's program funded under title IV–A of the Social Security Act.

(4) Strikers whose households are eligible under the criteria in § 273.1(g) are subject to Food Stamp Program work requirements unless they are exempt under paragraph (b)(1) of this section at the time of application.

(5) State agencies may request approval from FNS to substitute State or local procedures for work registration for PA households not subject to the work requirements under title IV of the Social Security Act or for GA households. However, the failure of a household member to comply with State or local work requirements that exceed the requirements listed in this section must not be considered grounds for disqualification. Work requirements imposed on refugees participating in refugee resettlement programs may also be substituted, with FNS approval.

(6) Household members who are applying for SSI and for food stamps under § 273.2(k)(1)(i) will have Food Stamp Program work requirements waived until they are determined eligible for SSI and become exempt from Food Stamp Program work requirements, or until they are determined ineligible for SSI, at which time their exemptions from Food Stamp Program work requirements will be reevaluated.

(b) *Exemptions from work requirements.* (1) The following persons are exempt from Food Stamp Program work requirements:

(i) A person younger than 16 years of age or a person 60 years of age or older. A person age 16 or 17 who is not the head of a household or who is attending school, or is enrolled in an employment training program, on at least a half-time-basis, is exempt. If the person turns 16 (or 18 under the preceding sentence) during a certification period, the State agency must register the person as part of the next scheduled recertification process, unless the person qualifies for another exemption.

(ii) A person physically or mentally unfit for employment. For the purposes of this paragraph (b), a State agency will define physical and mental fitness; establish procedures for verifying; and will verify claimed physical or mental unfitness when necessary. However, the State agency must not use a definition, procedure for verification, or verification that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under the State agency's program funded under title IV–A of the Social Security Act.

(iii) A person subject to and complying with any work requirement under title IV of the Social Security Act. If the exemption claimed is questionable, the State agency is responsible for verifying the exemption.

(iv) (A) A parent or other household member responsible for the care of a dependent child under 6 or an incapacitated person. If the child has its 6th birthday during a certification period, the State agency must work register the individual responsible for the care of the child as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(B) The State agencies of Alabama, Kansas, Maryland, Michigan, North Dakota, Virginia, Wisconsin, and Wyoming may opt to lower the age of

a dependent child that qualifies a parent or other household member for an exemption to between 1 and 6. The age may be lowered for a maximum three-year period. The eligible State agencies must notify FNS, in writing, when they decide to initiate their option. Only the State agencies listed are authorized this option.

(v) A person receiving unemployment compensation. A person who has applied for, but is not yet receiving, unemployment compensation is also exempt if that person is complying with work requirements that are part of the Federal-State unemployment compensation application process. If the exemption claimed is questionable, the State agency is be responsible for verifying the exemption with the appropriate office of the State employment services agency.

(vi) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(vii) An employed or self-employed person working a minimum of 30 hours weekly or earning weekly wages at least equal to the Federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farmworkers under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this will not prevent individuals from seeking additional services from the State employment services agency). For work registration purposes, a person residing in areas of Alaska designated in § 274.10(a)(4)(iii) of this chapter, who subsistence hunts and/or fishes a minimum of 30 hours weekly (averaged over the certification period) is considered exempt as self-employed. An employed or self-employed person who voluntarily and without good cause reduces his or her work effort and, after the reduction, is working less than 30 hours per week, is ineligible to participate in the Food Stamp Program under paragraph (j) of this section.

(viii) A student enrolled at least half time in any recognized school, training program, or institution of higher education. Students enrolled at least half time in an institution of higher education must meet the student eligibility requirements listed in § 273.5. A student will remain exempt during normal periods of class attendance, vacation, and recess. If the student graduates, enrolls less than half time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), the State agency must work register the individual, unless the individual qualifies for another exemption.

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) must register for employment when the change is reported. If the State agency does not use a work registration form, it must annotate the change to the member's exemption status. If a work registration form is used, the State agency is responsible for providing the participant with a work registration form when the change is reported. Participants are responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the participant fails to return the form, the State agency must issue a notice of adverse action stating that the participant is being terminated and why, but that the termination can be avoided by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of § 273.12 must register for employment at their household's next recertification.

(c) *State agency responsibilities.* (1) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section. As part of the work registration process, the State agency must explain to the individual the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency must provide a written statement of the above to each individual in the household who is registered for work. A notice must also be provided when a previously exempt individual or new household member becomes subject to a work requirement, and at recertification. The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency's criteria, to refer the individual to an E&T program, and if appropriate, referring the individual to an E&T program component. Upon entry into each component, the State agency must inform the participant, either orally or in writing, of the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. A State agency may, with FNS approval, use intake and sanction systems that are compatible with its title IV–A work program. Such systems must be proposed and explained in the State agency's E&T State Plan.

(3) The State agency must issue a notice of adverse action to an individual, or to a household if appropriate, within 10 days after learning of the individual's noncompliance with Food Stamp Program work requirements. The notice of adverse action must meet the timeliness and adequacy requirements of § 273.13. If the individual complies before the end of the advance notice period, the State agency will cancel the adverse action. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(4) The State agency must design and operate an E&T program that may consist of one or more or a combination of employment and/or training components as described in paragraph (e)(1) of this section. The State agency must ensure that it is notified by the agency or agencies operating its E&T components within 10 days if an E&T mandatory participant fails to comply with E&T requirements.

(5) Each component of a State agency's E&T program must be delivered through a statewide workforce development system, unless the component is not available locally through such a system.

(6) In accordance with § 272.2(e)(9) of this chapter, each State agency must prepare and submit an Employment and Training Plan to its appropriate FNS Regional Office and to the FNS National Office. The E&T Plan must be available for public inspection at the State agency headquarters. In its E&T Plan, the State agency will detail the following:

(i) The nature of the E&T components the State agency plans to offer and the reasons for such components, including cost information. The methodology for State agency reimbursement for education components must be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State agency that requests 50 percent Federal reimbursement for State agency E&T administrative costs, other than for participant reimbursements, must include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed, including the costs for case management and casework to facilitate the transition from economic dependency to self-sufficiency through work. Costs in excess of the Federal grant will be allowed only with the prior approval of FNS and must be adequately documented to assure that they are necessary, reasonable and properly allocated;

(iii) The categories and types of individuals the State agency intends to exempt from E&T participation, the estimated percentage of work registrants the State plans to exempt, and the frequency with which the State agency plans to reevaluate the validity of its exemptions;

(iv) The characteristics of the population the State agency intends to place in E&T;

(v) The estimated number of volunteers the State agency expects to place in E&T;

(vi) The geographic areas covered and not covered by the E&T Plan and why, and the type and location of services to be offered;

(vii) The method the State agency uses to count all work registrants the first month of each fiscal year;

(viii) The method the State agency uses to report work registrant information on the quarterly Form FNS–583.

(ix) The method the State agency uses to prevent work registrants from being counted twice within a Federal fiscal year. If the State agency universally work registers all food stamp applicants, this method must specify how the State agency excludes those exempt from work registration under paragraph (b)(1) of this section. If the State agency work registers nonexempt participants whenever a new application is submitted, this method must also specify how the State agency excludes those participants who may have already been registered within the past 12 months as specified under paragraph (a)(1)(i) of this section.

(x) The organizational relationship between the units responsible for certification and the units operating the E&T components, including units of the Statewide workforce development system, if available. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within 10 working days after the noncompliance occurs;

(xi) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services, including organizations in the Statewide workforce development system, if available. Copies of contracts must be available for inspection;

(xii) The availability, if appropriate, of E&T programs for Indians living on reservations.

(xiii) If an informal conciliation process is planned, the procedures that will be used when an individual fails to comply with an E&T program requirement. Include the length of the conciliation period.

(xiv) The payment rates for child care established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, which require the State agency to ensure that eligible children receive child care services equal to the services provided to children not funded through Block Grant assistance or through child care assistance under any other Federal, State, or Tribal programs.

(7) State agencies will submit E&T Plans biennially, at least 45 days before the start of the Federal fiscal year. State agencies must submit plan revisions to the appropriate FNS regional office for approval if they plan to alter the nature or location of their components or the number or characteristics of persons served. The proposed changes must be submitted for approval at least 30 days prior to planned implementation.

(8) The State agency will submit quarterly reports to FNS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

(i) Participants newly work registered;

(ii) Work registrants exempted by the State agency from participation in E&T;

(iii) Participants who volunteer for and commence participation in an approved E&T component;

(iv) E&T mandatory participants who commence an approved E&T component, including Food Stamp Program applicants if the State agency chooses to operate a component for applicants.

(9) State agencies will submit annually, on their first quarterly report, the number of work registered persons in that State in October of the new fiscal year.

(10) State agencies will submit annually, on their final quarterly report, the following information:

(i) The number of work registrants exempted from E&T participation as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

(ii) The number of mandatory and volunteer participants placed in each E&T component offered by the State agency.

(11) Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State agency's E&T Plan regarding the type of components offered and the characteristics of persons served.

(12) State agencies must ensure, to the maximum extent practicable, that E&T programs are provided for Indians living on reservations.

(13) If a benefit overissuance is discovered for a month or months in which a mandatory E & T participant has already fulfilled a work component requirement, the State agency must follow the procedure specified in paragraph (m)(6)(v) of this section for a workfare overissuance.

(14) If a State agency fails to efficiently and effectively administer its E&T program, the provisions of § 276.1(a)(4) of this chapter will apply.

(d) *Federal financial participation.* (1) *Employment and training grants.* (i) Each State agency will receive an E&T program grant for each fiscal year to operate an E&T program. The grant requires no State matching. The grant will remain available until expended.

(A) No State agency will receive less than $50,000 in Federal 100 percent funds in a fiscal year.

(B) If a State agency will not expend all of the funds allocated to it for a fiscal year, FNS will reallocate the unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year.

(C) State agencies must use E&T program grants to fund the administrative costs of planning, implementing and operating food stamp E&T programs in accordance with approved State agency E&T plans. E&T grants may not be used for the process of determining whether an individual must be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity that takes place after the operator of an E&T component reports noncompliance without good cause. For purposes of this paragraph (d), the certification process is considered ended when an individual is referred to an E&T component for assessment or participation. E&T grants may also not be used to subsidize the wages of

participants, or to reimburse participants under paragraph (d)(1)(ii) of this section.

(D) A State agency's receipt of the E&T program grant as allocated under paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section is contingent on FNS's approval of the State agency's E&T plan. If an adequate plan is not submitted, FNS may reallocate a State agency's grant among other State agencies with approved plans. Non-receipt of an E&T program grant does not release a State agency from its responsibility under paragraph (c)(4) of this section to operate an E&T program.

(E) Federal funds made available to a State agency to operate a component under paragraph (e)(1)(vi) of this section must not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an E&T program.

(F) In accordance with section 6(d)(4)(K) of the Food Stamp Act, and notwithstanding any other provision of this paragraph (d), the amount of Federal E&T funds, including participant and dependent care reimbursements, a State agency uses to serve participants who are receiving benefits under a State program funded under part A of title IV of the Social Security Act must not exceed the amount of Federal E&T funds the State agency used in FY 1995 to serve participants who were receiving benefits under a State program funded under part A of title IV of the Social Security Act.

(*1*) Based on information provided by each State agency, FNS established claimed Federal E&T expenditures on this category of recipients in fiscal year 1995 for the State agencies of Colorado ($318,613), Utah ($10,200), Vermont ($1,484,913), and Wisconsin ($10,999,773). These State agencies may spend up to a like amount each fiscal year to serve food stamp recipients who also receive title IV assistance.

(*2*) All other State agencies are prohibited from expending any Federal E&T funds on title IV recipients.

(ii) *Participant reimbursements.* The State agency must provide payments to participants in its E&T program, including applicants and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency must inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs must not include the cost of meals away from home. If applicable, any allowable costs incurred by a noncompliant E&T participant after the expiration of the noncompliant participant's minimum mandatory disqualification period, as established by the State agency, that are reasonably necessary and directly related to reestablishing eligibility, as defined by the State agency, are reimbursable under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section, however, only costs that are up to but not in excess of those amounts are subject to Federal cost sharing. Reimbursement must not be provided from E&T grants allocated under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section is not deductible under § 273.10(d)(1)(i). Reimbursements will be provided as follows:

(A) The costs of dependent care determined by the State agency to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, or the applicable payment rate for child care, whichever is lowest. The payment rate for child care is determined in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, which require the State agency to ensure that eligible children receive child care services equal to the services provided to children not funded through Block Grant assistance or through child care assistance under any other Federal, State, or Tribal programs. The State agency will provide a dependent care reimbursement to an E&T participant for all dependents requiring care unless otherwise prohibited by this section. The State agency will not provide a reimbursement for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or under court supervision. The State agency must provide a reimbursement for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. The State agency will obtain verification of the physical and/or mental incapacity for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, the State agency will verify a court imposed requirement for the supervision of a dependent age 13 or older if the need for dependent care is questionable. If more than one household member is required to participate in an E&T program, the State agency will reimburse the actual cost of dependent care, the applicable payment rate for child care, or the Statewide limit, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. An individual who is the caretaker relative of a dependent in a family receiving benefits under title IV–A of the Social Security Act in a local area where an employment, training, or education program under title IV–A is in operation is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service, e.g., five hours per day, five days per week for two weeks. A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local law, including requirements designed to ensure basic health and safety protections, e.g., fire safety. An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with

participation in the E&T program as required by the State agency. A State agency may claim 50 percent of actual costs for dependent care services provided or arranged for by the State agency up to the actual cost of dependent care, the applicable payment rate for child care, or the Statewide limit, whichever is lowest.

(B) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T program up to $25 per participant per month. Such costs are the actual costs of participation unless the State agency has a method approved in its E&T Plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses that exceed the standard, up to $25 or such other maximum level of reimbursements established by the State agency.

(C) No participant cost that has been reimbursed under a workfare program under paragraph (m)(7)(i) of this section, title IV of the Social Security Act or other work program will be reimbursed under this section.

(D) Any portion of dependent care costs that are reimbursed under this section may not be claimed as an expense and used in calculating the dependent care deduction under § 273.9(d)(4) for determining benefits.

(E) The State agency must inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section are not required to participate in that component. These individuals will be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals will be exempt from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the State agency. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(1)(ii)(B) of this section will be considered in determining a dependent care deduction under § 273.9(d)(4).

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating E&T programs, above the costs referenced in paragraph (d)(1)(i) of this section, will be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under paragraph (m)(7)(iv) of this section at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* E&T program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of this chapter. The State agency must ensure that records are maintained that support the financial claims being made to FNS.

(3) *Fiscal recordkeeping and reporting requirements.* Total E&T expenditures are reported on the Financial Status Report (SF–269) in the column containing ''other'' expenses. E&T expenditures are also separately identified in an attachment to the SF–269 to show, as provided in instructions, total State and Federal E&T expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for E&T costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and paragraph (m)(7) of this section. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program will be submitted in accordance with paragraph (m)(7)(iv) of this section.

(e) *Employment and training programs.* Work registrants not otherwise exempted by the State agency are subject to the E&T program participation requirements imposed by the State agency. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency will result in disqualification as specified in paragraph (f)(2) of this section.

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency must entail a certain level of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months (or less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount) making job contacts; however, FNS may approve components which do not meet this guideline which it determines will advance program goals. An initial screening by an eligibility worker to determine whom to place in an E&T program does not constitute a component. The State agency may require Food Stamp Program applicants to participate in any component it offers in its E&T program at the time of application. The State agency must not impose requirements that would delay the determination of an individual's eligibility for benefits or in issuing benefits to any household that is otherwise eligible. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24 of these regulations, job search and job search training, when offered as components of an E&T program *do not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the required time spent in the other components. An E&T program offered by a State agency must include one or more of the following components:

(i) A job search program. The State agency may require an individual to participate in job search from the time an application is filed for an initial period established by the State agency. Following this initial period (which may extend beyond the date when eligibility is determined) the State agency may require an additional job search period in any period of 12 consecutive months. The first such period of 12 consecutive months will begin at any time following the close of the initial period. The State agency may establish a job search period, that in its estimation, will provide participants a reasonable opportunity to find suitable employment. The State agency should not, however, establish a continuous, year-round job search requirement. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24 of these regulations, a job search program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, such a program, when

operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) does meet the definition of work program.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved. In accordance with section 6(o)(1) and (2) of the Food Stamp Act and § 273.24 of these regulations, a job search program *does not meet* the definition of work program relating to the participation requirements necessary to maintain food stamp eligibility for able-bodied adults. However, such a program, when operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) does meet the definition of work program.

(iii) A workfare program as described in paragraph (m) of this section. In accordance with section 20(e) of the Food Stamp Act and paragraph (m)(6)(ii) of this section, the State agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment. This job search activity is part of the workfare assignment, and not a job search ''program.'' Participants are considered to be participating in and complying with the requirements of workfare, thereby meeting the work requirement for able-bodied adults.

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience must:

(A) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(B) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a WIA or State or local program aimed at accomplishing the purpose of the E&T program.

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

(vii) A program designed to improve the self-sufficiency of recipients through self-employment. Included are programs that provide instruction for self-employment ventures.

(2) *Exemptions.* Each State agency may, at its discretion, exempt individual work registrants and categories of work registrants from E&T participation. Each State agency must periodically reevaluate its individual and categorical exemptions to determine whether they remain valid. Each State agency will establish the frequency of its periodic evaluation.

(3) *Time spent in an employment and training program.* (i) Each State agency will determine the length of time a participant spends in any E&T component it offers. The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an E&T work program including, but not limited to those carried out under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section, combined with any hours worked that month in a workfare program under paragraph (m) of this section must not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation in an E&T component for any household member individually in any month, together with any hours worked in a workfare program under paragraph (m) of this section and any hours worked for compensation (in cash or in kind), must not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency must not disqualify voluntary participants in an E&T component for failure to comply with E&T requirements.

(iii) The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants, as specified in paragraph (e)(3) of this section.

(f) *Failure to comply.* (1) *Ineligibility for failure to comply.* A nonexempt individual who refuses or fails without good cause, as defined in paragraphs (i)(2) and (i)(3) of this section, to comply with the Food Stamp Program work requirements listed under paragraph (a)(1) of this section; or who, in accordance with paragraph (j) of this section, voluntarily and without good cause quits a job or reduces work effort and, after the reduction, is working less than 30 hours per week, is ineligible to participate in the Food Stamp Program, and will be considered an ineligible household member, pursuant to § 273.1(b)(2).

(i) As soon as the State agency learns of the individual's noncompliance it must determine whether good cause for the noncompliance exists, as discussed in paragraph (i) of this section. Within 10 days of establishing that the noncompliance was without good cause, the State agency must provide the individual with a notice of adverse action, as specified in § 273.13. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(ii) The notice of adverse action must contain the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may, if appropriate, reapply at the end of the disqualification period. Information must be included on or with the notice describing the action that can be taken to avoid the sanction. The disqualification period must begin with the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

(2) *Disqualification periods.* The following disqualification periods will be imposed:

(i) For the first occurrence of noncompliance, the individual will be disqualified until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) One month; or

(C) Up to three months, at State agency option.

(ii) For the second occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Three months; or

(C) Up to six months, at State agency option.

(iii) For the third or subsequent occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Six months;

(C) A date determined by the State agency; or

(D) At the option of the State agency, permanently.

(3) *Disqualification plan.* In accordance with § 272.2(d)(1)(xiii) of this chapter, each State agency must prepare and submit a plan detailing its disqualification policies. The plan must include the length of disqualification to be enforced for each occurrence of noncompliance, how compliance is determined by the State agency, and the State agency's household disqualification policy.

(4) *Household ineligibility.* (i) If the individual who becomes ineligible to participate under paragraph (f)(1) of this section is the head of a household, the State agency, at its option, may disqualify the entire household from Food Stamp Program participation.

(ii) The State agency may disqualify the household for a period that does not exceed the lesser of:

(A) The duration of the ineligibility of the noncompliant individual under paragraph (f)(2) of this section; or

(B) 180 days.

(iii) A household disqualified under this provision may reestablish eligibility if:

(A) The head of the household leaves the household; or

(B) A new and eligible person joins the household as the head of the household, as defined in § 273.1(d)(2).

(iv) If the head of the household joins another household as its head, that household will be disqualified from participating in the Food Stamp Program for the remaining period of ineligibility.

(5) *Fair hearings.* Each individual or household has the right to request a fair hearing, in accordance with § 273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with Food Stamp Program work requirements. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component must receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency must be available through one of these means. A household must be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (that may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the fair hearing are binding on the State agency.

(6) *Failure to comply with a work requirement under title IV of the Social Security Act, or an unemployment compensation work requirement.* An individual exempt from Food Stamp Program work requirements by paragraphs (b)(1)(iii) or (b)(1)(v) of this section because he or she is subject to work requirements under title IV–A or unemployment compensation who fails to comply with a title IV–A or unemployment compensation work requirement will be treated as though he or she failed to comply with the Food Stamp Program work requirement.

(i) When a food stamp household reports the loss or denial of title IV–A or unemployment compensation benefits, or if the State agency otherwise learns of a loss or denial, the State agency must determine whether the loss or denial resulted when a household member refused or failed without good cause to comply with a title IV–A or unemployment compensation work requirement.

(ii) If the State agency determines that the loss or denial of benefits resulted from an individual's refusal or failure without good cause to comply with a title IV or unemployment compensation requirement, the individual (or household if applicable under paragraph (f)(4) of this section) must be disqualified in accordance with the applicable provisions of this paragraph (f). However, if the noncomplying individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section (other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of this section) the individual (or household if applicable under paragraph (f)(4) of this section) will not be disqualified.

(iii) If the State agency determination of noncompliance with a title IV–A or unemployment compensation work requirement leads to a denial or termination of the individuals or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of paragraph (f)(1) of this section.

(iv) In cases where the individual is disqualified from the title IV–A program for refusal or failure to comply with a title IV–A work requirement, but the individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of this section, the State agency may, at its option, apply the identical title IV–A disqualification on the individual under the Food Stamp Program. The State agency must impose such optional disqualifications in accordance with section 6(i) of the Food Stamp Act and with the provisions of § 273.11(l) of these regulations.

(g) *Ending disqualification.* Except in cases of permanent disqualification, at the end of the applicable mandatory disqualification period for noncompliance with Food Stamp Program work requirements, participation may resume if the disqualified individual applies again and is determined by the State agency to be in compliance with work requirements. A disqualified individual may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work requirements.

(h) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment will be considered unsuitable if:

(i) The wage offered is less than the highest of the applicable Federal minimum wage, the applicable State minimum wage, or eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (h)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been

enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(2) In addition, employment will be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment will not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor will employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs. For example, a Sabbatarian could refuse to work on the Sabbath.

(i) *Good cause.* (1) The State agency is responsible for determining good cause when a food stamp recipient fails or refuses to comply with FSP work requirements. Since it is not possible for the Department to enumerate each individual situation that should or should not be considered good cause, the State agency must take into account the facts and circumstances, including information submitted by the household member involved and the employer, in determining whether or not good cause exists.

(2) Good cause includes circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(3) Good cause for leaving employment includes the good cause provisions found in paragraph (i)(2) of this section, and resigning from a job that does not meet the suitability criteria specified in paragraphs (h)(1) and (h)(2) of this section. Good cause for leaving employment also includes:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance of employment by the individual, or enrollment by the individual in any recognized school, training program or institution of higher education on at least a half time basis, that requires the individual to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision that requires the household to move and thereby requires the individual to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment that becomes unsuitable by not meeting the criteria specified in paragraphs (h)(1) and (h)(2) of this section after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours that, because of circumstances beyond the individual's control, subsequently either does not materialize or results in employment of less than 20 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 20 hours; and

(viii) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment must be considered as with good cause if it is part of the pattern of that type of employment.

(4) *Verification.* To the extent that the information given by the household is questionable, as defined in § 273.2(f)(2), State agencies must request verification of the household's statements. The primary responsibility for providing verification, as provided in § 273.2(f)(5), rests with the household.

(j) *Voluntary quit and reduction of work effort.* (1) *Individual ineligibility.* An individual is ineligible to participate in the Food Stamp Program if, in the 60 days before applying for food stamp benefits or at any time thereafter, the individual:

(i) Voluntarily and without good cause quits a job of 30 hours a week or more; or

(ii) Reduces his or her work effort voluntarily and without good cause and, after the reduction, is working less than 30 hours per week.

(2) *Determining whether a voluntary quit or reduction of work effort occurred and application processing.* (i) When a household files an application for participation, or when a participating household reports the loss of a source of income or a reduction in household earnings, the State agency must determine whether any household member voluntarily quit his or her job or reduced his or her work effort. Benefits must not be delayed beyond the normal processing times specified in § 273.2 pending the outcome of this determination.

(ii) The voluntary quit provision applies if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this paragraph (j). An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, will be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own, loses the new job, the individual must not be disqualified for the earlier quit.

(iii) The reduction of work effort provision applies if, before the reduction, the individual was employed 30 hours or more per week; the reduction occurred within 60 days prior to the date of application or anytime thereafter; and the reduction was voluntary and without good cause. The minimum wage equivalency does not

apply when determining a reduction in work effort.

(iv) In the case of an applicant household, the State agency must determine if any household member subject to Food Stamp Program work requirements voluntarily quit his or her job or reduced his or her work effort within the last 60 days. If the State agency learns that a household has lost a source of income or experienced a reduction in income after the date of application but before the household is certified, the State agency must determine whether a voluntarily quit or reduction in work effort occurred.

(v) Upon determining that an individual voluntarily quit employment or reduced work effort, the State agency must determine if the voluntary quit or reduction of work effort was with good cause as defined in paragraph (i)(3) of this section.

(vi) In the case of an individual who is a member of an applicant household, if the voluntary quit or reduction in work effort was without good cause, the individual will be determined ineligible to participate and will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(2). The disqualification is effective upon the determination of eligibility for the remaining household members. If the individual who becomes ineligible is the head of the household, as defined in § 273.1(d)(2), the State agency may choose to disqualify the entire household, in accordance with paragraph (f)(3) of this section. If the State agency chooses to disqualify the household, the State agency must provide the applicant household with a notice of denial in accordance with § 273.2(g)(3). The notice must inform the household of the proposed period of disqualification; its right to reapply at the end of the disqualification period; and of its right to a fair hearing. The household's disqualification is effective upon the issuance of the notice of denial.

(vii) In the case of an individual who is a member of a participating household, if the State agency determines that the individual voluntarily quit his or her job or reduced his or her work effort without good cause while participating in the program or discovers that the individual voluntarily quit his or her job or reduced his or her work effort without good cause within 60 days prior to application for benefits or between application and certification, the State agency must provide the individual with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit or reduction in work effort. The notification must contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions that may be taken to avoid the disqualification, and it must specify that the individual may resume participation at the end of the disqualification period, if applicable. The individual will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(2). The disqualification period will begin the first month following the expiration of the 10 day adverse notice period, unless the individual requests a fair hearing. If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate mandatory disqualification period, beginning with the day after the last certification period ends. If the individual does not apply for food stamp benefits by the end of the certification period, the State agency must establish a claim for the benefits received by the individual, for up to the entire appropriate mandatory disqualification period, beginning the first of the month after the month in which the voluntary quit or reduction in work effort occurred. If there are fewer days than the appropriate mandatory disqualification period from the first of the month after the month in which the voluntary quit or reduction in work effort occurred to the end of the certification period, a claim must be imposed, and the individual must remain ineligible for benefits for a prorated number of days, with the end result that a claim is established or the individual is ineligible for the full mandatory disqualification period. Each individual has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the individual voluntarily quit his or her job or reduced his or her work effort without good cause. If the participating individual's benefits are continued pending a fair hearing and the State agency determination is upheld, the disqualification period must begin the first of the month after the hearing decision is rendered.

(viii) If the individual who voluntarily quit his or her job, or who reduced his or her work effort without good cause is the head of a household, as defined in § 273.1(d), the State agency, at its option, may disqualify the entire household from Food Stamp Program participation in accordance with paragraph (f)(3) of this section.

(3) *Ending a voluntary quit or a reduction in work disqualification.* Except in cases of permanent disqualification, following the end of the mandatory disqualification period for voluntarily quitting a job or reducing work effort without good cause, an individual may begin participation in the program if he or she reapplies and is determined eligible by the State agency. Eligibility may be reestablished during a disqualification and the individual, if otherwise eligible, may be permitted to resume participation if the individual becomes exempt from Program work requirements under paragraph (b)(1) of this section.

(4) *Application in the final month of disqualification.* Except in cases of permanent disqualification, if an application for participation in the Program is filed in the final month of the mandatory disqualification period, the State agency must, in accordance with § 273.10(a)(3), use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

(k) *Employment initiatives program.* (1) *General.* In accordance with section 17(d)(1)(B) of the Food Stamp Act, qualified State agencies may elect to operate an employment initiatives program, in which an eligible household can receive the cash equivalent of its food stamp coupon allotment.

(2) *State agency qualification.* A State agency qualifies to operate an employment initiatives program if, during the summer of 1993, at least half of its food stamp households also received cash benefits from a State program funded under part A of title IV of the Social Security Act.

(3) *Qualified State agencies.* Alaska, California, Connecticut, DC, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia, and Wisconsin meet the qualification. These 10 State agencies may operate an employment initiatives program.

(4) *Eligible households.* A food stamp household in one of the 10 qualified State agencies may receive cash benefits in lieu of a food stamp coupon allotment if it meets the following requirements:

(i) The food stamp household elects to participate in an employment initiatives program;

(ii) An adult member of the household:

(A) Has worked in unsubsidized employment for the last 90 days, earning a minimum of $350 per month;

(B) Is receiving cash benefits under a State program funded under part A of title IV of the Social Security Act; or

(C) Was receiving cash benefits under the State program but, while participating in the employment initiatives program, became ineligible because of earnings and continues to earn at least $350 a month from unsubsidized employment.

(5) *Program provisions.* (i) Cash benefits provided in an employment initiatives program will be considered an allotment, as defined at § 271.2 of this chapter.

(ii) An eligible household receiving cash benefits in an employment initiatives program will not receive any other food stamp benefit during the period for which cash assistance is provided.

(iii) A qualified State agency operating an employment initiatives program must increase the cash benefit to participating households to compensate for any State or local sales tax on food purchases, unless FNS determines that an increase is unnecessary because of the limited nature of items subject to the State or local sales tax.

(iv) Any increase in cash assistance to account for a State or local sales tax on food purchases must be paid by the State agency.

(6) *Evaluation.* After two years of operating an employment initiatives program, a State agency must evaluate the impact of providing cash assistance in lieu of a food stamp coupon allotment to participating households. The State agency must provide FNS with a written report of its evaluation findings. The State agency, with the concurrence of FNS, will determine the content of the evaluation.

(l) *Work supplementation program.* In accordance with section 16(b) of the Food Stamp Act, States may operate work supplementation (or support) programs that allow the cash value of food stamp benefits and public assistance, such as cash assistance authorized under title IV–A of the Social Security or cash assistance under a program established by a State, to be provided to employers as a wage subsidy to be used for hiring and employing public assistance recipients. The goal of these programs is to promote self-sufficiency by providing public assistance recipients with work experience to help them move into unsubsidized jobs. In accordance with § 272.2(d)(1)(xiv) of this chapter, State agencies that wish to exercise their option to implement work supplementation programs must submit to FNS for approval a plan that complies with the provisions of this paragraph (l). Work supplementation programs may not be implemented without prior approval from FNS.

(1) *Plan.* (i) *Assurances.* The plan must contain the following assurances:

(A) The individual participating in a work supplementation program must not be employed by the employer at the time the individual enters the program.

(B) The wage subsidy received under the work supplementation program must be excluded from household income and resources during the term the individual is participating in work supplementation.

(C) The household must not receive a separate food stamp allotment while participating in the work supplementation program.

(D) An individual participating in a work supplementation program is excused from meeting any other work requirements.

(E) The work supplementation program must not displace any persons currently employed who are not supplemented or supported.

(F) The wage subsidy must not be considered income or resources under any Federal, State or local laws, including but not limited to, laws relating to taxation, welfare, or public assistance programs, and the household's food stamp allotment must not be decreased due to taxation or any other reason because of its use as a wage subsidy.

(G) The earned income deduction does not apply to the subsidized portion of wages received in a work supplementation program.

(H) All work supplemented or supported employees must receive the same benefits (sick and personal leave, health coverage, workmen's compensation, etc.) as similarly situated coworkers who are not participating in work supplementation and wages paid under a wage supplementation or support program must meet the requirements of the Fair Labor Standards Act.

(ii) *Description.* The plan must also describe:

(A) The procedures the State agency will use to ensure that the cash value of food stamp benefits for participating households are not subject to State or local sales taxes on food purchases. The costs of increasing household food stamp allotments to compensate for such sales taxes must be paid from State funds.

(B) State agency, employer and recipient obligations and responsibilities.

(C) The procedures the State agency will use to provide wage subsidies to employers and to ensure accountability.

(D) How public assistance recipients in the proposed work supplementation program will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

(E) Whether the food stamp allotment and public assistance grant will be frozen at the time a recipient begins a subsidized job.

(F) The procedures the State agency will use to ensure that work supplementation program participants do not incur any Federal, State, or local tax liabilities on the cash value of their food stamp benefits.

(2) *Budget.* In addition to the plan described in paragraph (l)(1) of this section, an operating budget for the proposed work supplementation program must be submitted to FNS.

(3) *Approval.* FNS will review the initial plan and any subsequent amendments. Upon approval by FNS, the State agency must incorporate the approved work supplementation program plan or subsequent amendment into its State Plan of Operation and its operating budget must be included in the State agency budget. No plan or amendment may be implemented without approval from FNS.

(4) *Reporting.* State agencies operating work supplementation and support programs are required to comply with all FNS reporting requirements, including reporting the amount of benefits contributed to employers as a wage subsidy on the FNS–388, State Issuance and Participation Estimates; FNS–388A, Participation and Issuance by Project Area; FNS–46, Issuance Reconciliation Report; and SF–269, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS–366A, Budget Projection and SF–269, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

(5) *Funding.* FNS will pay the cash value of a participating household's food stamp benefits to a State agency with an approved work supplementation program to pay to an employer as a wage subsidy, and will also reimburse the State agency for related administrative costs, in accordance with Section 16 of the Food Stamp Act.

(6) *Quality control.* Cases in which a household member is participating in a work supplementation program will be coded as not subject to review.

(m) *Optional workfare program.* (1) *General.* This paragraph (m) contains the rules to be followed in operating a food stamp workfare program. In workfare, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled. The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(2) *Program administration.* (i) A food stamp workfare program may be operated as a component of a State agency's E&T program, or it may be operated independently. If the workfare program is part of an E&T program it must be included as a component in the State agency's E&T plan in accordance with the requirements of paragraph (c)(4) of this section. If it is operated independent of the E&T program, the State agency must submit a workfare plan to FNS for its approval. For the purpose of this paragraph (m) a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State agency's workfare or E&T plan.

(ii) Political subdivisions are encouraged, but not required, to submit their plans to FNS through their respective State agencies. At a minimum, however, plans must be submitted to the State agencies concurrent with their submission to FNS. Workfare plans and subsequent amendments must not be implemented prior to their approval by FNS.

(iii) When a State agency chooses to sponsor a workfare program by submitting a plan to FNS, it must incorporate the approved plan into its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FNS, the State agency is responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (m)(4) of this section. When it is notified that FNS has approved a workfare plan submitted by a political subdivision in its State, the State agency must append that political subdivision's workfare plan to its own State Plan of Operations.

(iv) The operating agency is the administrative organization identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this paragraph (m). The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision that submitted the workfare plan is responsible for monitoring the operating agency's compliance with the requirements of this paragraph (m) or of the workfare plan. The Department may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision that submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies, have failed to comply with the requirements of this paragraph (m) or of the workfare plan.

(v) State agencies or other political subdivisions must describe in detail in the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, will fulfill the provisions of this paragraph (m). The plan will be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(vi) State agencies or political subdivisions submitting a workfare plan must submit with the plan an operating budget covering the period from the initiation of the workfare program's implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operation must be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget must be included in the State agency's budget.

(vii) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department will determine which political subdivision will have its plan approved. Under no circumstances will a food stamp recipient be subject to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(3) *Operating agency responsibilities.* (i) *General.* The operating agency, as designated by the State agency or other political subdivision that submits a plan, is responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this paragraph (m).

(ii) *Establishment of job sites.* Workfare job slots may only be located in public or private nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs that include, but are not limited to, designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(iii) *Notifying State agency of noncompliance.* The operating agency must notify the State agency of noncompliance by an individual with a workfare obligation when it determines that the individual did not have good cause for the noncompliance. This notification must occur within five days of such a determination so that the State agency can make a final determination as provided in paragraph (m)(4)(iv) of this section.

(iv) *Notifications.* (A) State agencies must establish and use notices to notify the operating agency of workfare-eligible households. The notice must include the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, it must also include this in the notice. If the operating agency is computing the hours to be worked, include the monthly allotment amount.

(B) Operating agencies must establish and use notices to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(C) Operating agencies must establish and use notices to notify the State agency of failure by a household to meet its workfare obligation.

(v) *Recordkeeping requirements.* (A) Files that record activity by workfare participants must be maintained. At a minimum, these records must contain job sites, hours assigned, and hours completed.

(B) Program records must be maintained, for audit and review purposes, for a period of 3 years from

the month of origin of each record. Fiscal records and accountable documents must be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph (m), means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph (m), means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records must be kept in a manner that will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (m)(6)(ii) of this section.

(vi) *Reporting requirements.* The operating agency is responsible for providing information needed by the State agency to fulfill the reporting requirements contained in paragraph (m)(4)(v) of this section.

(vii) *Disclosure.* The provisions of § 272.1(c) of this chapter restricting the use and disclosure of information obtained from food stamp households is applicable to the administration of the workfare program.

(4) *State agency responsibilities.* (i) If a political subdivision chooses to operate a workfare program, the State agency must cooperate with the political subdivision in developing a plan.

(ii) The State agency must determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (m)(5)(i) of this section must be referred to the organization which is the operating agency. The information identified in paragraph (m)(3)(iv)(A) of this section must be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(iii) The State agency must inform the household and the operating agency of the effect of any changes in a household's circumstances on the household's workfare obligation. This includes changes in benefit levels or workfare eligibility.

(iv) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency must make a final determination as to whether or not the failure occurred and whether there was good cause for the failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction must be processed as provided in paragraph (f)(1)(i) and (f)(1)(ii) of this section. The State agency must immediately inform the operating agency of the months during which the sanction will apply.

(v) The State agency must submit quarterly reports to FNS within 45 days of the end of each quarter identifying for that quarter for that State:

(A) The number of households with workfare-eligible recipients referred to the operating agency. A household will be counted each time it is referred to the operating agency.

(B) The number of households assigned to jobs each month by the operating agency.

(C) The number of individuals assigned to jobs each month by the operating agency.

(D) The total number of hours worked by participants.

(E) The number of individuals against which sanctions were applied. An individual being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(vi) The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FNS. Should the State agency assume this responsibility, it would act as agent for FNS, which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or FNS directs otherwise.

(5) *Household responsibilities.* (i) *Participation requirement.* Participation in workfare, if assigned by the State agency, is a Food Stamp Program work requirement for all nonexempt household members, as provided in paragraph (a) of this section. In addition:

(A) Those recipients exempt from Food Stamp Program work requirements because they are subject to and complying with any work requirement under title IV of the Social Security Act are subject to workfare if they are currently involved less than 20 hours a week in title IV work activities. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision.

(B) Those recipients exempt from Food Stamp Program work requirements because they have applied for or are receiving unemployment compensation are subject to workfare.

(ii) *Household obligation.* The maximum total number of hours of work required of a household each month is determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month.

(6) *Other program requirements.* (i) *Conditions of employment.* (A) Participants may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a workfare participant, together with any other hours worked in any other compensated capacity, including hours of participation in a title IV work program, by that participant on a regular or predictable part-time basis, must not exceed 30 hours a week. With the participant's consent, the hours to be worked may be scheduled in such a manner that more than 30 hours are worked in one week, as long as the total for that month does not exceed the weekly average of 30 hours.

(B) No participant will be required to work more than eight hours on any given day without his or her consent.

(C) No participant will be required to accept an offer of workfare employment if it fails to meet the criteria established in paragraphs (h)(1)(iii), (h)(1)(iv), (h)(2)(i), (h)(2)(ii), (h)(2)(iv), and (h)(2)(v) of this section.

(D) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements; other Food Stamp Program work requirements established in paragraph (a)(1) of this section; or the job search requirements established in paragraph (e)(1)(i) of this section, that inability must not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency must, if possible, reschedule the missed activity. If the rescheduling cannot be completed before the end of the month, that must not be considered as cause for disqualification.

(E) The operating agency must assure that all persons employed in workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These are benefits related to the actual work being performed, such as workers'

compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit that requires a cash contribution by the participant will be optional at the discretion of the participant.

(F) The operating agency must assure that all workfare participants experience the same working conditions that are provided to non-workfare employees similarly employed.

(G) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89–286), relating to health and safety conditions, apply to the workfare program.

(H) Operating agencies must not place a workfare participant in a work position that has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies due to hiring freezes, terminations, or lay-offs must not be filled by workfare participants unless it can be demonstrated that the vacancies are a result of insufficient funds to sustain former staff levels.

(I) Workfare jobs must not, in any way, infringe upon the promotional opportunities that would otherwise be available to regular employees.

(J) Workfare jobs must not be related in any way to political or partisan activities.

(K) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (m)(7) of this section. However, whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site).The Department does not assume liability for any injury to or death of a workfare participant while on the job.

(L) The nondiscrimination requirement provided in § 272.6(a) of this chapter applies to all agencies involved in the workfare program.

(ii) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under this section during this time.

(iii) *Participant reimbursement.* The operating agency must reimburse participants for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs may not include the cost of meals away from home. No participant cost reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program may be reimbursed under the food stamp workfare program. Only reimbursement of participant costs up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (m)(7) of this section. Reimbursed child care costs may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. In accordance with paragraph (m)(4)(i) of this section, a State agency may decide what its reimbursement policy shall be.

(iv) *Failure to comply.* When a workfare participant is determined by the State agency to have failed or refused without good cause to comply with the requirements of this paragraph, (m), the provisions of paragraph (f) of this section will apply.

(v) *Benefit overissuances.* If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency must apply the claim recovery procedures contained in paragraphs (m)(6)(v)(A) and (m)(6)(v)(B) of this section.

(A) If the person who performed the work is still subject to a work obligation, the State must determine how many extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future work obligations.

(B) If a workfare or work component requirement does not continue, the State agency must determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency must determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper benefit level been used in calculating the number of hours to work. A claim must be established for the amount of the overissuance not ''worked off,''' if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim will be established. No credit for future work requirements will be given.

(7) *Federal financial participation*—(i) *Administrative costs.* Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program will be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to $25 per month for any participant, as indicated in paragraph (m)(6)(iii) of this section. Such costs do not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of $25 per month for any participant.

(ii) *Funding mechanism.* The State agencies have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency must also assure that records are being maintained which support the financial claims being made to FNS. This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(iii) *Fiscal recordkeeping and reporting requirements.* Workfare-related costs must be identified by the State agency on the Financial Status Report (Form SF–269) as a separate column. All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to workfare program funds must be maintained in accordance with § 277.12 of this chapter.

(iv) *Sharing workfare savings*—(A) *Entitlement.* A political subdivision is entitled to share in the benefit reductions that occur when a workfare participant begins employment while participating in workfare for the first time, or within thirty days of ending the first participation in workfare.

(*1*) To begin employment means to appear at the place of employment and to begin working.

(*2*) First participation in workfare means performing work for the first time in a particular workfare program. The only break in participation that does not end the first participation will be due to

the participant's taking a job which does not affect the household's allotment by an entire month's wages and which is followed by a return to workfare.

(B) *Calculating the benefit reductions.* The political subdivision will calculate benefit reductions from each workfare participant's employment as follows.

(*1*) Unless the political subdivision knows otherwise, it will presume that the benefit reduction equals the difference between the last allotment issued before the participant began the new employment and the first allotment that reflects a full month's wages, earned income deduction, and dependent care deduction attributable to the new job.

(*2*) If the political subdivision knows of other changes besides the new job that affect the household's allotment after the new job began, the political subdivision will obtain the first allotment affected by an entire month's wages from the new job. The political subdivision will then recalculate the allotment to account for the wages, earned income deduction, and dependent care deduction attributable to the new job. In recalculating the allotment the political subdivision will also replace any benefits from a State program funded under part A of title IV of the Social Security Act received after the new job with benefits received in the last month before the new job began. The difference between the first allotment that accounts for the new job and the recalculated allotment will be the benefit reduction.

(*3*) The political subdivision's share of the benefit reduction is three times this difference, divided by two.

(*4*) If, during these procedures, an error is discovered in the last allotment issued before the new employment began, that allotment must be corrected before the savings are calculated.

(C) *Accounting.* The reimbursement from workfare will be reported and paid as follows:

(*1*) The political subdivision will report its enhanced reimbursement to the State agency in accordance with paragraph (m)(7)(iii) of this section.

(*2*) The Food and Nutrition Service will reimburse the political subdivision in accordance with paragraph (m)(7)(ii) of this section.

(*3*) The political subdivision will, upon request, make available for review sufficient documentation to justify the amount of the enhanced reimbursement.

(*4*) The Food and Nutrition Service will reimburse only the political subdivision's reimbursed administrative costs in the fiscal year in which the workfare participant began new employment and which are acceptable according to paragraph (m)(7)(i) of this section.

(8) *Coordination with other workfare-type programs.* State agencies and political subdivisions may operate workfare programs as provided in this section jointly with a workfare program operated under Title IV of the Social Security Act to the extent that provisions and protections of the statute are maintained or with other workfare programs operated by the subdivision to the extent that the provisions and protections of this paragraph (m) are maintained. Statutory provisions include, but are not limited to, eligible recipients as provided in paragraph (m)(5)(i) of this section, maximum hours of work per week as provided in paragraph (m)(6)(i)(A) of this section and the penalties for noncompliance as provided in paragraph (f) of this section. When a household receives benefits from more than one program with a workfare requirement and the household is determined to have a food stamp workfare obligation, the food stamp obligation may be combined with the obligation from the other program. However, this may be done only to the extent that eligible food stamp workfare participants are not required to work more than 30 hours a week in accordance with paragraph (m)(6)(i)(A) of this section. Any intent to coordinate programs should be described in the plan. Waivers of provisions in this section, for the purpose of operating workfare jointly with local general assistance workfare-type programs, may be requested and provided in accordance with § 272.3(c) of this chapter. Statutory provisions shall not be waived.

(9) *Voluntary workfare program.* State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalties for failure to comply, as provided in paragraph (f) of this section, will not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (m)(5)(ii) of this section. In addition, all protections provided under paragraph (m)(6)(i) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criteria, the Department reserves the right to withdraw approval.

(10) *Comparable workfare programs.* In accordance with section 6(o)(2)(C) of the Food Stamp Act, State agencies and political subdivisions may establish programs comparable to workfare under this paragraph (m) for the purpose of providing able-bodied adults without dependents affected by the participation time limits specified at § 273.24 a means of fulfilling the work requirements in order to remain eligible for food stamps. While comparable to workfare in that they require the participant to work for his or her household's food stamp allotment, these programs may or may not conform to other workfare requirements. State agencies or political subdivisions desiring to operate a comparable workfare program must meet the following conditions:

(i) The maximum number of hours worked weekly in a comparable workfare activity, combined with any other hours worked during the week by a participant for compensation (in cash or in kind) in any other capacity, must not exceed 30.

(ii) Participants must not receive a fourth month of food stamp benefits (the first month for which they would not be eligible under the time limit) without having secured a workfare position or without having met their workfare obligation. Participation must be verified timely to prevent issuance of a month's benefits for which the required work obligation is not met.

(iii) The State agency or political subdivision must maintain records to support the issuance of benefits to comparable workfare participants beyond the third month of eligibility.

(iv) The State agency or political subdivision must provide a description of its program, including a methodology for ensuring compliance with (m)(10)(ii) of this section. The description should be submitted to the appropriate Regional office, with copies forwarded to the Food Stamp Program National office.

§ 273.22 [Removed]

5. Remove § 273.22.

Dated: December 16, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–33131 Filed 12–22–99; 8:45 am]

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federal register

Thursday
December 23, 1999

Part V

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 991210330–9330–01]

RIN 0660–ZA10

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Availability of Funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP).

DATES: Pursuant to 15 CFR 2301.8(b), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for FY 2000 is February 17, 2000. Applications must be received prior to 8 p.m. on or before February 17, 2000. Applications submitted by facsimile or electronic means are not acceptable.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (http://www.ntia.doc.gov/otiahome/ptfp).

SUPPLEMENTARY INFORMATION:

I. Application Forms and Regulations

Applicants for matching grants under the PTFP must file their applications on or before Thursday, February 17, 2000. NTIA anticipates making grant awards by September 30, 2000. NTIA shall not be liable for any proposal preparation costs.

Approximately $26 million is available for FY 2000 for PTFP grants pursuant to Pub. L. 106–113, the ''Consolidated Appropriations Act, Fiscal Year 2000''. The amount of a grant award by NTIA will vary, depending on the approved project. For fiscal year 1999, NTIA awarded $21.7 million in funds to 99 projects. The awards ranged from $5,538 to $1,028,450.

The applicable Rules for the PTFP were published on November 8, 1996 (61FR 57966). Copies of the 1996 Rules will be posted on the NTIA Internet site and NTIA will make printed copies available to applicants. NTIA is hereby notifying potential applicants of the procedures that will be used to process applications for digital television conversion projects in the FY 2000 grant round. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on a current form approved by the Agency. Applicants for television projects in the Broadcast Other category (15 CFR 2301.4(b)(6)) are requested to supply one additional copy of their application (an original and six copies), if this does not create a hardship on the applicant. The current application form will be provided to applicants as part of the application package. This form expires on November 30, 2000, and no previous versions of the form may be used. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) Significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current grant round and will be returned to the applicant. See 15 CFR 2301.8(c); but see also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

All persons and organizations on the PTFP's mailing list will be sent a notification of the FY 2000 Grant round. Copies of the application forms, Final Rules, Closing Date notification and application guidelines will be available on the NTIA Internet site: *www.ntia.doc.gov/otiahome/ptfp.* Those not on the mailing list or who desire a printed copy of these materials may obtain copies by contacting the PTFP at the telephone and fax numbers, at the Internet site, or at mailing address listed above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred in FY 1999 will be mailed information regarding the reactivation of their applications. Applicants whose *television* projects were deferred from FY 99 should carefully review Section III, Television Broadcasting and Digital Conversion, regarding changes in policies which may apply to the reactivation of their applications.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

Special Note: NTIA has established a policy which is intended to encourage stations to increase from 25 percent to 50 percent the matching percentage for those proposals that call for equipment replacement, improvement, or augmentation (PTFP Policy Statement, 56 FR 59168 (1991)). The presumption of 50 percent funding will be the general rule for the replacement, improvement or augmentation of equipment. (This 50 percent presumption, however, does not apply to digital television projects as explained in Section III. Television Broadcasting and Digital Conversion.) A showing of extraordinary need (*i.e.* small community-licensee stations or a station that is licensed to a large institution (*e.g.,* a college or university) documenting that it does not receive direct or in-kind support from the larger institution) or an emergency situation

will be taken into consideration as justification for grants of up to 75 percent of the total project cost for such projects.

A point of clarification is in order: NTIA expects to continue funding projects to activate stations or to extend service at up to 75 percent of the total project cost. NTIA will do this because applicants proposing to provide first service to a geographic area ordinarily incur considerable costs that are not eligible for NTIA funding. The applicant must cover the ineligible costs including those for construction or renovation of buildings and other similar expenses.

Since NTIA has limited funds for the PTFP program, the PTFP Final Rules (published November 8, 1996) modified NTIA's policy regarding the funding of planning applications. Our policy now includes the general presumption to fund planning projects at no more than 75 percent of the project costs. NTIA notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. The new NTIA policy, therefore, codifies what already has become PTFP practice. NTIA, however, is mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new facilities in unserved areas. We, therefore, will continue to award up to 100 percent of total project costs in cases of extraordinary need (*e.g.* small community group proposing to initiate new public telecommunication service).

We take this opportunity to restate the policy published in the November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)), regarding applicants' use of funds from the Corporation for Public Broadcasting (CPB) to meet the local match requirements of the PTFP grant. NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another Federally supported grant program for local matching funds. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of ''clear and compelling need'' (15 CFR 2301.6(c)(2)). NTIA intends to maintain that standard and to apply it on a case-by-case basis.

II. Radio Broadcasting

During the FY 2000 grant round, NTIA is proposing no changes from prior years in its support of radio applications. The policies implemented in the next section of this document on Television Broadcasting and Digital Conversion apply only to digital television applications. The eligibility or priority of radio projects, eligibility of radio equipment and the 50% presumption of funding for radio equipment replacement applications remain as they were in the FY 99 grant round. NTIA will take great care to ensure that its funding of radio applications reflects its responsibilities under 47 U.S.C. 393(c) that ''a substantial amount'' of each year's PTFP funds should be awarded to public radio.

NTIA encourages the use of digital technologies for public radio facilities. NTIA has funded projects for digital STLs and audio production equipment which will assist public radio stations as they prepare for conversion to digital technologies. These digital projects are funded as equipment replacement, improvement or augmentation projects with the presumption of a 50 percent Federal share as discussed earlier in Section I of this document, Application Forms and Regulations, unless a showing of extraordinary need for a higher percentage has been made pursuant to § 2301.6(b)(ii) of the PTFP Rules.

For fiscal year 1999, NTIA awarded $2.1 million in funds to 35 grants for public radio projects. The awards ranged from $5,538 to $251,461.

III. Television Broadcasting and Digital Conversion

As outlined in this section, NTIA is establishing new policies in the FY 2000 grant round that will apply only to FY 2000 applications for projects to convert public television stations to digital transmission capability. The FCC's adoption of the *Fifth Report and Order* in April 1997 requires that all public television stations begin the broadcast of a digital signal by May 1, 2003. This deadline is so close that NTIA decided that the new policies should be applied in the FY 2000 grant round. At the same time, NTIA wishes to invite comment on these policies. All comments received will be considered carefully for possible modification of the policies in subsequent years. They will be printed or summarized in the Notice for the next grant round. Please do not include your comments with any application you may submit, but rather send them directly to the PTFP Director. Comments may be submitted to William Cooperman, Director, Public Broadcasting Division, by mail (see the **ADDRESS** section), by fax at (202) 482–2156, or by e-mail to wcooperman@ntia.doc.gov.

NTIA recognizes that meeting the FCC's deadline is one of the greatest challenges facing America's public television stations. Over 350 stations must overcome both technical and financial challenges in order to complete conversion to digital broadcasting within the FCC's timetable.

In February 1999, the Administration proposed a major expansion of the PTFP and recommended that $355 million be appropriated to NTIA over a five-year period. These funds would primarily be used to assist public television stations in meeting the FCC's deadline. While these sums are significant, NTIA anticipates that the majority of funds required to convert all the nation's public television stations will actually come from non-Federal sources.

For fiscal year 1999, NTIA awarded $15.7 million in funds to 43 projects which assisted public television stations in the conversion to digital technologies. The awards ranged from $25,252 to $1,028,450. NTIA awarded approximately $5.4 million from the Broadcast Other category to complete the digital conversion of eight public television stations. NTIA also awarded an additional $5.3 million in equipment replacement funds to seven projects which completed major phases of digital conversion projects, such as the funding of two digital statewide interconnection projects and eight replacement transmitters. Further, an additional $5 million was awarded to 28 projects to purchase digital television equipment required for the orderly conversion of a station to digital broadcasting.

NTIA has considered how best to efficiently implement the distribution of digital conversion funds to public television stations through the PTFP. NTIA has received recommendations on this subject from several public broadcasting organizations, including the Corporation for Public Broadcasting's Task Force on Digital Television Funding, the Association of America's Public Television Stations and its Legislative Advisory Group, and the Organization of State Broadcasting Executives. NTIA has also discussed with many individual public television stations the challenges presented by the May 2003 deadline.

One of NTIA's goals during the FY 2000 grant round is to ensure that PTFP's administrative procedures as well as its funds can support public television's needs in meeting the FCC's 2003 deadline. Another of NTIA's goals is to maintain an acceptable balance between equipment replacement projects and digital television conversion projects. As a result of these discussions, NTIA is implementing several new policies/procedures which will assist public television stations in

the application for and use of PTFP funds for digital conversion projects.

These new policies/procedures are summarized here and then are discussed fully in parts A through G later in this section:

(A) Digital television conversion projects and digital equipment replacement. NTIA has established a ''Digital TV List'' which includes the equipment eligible for PTFP funding under the Broadcast Other category. NTIA will also use the ''Digital TV List'' for most television equipment replacement projects and modifies the way it views television replacement applications.

(B) Multi-year funding. NTIA will accept applications under the Broadcast Other category for phased projects requesting funding for up to four years and which are intended to enable all of the applicant's public television stations to meet the FCC's May 2003 digital broadcasting deadline.

(C) Effective date for expenditure of local matching funds. Applicants for digital conversion projects in the Broadcast Other category may include eligible equipment from the Digital TV List in their projects when that equipment is purchased with non-Federal funds after July 1, 1999.

(D) Subpriorities for digital conversion projects. NTIA is creating three Subpriorities to aid in the processing of digital conversion applications.

(E) Funding levels for television projects. NTIA has revised the presumption of funding from 50% Federal share for most television projects to 40%, has established simplified procedures so stations can qualify for hardship grants up to a 67% Federal share, and will provide incentives for applicants who request only 25% Federal funding.

(F) Use of CPB funds. Applicants may use CPB funds as part of their local non-Federal match in cases of clear and compelling need.

(G) Partnerships; urgency. NTIA encourages partnerships with commercial as well as noncommercial organizations and clarifies its consideration of urgency for digital conversion applications. NTIA believes that digital conversion applications should be afforded high urgency when they document time-sensitive partnerships, time-sensitive funding opportunities, or which include the replacement of equipment required to maintain existing service.

In developing these policies for the FY 2000 grant round, NTIA intends to remain responsive to the equipment replacement needs of public television stations. NTIA's balancing of equipment replacement and digital conversion applications is discussed in the following sections.

In order to assist public television stations in meeting the FCC's May 2003 deadline and to facilitate a station's raising non-Federal matching funds required for digital conversion projects. NTIA is adopting new application procedures in the following areas.

(A) Digital Television Conversion Projects and Digital Equipment Replacement. For FY 2000, NTIA will support the equipment necessary for a public television station to comply with the FCC's 2003 deadline. This includes equipment required for digital broadcast of programs produced locally in analog format as well as the broadcast of digital programming received from national sources. NTIA is posting on its Internet site a listing of transmission and distribution equipment (as contained in the ''Digital TV List'') which is eligible for PTFP digital television conversion funding. Printed copies of this list are also available from PTFP at the address shown in the **ADDRESS** section of this document. This list was developed in conjunction with the Public Broadcasting Service and is similar to equipment lists PTFP used during last year's grant round. The Digital TV List includes transmission equipment (transmitters, antennas, STLs, towers, etc.) as well as distribution equipment located in a station's master control (routing switchers, video servers, PSIP generators, digital encoders, etc.). Applications seeking funding for the equipment necessary to meet the FCC's 2003 deadline will, as in FY 98 and FY 99, be placed in the Broadcast Other category.

NTIA believes that many stations must replace obsolete equipment in order to complete their digital conversion projects. NTIA is now revising its policies to permit the replacement of obsolete equipment as part of digital conversion projects. If the conversion to digital transmission includes the urgent replacement of an existing item of equipment, the application will be considered as a Broadcast Other, rather than as replacement under Priorities 2 or 4. Replacement of existing equipment then is a normal part of a digital conversion application.

If the purpose of an application is just for replacement of urgently needed equipment, even though the equipment is drawn from the Digital TV List, the application will be classified as a Priority 2 or 4, as appropriate.

Any application which includes equipment replacement as a justification for the urgency criterion should submit documentation of downtime or other evidence in support of the urgency evaluation criterion as contained in § 2301.17 of the PTFP Final Rules. The need to replace current equipment in order to maintain existing services will, in many cases, strengthen the urgency criterion of a digital conversion application.

Because of the requirement that all public television stations begin their digital broadcasts by May 2003, all public television applications, whether submitted for Priority 2, Priority 4 or the Broadcast Other category, should include the station's comprehensive plan for digital conversion to meet the FCC's deadline and explain how the requested equipment is consistent with that plan. If the applicant is still developing its plan for digital conversion, the application should address how the requested equipment will be consistent with the overall objective of converting the facility for digital broadcasting. Failure to provide detailed information on the applicant's proposed or existing digital conversion plan will place a television application at a competitive disadvantage during the evaluation of the technical qualification criterion as described in 15 CFR 2301.17 of the PTFP Rules.

NTIA calls applicants' attention to the fact that television production equipment is not included on the Digital TV List but will be found on other equipment lists posted on the NTIA Internet site or available from NTIA by mail. NTIA notes that while a television station must use digital transmission and distribution equipment to begin digital broadcasting, digital production equipment is not required to meet the FCC's May 2003 deadline. As the FCC deadline approaches, NTIA has reluctantly concluded that, with the funds available to it in FY 2000, it cannot fund television production equipment at the same level as it has in the past. Television production equipment will continue to be eligible for PTFP funding under Priority 2 and Priority 4, as appropriate. However, for the FY 2000 grant round NTIA will fund television production equipment replacement applications only for those projects that present a ''clear and compelling'' case for the urgency of such replacement. NTIA anticipates funding television production replacement projects in FY 2000, though fewer than in recent years.

When making the final selection of awards under the procedures of § 2301.17, NTIA will take care to ensure that there is an acceptable balance between projects awarded for

equipment replacement projects and those awarded for digital conversion projects. Further, NTIA will consider as part of this balance those stations in the Broadcast Other category (1) Which request digital conversion projects and (2) Which also include elements of equipment replacement. NTIA will not fund applications in the Broadcast Other category requesting digital conversion to the exclusion of those Broadcast Other applications which include documentation supporting equipment replacement as part of their urgency justification. Further, in making funding decisions for FY 2000, NTIA will limit its support of television replacement applications for production equipment to those applications which present a ''clear and compelling'' justification for funding during the current grant round.

A complete listing of equipment eligible for funding during the FY 2000 grant round is posted on the NTIA Internet site and printed copies are available from PTFP.

(B) Multi-year funding. NTIA anticipates that it will take many public television licensees several years to complete their digital conversion projects. The time required to complete a digital conversion project will be determined by several factors. In some instances, it will take a station several years to raise the local funds required to complete the project. Even if a station has accumulated all the funds required for its digital conversion project, the technical complexity of some projects (such as the construction of a 1,000-foot tower) will probably require several years to complete. Finally, many public television licensees operate several stations and are, therefore, responsible for the conversion of multiple broadcast facilities.

NTIA recognizes that the construction period for many of these digital conversion projects must, of necessity, be longer than the typical one to two years of the usual PTFP grant. Further, NTIA acknowledges that, with the funds available for award, the PTFP would be unable to fully fund more than a few of the digital conversion applications it could receive in FY 2000.

Therefore, for FY 2000, the PTFP will accept construction applications within the Broadcast Other category for digital television conversion projects which propose multi-year funding.

Applicants may submit project plans and budgets for up to four years. A multi-year application must contain the applicant's entire digital conversion plan. The plan must be divided into annual phases, with each year's request a severable phase of the project. The application must identify the Federal funds requested for each year. Projects will be funded for no more than one year at a time.

Once a project is approved for first year funding, applicants will not be required to compete each year for funding of subsequent phases. Funding for each subsequent year will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project(s).

Projections based on previous experience indicate availability of between $10 million and $15 million to support multi-year digital television projects in FY 2000. The exact level of funding available for multi-year awards will be determined by NTIA after a review of applications submitted for multi-year awards and those radio, television and distance learning applications requesting a regular award.

NTIA believes that initiating multi-year funding for digital television awards has significant benefits for both public television licensees and NTIA.

- Submission of a multi-year application particularly should help applicants which must convert multiple broadcast transmitters. NTIA understands that many stations have already begun to raise significant non-Federal funds with which they can begin to implement their digital conversion plans. Upon submission of a multi-year application, an applicant could begin spending its local match—at its own risk. An applicant, therefore, might be able to complete a portion of its digital conversion project using its local non-Federal funds for which Federal matching funds may not be available for several years. (For example, a future phase of a statewide project might be the conversion of two repeater stations; one might be constructed with available non-Federal funds, the second constructed if Federal funds are received). Applicants are cautioned, however, that while expenditure of the local match is permitted, PTFP Rules (§ 2301.6(d)) prohibit a grantee from obligating funds from the eventual Federal share of an award before a grant is actually awarded.
- NTIA believes that a multi-year award will reduce the administrative burden on both grantees and the PTFP. Grant recipients will submit only one application to cover the multiple years of their award, saving both the grantee and the PTFP the administrative tasks required to process applications during the annual grant round.
- Multi-year applications and awards will also assist both NTIA and public broadcasting licensees in the advance planning required to complete the conversion of almost 350 television facilities by May 2003.
- By issuing multi-year grants, NTIA would be able to fund the initial phases of more digital conversion projects with the monies available in FY 2000 than if PTFP funded fewer entire digital conversion plans.

NTIA believes that multi-year funding through the Broadcast Other category also is appropriate for projects which include urgent replacement of equipment, since, as noted earlier, most television equipment replacement requests can be viewed as one phase of a station's conversion to digital broadcasting.

Since NTIA for the first time is supporting multi-year funding for digital conversion applications, applicants who are reactivating applications deferred from the FY 99 grant round will be permitted to revise their applications to include their full digital conversion plans. This includes those applications which were submitted during the FY 1999 grant round as Priority 2 or Priority 4 equipment replacement applications, which may be reactivated as Broadcast Other digital conversion applications. Applications which are reactivated for the FY 2000 grant round must comply with the guidelines included in this notice, including the funding levels for television projects discussed later in this document.

Applicants submitting projects for consideration under the Broadcast Other category have a choice and may request either multi-year funding or a single grant. However, applications submitted for consideration under Priority 2 or Priority 4 may only request a single grant for a project, as in the past. NTIA anticipates that a majority of the television grants funded in FY 2000 will include multi-year projects.

(C) Effective date for expenditure of local matching funds for digital conversion projects. NTIA recognizes that many public television stations have begun to raise significant non-Federal funds for their digital conversion projects. State or local governments may have appropriated funds to initiate digital conversion projects that, by local law, must be expended during the fiscal year in which they are awarded. Public television licensees that have raised significant non-Federal funds may desire to take advantage of unique opportunities (such as partnering with other stations to share broadcast

antennas or towers). Some stations may be anxious to begin digital conversion projects with long lead times for completion, or may desire to begin digital broadcasting on the same timetable as commercial stations in their market. Within the limitations of Federal regulations, NTIA supports efforts undertaken by public television stations which bring the benefits of digital television broadcasting to their communities as quickly as possible.

In order to facilitate the raising of non-Federal funds for digital television projects and to also permit stations to begin construction of their digital facilities as soon as possible, NTIA will permit an applicant for a Broadcast Other project to include equipment in a PTFP application if the equipment was purchased with non-Federal funds after July 1, 1999. This date was selected to coincide with the beginning of the 2000 fiscal year used by many state and local governments. NTIA also anticipates that July 1, 1999 will be the effective date in the FY 2001, FY 2002 and FY 2003 grant rounds for the expenditure of non-Federal funds for projects in the Broadcast Other category. Applicants who desire to use equipment purchased prior to July 1, 1999 as part of their local match must submit a ''clear and compelling justification'' supporting their request.

Applicants who are reactivating applications deferred from the FY 99 grant round will be permitted to use the closing date of their original applications.

(D) Subpriorities for Digital Conversion Projects. As almost 350 public television stations are required to convert to digital broadcasting by May 2003, NTIA anticipates a significant increase in the number of applications in the Broadcast Other category for digital conversion projects. In order to process these applications in an orderly manner and to provide guidance to potential applicants for the FY 2000 grant round, NTIA will divide the applications received for digital conversion projects in the Broadcast Other category into three subpriorities; Broadcast Other-A; Broadcast Other-B, and Broadcast Other-C.

These three divisions are intended to reflect the priorities NTIA has used in the evaluation of traditional broadcast applications and to place a premium on projects either to assist stations providing sole service, to encourage cooperative efforts among different stations, or to support licensees facing the requirement to convert multiple transmission facilities in several television markets. NTIA notes that in the past it has been able to fund applications each year in most if not all of the five traditional broadcast Priorities and anticipates that it will be able to fund applications in FY 2000 in most if not all of the subpriorities for applications received under the Broadcast Other category.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the first subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority A.

— A single applicant providing the sole service in an area unserved by a digital public television signal. This reflects PTFP's funding priority for equipment replacement projects for sole service stations (PTFP Priority 2).
— Cooperative applications by two or more licensees for the first digital public television service to an area. This is intended to encourage cooperation and efficiencies among stations in overlap markets (as listed by CPB) in constructing digital facilities. It would provide stations in overlap markets the opportunity, if they work collaboratively, to be eligible for the highest priority in funding within this category.
— A statewide staged plan for the conversion of multiple stations, whether a state network, or other appropriate statewide organization, or a staged plan from a licensee with stations in several markets. This is intended to encourage licensees that must convert multiple stations and also to encourage groups of stations to work collaboratively in developing a digital conversion project.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the second subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority B.

— An applicant in a multi-PTV station market providing first public television service in an area. An applicant in a multi-PTV station market who chooses to file separately, rather than in conjunction with another licensee in the same area, receives a second priority for funding.
— A cooperative application by two or more licensees in an area already served by a digital public television station. The application is given a priority over Broadcast Other—C to encourage efficiency and cooperation. Since this is not the first service in the area, it is given a second priority.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the third subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority C.

— Individual applicants proposing a second digital public television service in an area already receiving a digital public television signal. This reflects PTFP's funding priority for equipment replacement applications in served areas (Priority 4).
— All other public television digital conversion applications.

(E) Funding Levels for Television Projects. As noted earlier in Section I of this document, NTIA has published several policies regarding the presumed Federal share of a requested project. These policies are intended to aid applicants in the planning of their applications. The policy for PTFP support of equipment replacement applications has long been the presumption of a 50 percent Federal share, although applicants are permitted to submit justification for a Federal grant of up to 75 percent of project costs. Those policies are contained in § 2301.6(b) of the PTFP Final Rules.

In reviewing the projected costs to convert all the public television stations in the country, NTIA has concluded that it cannot continue its 50 percent presumption of Federal funding for television equipment replacement or digital conversion projects. Furthermore, NTIA believes that many public television facilities will be unable to raise 50 percent of the project costs. A significant number of stations may need Federal funding of 67 percent of a project's cost, or even up to the legal maximum of 75 percent of a project's cost, in order for them to meet the FCC's deadline.

In order to ensure that sufficient Federal funds are available to support the conversion of the nation's public television stations, NTIA is establishing a new policy regarding the presumed Federal funding level for television equipment. As noted earlier in this section, NTIA recognizes that equipment on the PTFP Digital TV List may be included in either Broadcast Other digital conversion applications or in Priority 2 or Priority 4 equipment replacement applications. In order to treat all applicants equitably, NTIA's new policy will be the presumption of a 40 percent Federal share of the eligible project costs for television equipment for digital conversion or equipment replacement, improvement or

augmentation projects. This 40 percent presumption will apply whether the application requests consideration under the two equipment replacement priorities (Priority 2 or 4) or under the digital conversion category (Broadcast Other). As noted earlier, NTIA will fund the replacement of production equipment upon a showing of clear and compelling need. However, since the deadline for digital conversion is rapidly approaching and Federal funds are limited, NTIA will fund replacement of production equipment at the same level of Federal support as digital conversion or equipment replacement projects. The presumption of a 40 percent Federal share will extend to all television projects to replace or upgrade equipment. However, because of the emphasis NTIA places on the extension of broadcast services to unserved areas, NTIA has retained the 75 percent level of Federal funding applications proposing new television facilities in Priority 1 (§ 2301.4(b)(1)).

Applicants who are reactivating applications deferred from the FY 99 grant round will be permitted to request the same percentage of Federal support as requested in the FY 99 application as long as the scope of their application remains the same. Applicants who wish to revise their deferred application to include their full digital conversion plans, however, will be subject to the new policies presented in this section.

As already noted, NTIA recognizes that many small stations, primarily in rural areas, will be unable to raise even a 50 percent local share of the funds required for their PTFP projects. NTIA has long permitted stations to request more than the standard level of Federal support upon a showing of ''extraordinary need'' per § 2301.6(b)(ii) of the PTFP Rules. NTIA will permit applicants to qualify for hardship funding and receive a 67 percent Federal share of their project costs. An applicant can qualify for 67% Federal funding by certifying that it is unable to match at least 60 % of the eligible project costs, and either (a) by providing documentation that its average annual cash revenue for the previous four years is $2 million or less, or (b) by providing documentation that the eligible project costs are greater than the applicant's average annual cash revenue for the previous four years.

In addition, NTIA will continue to permit any applicant to provide justification that it has an ''extraordinary need'' for Federal funding up to the legal limit of 75 percent of eligible project costs.

In order to gather additional funds to award to stations which qualify under the hardship criteria, NTIA encourages financially able applicants to request a smaller share of Federal funds for digital equipment projects than the standard 40 percent. NTIA will add three additional points to the application evaluations from the independent review panel for applicants who request no more than 25 percent Federal funding. This provision will give extra credit to applications already highly reviewed, and, based on NTIA's previous experience, is often sufficient to move applications into the range for funding.

However, when making the final selection of awards, NTIA will take care to ensure that there is an acceptable balance between projects awarded to stations requesting a 25 percent Federal share and those requesting a higher Federal share. NTIA will not fund applications requesting a 25 percent Federal share to the exclusion of applications meeting the hardship criteria or to the exclusion of those requesting the standard 40 percent Federal share.

(F) Use of CPB funds. As discussed earlier in this document at the conclusion of Section I. Application Forms and Regulations, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of ''clear and compelling need'' (15 CFR 2301.6(c)(2)). NTIA recognizes that it will be difficult for many public television stations to raise the funds required to meet the FCC's digital broadcasting deadline. Therefore, NTIA continues its past policy that applicants may submit justification under this section for the use of CPB funds as part of their local match. Any request for the use of CPB funds must be accompanied by a statement regarding any limitations that CPB has placed on the expenditure of those funds.

(G) Miscellaneous Items. As discussed earlier in this section, part (D) on New Subpriorities, NTIA encourages efforts which promote efficiency within the public television system in order to save both current conversion costs and future operating costs. NTIA, therefore, also encourages public television stations to partner with commercial entities when this is in the best interests of the public station and the Federal government. In cases of public television partnerships with commercial entities, the PTFP project will be limited to the public television station's ownership share or use rights in the equipment. NTIA believes that such partnerships with commercial organizations comply with current PTFP regulations and PTFP has funded several projects for joint use of towers and broadcast antennas.

The urgency of an application is one of the criteria under which all PTFP applications are evaluated. (The evaluation criteria are listed in § 2301.17 of the PTFP Rules). NTIA suggests that there are at least three situations in which Broadcast Other applications may present high degrees of urgency. As we have just noted, applications containing proposals for joint use/ownership partnerships with other organizations may demonstrate a high urgency due to a time-sensitive opportunity. NTIA encourages these applicants to document the time-sensitive nature of the partnership opportunity in their response to the urgency criterion.

NTIA also recognizes that some applicants may be presented with time-sensitive funding opportunities and, therefore, encourages these applicants to document the time sensitive nature of these funding opportunities in their response to the urgency criterion. Finally, as already noted, NTIA expects that some applications will request urgent replacement of existing equipment as part of a Broadcast Other application. NTIA encourages such applicants to provide documentation of their need to replace their equipment during the current grant round. This documentation might include maintenance logs, letters from manufacturers, reports from independent engineers, photos etc.

NTIA will instruct the panels evaluating the FY 2000 Broadcast Other applications that they should award the highest score under the urgency criterion to those applications which fully justify and document either (1) The time sensitive nature of partnerships, (2) the time sensitive nature of funding opportunities, or (3) the need for equipment replacements that must be accomplished during this grant round in order to maintain existing services.

IV. Distance Learning Projects

Since 1979, NTIA has funded nonbroadcast distance learning projects through the ''Special Applications'' category as established in § 2301.4(a) of the PTFP Rules. In 1996, NTIA established a similar category for broadcast projects, ''Broadcast/other'' in § 2301.4(b)(6). NTIA encourages applications in either category for innovative or unique distance learning projects which address demonstrated and substantial community needs. For fiscal year 1999, NTIA awarded $1.7 million in funds to nine grants for distance learning projects. The awards ranged from $50,000 to $450,000.

The growth of digital technologies provides new opportunities for distance learning projects using both broadcast or nonbroadcast facilities. NTIA encourages applicants to consider the use of digital technologies in proposing unique or innovative distance learning projects for funding in FY 2000. Examples of innovative digital applications might include projects (1) Which use broadband technologies for distance learning, (2) which distribute educational or informational programming via Direct Broadcast Satellite technologies, or (3) which use the multi-channel capabilities of a digital public television station. All distance learning applications must address substantial and demonstrated needs of the communities being served. NTIA is particularly interested in distance learning projects which benefit traditionally underserved audiences, such as projects serving minorities or people living in rural areas.

As discussed in Section III of this document, NTIA anticipates that, in FY 2000, it will receive numerous digital conversion applications in the Broadcast/ Other category. NTIA recognizes that, due to the multi-channel capability of digital television, distance learning components may well be a part of a digital conversion application. NTIA will, therefore, consider such distance learning proposals under the subpriorities established in Section III. If NTIA determines that a broadcast distance learning project is not part of a digital conversion application, NTIA will evaluate the application pursuant to §§ 2301.4(b)(6) and 2301.17.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) mentioned in the Application Forms and Regulations section discussed a number of issues of particular relevance to applicants proposing *nonbroadcast* educational and instructional projects and potential improvement of nonbroadcast facilities. These policies remain in effect and will be available to all PTFP applicants as part of the Guidelines for preparing FY 2000 PTFP applications.

V. Eligible and Ineligible Costs

Eligible equipment for the FY 2000 grant round includes the apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

A complete listing of equipment eligible for funding during the FY 2000 grant round is posted on the NTIA Internet site and printed copies are available from PTFP.

Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain ''pre-operational expenses'' are eligible for funding. (See 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. 392(c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $300,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will, therefore, fund audit costs only in exceptional circumstances.

VI. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a notice in the **Federal Register** listing all applications received by the Agency. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. This listing does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The notice will also include a request for comments on the applications from any interested party. NTIA will also publish more complete information about all the applications received by the Agency on the NTIA Internet site and will make this information available by mail. The address of the NTIA Internet site is: www.ntia.doc.gov/otiahome/ptfp.

VII. Evaluation Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

VIII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval. The PTFP Director recommends the funding order for applications in three categories: ''Recommended for Funding,'' ''Recommended for Funding if Funds Available,'' and ''Not Recommended for Funding.'' See 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then

be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of FCC licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

IX. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods for grants in the five broadcast Priorities and nonbroadcast Special Applications category commonly range from one to two years. Construction projects funded in the Broadcast Other category would commonly be awarded for a one to two year period with the expectation that they would be extended annually in subsequent years dependent on the availability of Federal funds. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

X. NTIA Policies on Procedural Matters

Based upon NTIA's experience during the PTFP 1999 grant round, NTIA has determined that it is in the best interest of NTIA and applicants to continue recent policies regarding three procedural matters. The following policies are applicable only to the FY 2000 PTFP grand round and resulting awards.

Applications Resulting From Catastrophic Damage or Emergency Situations.

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision.

For FY 2000 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. NTIA limits this request to equipment essential to a station's continued operation such as transmitters, towers, antennas, STLs or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

When submitting an emergency application, the applicant should describe the circumstances that prompt the request and should provide appropriate supporting documentation. NTIA requires that applicants claiming significant failure of equipment will document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

NTIA will grant an award only if it determines that (1) The emergency satisfies this policy, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

Applications filed and accepted for emergency applications must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

NTIA will evaluate the application according to the evaluation criteria set forth in § 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at § 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application fulfills the requirements for an emergency award and satisfies the program's stated purposes set forth at § 2301.1(a) and (c).

Service of Applications

For the FY 2000 PTEP, applicants are not required to submit copies of their PTFP applcations to the FCC, nor will they be required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of projects submitted for funding which require FCC authorizations.

For the FY 2000 PTFP, applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. Many distance learning applications propose projects which are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will notify the state telecommunication agencies in the states in which they are located.

Federal Communications Commission Authorizations

For the FY 2000 PTFP, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

For the FY 2000 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

For the FY 2000 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the

other organization's name. NTIA believes that such circumstances will be rare and, in its experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

As noted above, for the FY 2000 PTFP applications, NTIA does not require that the FCC applications be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) construction of broadcast station, (including a digital broadcasting facility) or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

For those applicants whose projects require authorization by the Federal Communications Commission (FCC), NTIA reminds applicants that the mailing address for the Federal Communications Commission has changed to: 445 12th St. SW, Washington DC 20554.

XI. Department of Commerce Application Requirements

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before February 17, 2000. Applicants are encouraged to contact the appropriate SPOC well before the PTFP closing date. A listing of the state SPOC offices may be found with the PTFP application materials at the NTIA Internet site. A list of the SPOC offices is available from NTIA (see the **ADDRESS** section above).

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, § 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, § 605) are subject to 15 CFR part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applicants/bidders for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' (OMB Control Number 0348–0046) as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) the delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department are made.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they have received, there is no obligation on the part of the Department to cover preaward costs.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. 390–393, 397–399(b). (Catalog of Federal Domestic Assistance No. 11.550).

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 99–33327 Filed 12–22–99; 8:45 am]

BILLING CODE 3510–60–P

federal register

Thursday
December 23, 1999

Part VI

The President

Executive Order 13144—Adjustments of Certain Rates of Pay

Federal Register
Vol. 64, No. 246
Thursday, December 23, 1999

Presidential Documents

Title 3—

The President

Executive Order 13144 of December 21, 1999

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), in accordance with section 646(a) of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601(a)–(b) of Public Law 106–65, the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

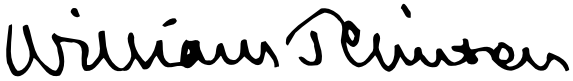
Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, and in accordance with section 646(a) of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective on January 1, 2000. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2000.

Sec. 8. *Prior Order Superseded.* Sections 1 through 7 of Executive Order 13106 of December 7, 1998, are superseded.



THE WHITE HOUSE,
December 21, 1999.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

	1	2	3	4	5	6	7	8	9	10
GS-1	$13,870	$14,332	$14,794	$15,252	$15,715	$15,986	$16,440	$16,900	$16,918	$17,351
2	15,594	15,964	16,481	16,918	17,107	17,610	18,113	18,616	19,119	19,622
3	17,015	17,582	18,149	18,716	19,283	19,850	20,417	20,984	21,551	22,118
4	19,100	19,737	20,374	21,011	21,648	22,285	22,922	23,559	24,196	24,833
5	21,370	22,082	22,794	23,506	24,218	24,930	25,642	26,354	27,066	27,778
6	23,820	24,614	25,408	26,202	26,996	27,790	28,584	29,378	30,172	30,966
7	26,470	27,352	28,234	29,116	29,998	30,880	31,762	32,644	33,526	34,408
8	29,315	30,292	31,269	32,246	33,223	34,200	35,177	36,154	37,131	38,108
9	32,380	33,459	34,538	35,617	36,696	37,775	38,854	39,933	41,012	42,091
10	35,658	36,847	38,036	39,225	40,414	41,603	42,792	43,981	45,170	46,359
11	39,178	40,484	41,790	43,096	44,402	45,708	47,014	48,320	49,626	50,932
12	46,955	48,520	50,085	51,650	53,215	54,780	56,345	57,910	59,475	61,040
13	55,837	57,698	59,559	61,420	63,281	65,142	67,003	68,864	70,725	72,586
14	65,983	68,182	70,381	72,580	74,779	76,978	79,177	81,376	83,575	85,774
15	77,614	80,201	82,788	85,375	87,962	90,549	93,136	95,723	98,310	100,897

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$77,614	$62,890	$50,960	$41,292	$33,459	$29,911	$26,740	$23,905	$21,370
2	79,942	64,777	52,489	42,531	34,463	30,808	27,542	24,622	22,011
3	82,341	66,720	54,063	43,807	35,497	31,733	28,368	25,361	22,671
4	84,811	68,722	55,685	45,121	36,562	32,685	29,220	26,122	23,352
5	87,355	70,783	57,356	46,475	37,658	33,665	30,096	26,905	24,052
6	89,976	72,907	59,077	47,869	38,788	34,675	30,999	27,712	24,774
7	92,675	75,094	60,849	49,305	39,952	35,715	31,929	28,544	25,517
8	95,455	77,347	62,674	50,784	41,150	36,787	32,887	29,400	26,282
9	98,319	79,667	64,555	52,307	42,385	37,890	33,873	30,282	27,071
10	100,897	82,057	66,491	53,877	43,656	39,027	34,890	31,191	27,883
11	100,897	84,519	68,486	55,493	44,966	40,198	35,936	32,126	28,719
12	100,897	87,054	70,541	57,158	46,315	41,404	37,014	33,090	29,581
13	100,897	89,666	72,657	58,873	47,705	42,646	38,125	34,083	30,469
14	100,897	92,356	74,836	60,639	49,136	43,925	39,269	35,105	31,383

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$131,811 **	
Associate Deputy Under Secretary for Health	126,250 ***	
Assistant Under Secretaries for Health	122,529 ***	

	Minimum	Maximum	
Medical Directors	$104,542	$118,484	***
Service Directors	91,028	113,050	
Director, National Center for Preventive Health	77,614	113,050	

Physician and Dentist Schedule

Director Grade	$91,028	$113,050
Executive Grade	84,055	107,125
Chief Grade	77,614	100,897
Senior Grade	65,983	85,774
Intermediate Grade	55,837	72,586
Full Grade	46,955	61,040
Associate Grade	39,178	50,932

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$77,614	$100,897
Senior Grade	65,983	85,774
Intermediate Grade	55,837	72,586
Full Grade	46,955	61,040
Associate Grade	39,178	50,932

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$77,614	$100,897
Assistant Director Grade	65,983	85,774
Chief Grade	55,837	72,586
Senior Grade	46,955	61,040
Intermediate Grade	39,178	50,932
Full Grade	32,380	42,091
Associate Grade	27,864	36,225
Junior Grade	23,820	30,966

* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $122,400.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $114,500.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

ES-1	$106,200
ES-2	111,200
ES-3	116,300
ES-4	122,200
ES-5	122,400
ES-6	122,400

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

level I	$157,000
level II	141,300
level III	130,200
level IV	122,400
level V	114,500

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Vice President	$181,400
Senators	141,300
Members of the House of Representatives	141,300
Delegates to the House of Representatives	141,300
Resident Commissioner from Puerto Rico	141,300
President pro tempore of the Senate	157,000
Majority leader and minority leader of the Senate	157,000
Majority leader and minority leader of the House of Representatives	157,000
Speaker of the House of Representatives	181,400

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Chief Justice of the United States	$181,400
Associate Justices of the Supreme Court	173,600
Circuit Judges	149,900
District Judges	141,300
Judges of the Court of International Trade	141,300

SCHEDULE 8–PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 2000)

Part I–MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10 **	$8,214.90	$8,503.80	$8,503.80	$8,503.80	$8,503.80	$8,830.20	$8,830.20	$9,319.50	$9,319.50	$9,986.40	$9,986.40	$10,655.10	$10,655.10	$10,655.10	$11,318.40*
O-9	7,280.70	7,471.50	7,630.50	7,630.50	7,630.50	7,824.60	7,824.60	8,150.10	8,150.10	8,830.20	8,830.20	9,319.50	9,319.50	9,319.50	9,986.40
O-8	6,594.30	6,792.30	6,953.10	6,953.10	6,953.10	7,471.50	7,471.50	7,824.60	7,824.60	8,150.10	8,503.80	8,830.20	9,048.00	9,048.00	9,048.00
O-7	5,479.50	5,851.80	5,851.80	5,851.80	6,114.60	6,114.60	6,468.90	6,468.90	6,792.30	7,471.50	7,985.40	7,985.40	7,985.40	7,985.40	7,985.40
O-6	4,061.10	4,461.60	4,754.40	4,754.40	4,754.40	4,754.40	4,754.40	4,754.40	4,916.10	5,693.10	5,983.80	6,114.60	6,468.90	6,687.30	7,015.50
O-5	3,248.40	3,813.90	4,077.90	4,077.90	4,077.90	4,077.90	4,200.30	4,427.10	4,723.80	5,077.50	5,368.20	5,531.10	5,724.60	5,724.60	5,724.60
O-4	2,737.80	3,333.90	3,556.20	3,556.20	3,622.20	3,781.80	4,040.40	4,267.50	4,461.60	4,658.10	4,785.90	4,785.90	4,785.90	4,785.90	4,785.90
O-3 ***	2,544.00	2,844.30	3,041.10	3,364.80	3,525.90	3,652.20	3,850.20	4,040.40	4,139.10	4,139.10	4,139.10	4,139.10	4,139.10	4,139.10	4,139.10
O-2 ***	2,218.80	2,423.10	2,910.90	3,009.00	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10	3,071.10
O-1 ***	1,926.30	2,004.90	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10	2,423.10
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER															
O-3E	-	-	-	$3,364.80	$3,525.90	$3,652.20	$3,850.20	$4,040.40	$4,200.30	$4,200.30	$4,200.30	$4,200.30	$4,200.30	$4,200.30	$4,200.30
O-2E	-	-	-	3,009.00	3,071.10	3,168.60	3,333.90	3,461.40	3,556.20	3,556.20	3,556.20	3,556.20	3,556.20	3,556.20	3,556.20
O-1E	-	-	-	2,423.10	2,588.40	2,683.80	2,781.30	2,877.60	3,009.00	3,009.00	3,009.00	3,009.00	3,009.00	3,009.00	3,009.00

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $10,850.10 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $12,488.70 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $10,850.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	–	–	–	–	–	–	–	–	–	–	–	$4,423.80	$4,591.20	$4,724.10	$4,923.30
W-4	$2,592.00	$2,781.30	$2,781.30	$2,844.30	$2,974.20	$3,105.00	$3,235.50	$3,461.40	$3,622.20	$3,749.40	$3,850.20	3,974.10	4,107.00	4,235.10	4,427.10
W-3	2,355.90	2,555.40	2,555.40	2,588.40	2,618.70	2,810.40	2,974.20	3,071.10	3,168.60	3,263.40	3,364.80	3,495.90	3,622.20	3,622.20	3,749.40
W-2	2,063.40	2,232.60	2,232.60	2,297.40	2,423.10	2,555.40	2,652.60	2,749.80	2,844.30	2,944.50	3,041.10	3,136.80	3,263.40	3,263.40	3,263.40
W-1	1,719.00	1,971.00	1,971.00	2,135.70	2,232.60	2,328.00	2,423.10	2,522.70	2,618.70	2,716.20	2,810.40	2,910.90	2,910.90	2,910.90	2,910.90
ENLISTED MEMBERS															
E-9 *	–	–	–	–	–	–	$3,015.30	$3,083.40	$3,152.70	$3,225.60	$3,298.20	$3,361.50	$3,537.90	$3,675.60	$3,882.60
E-8	–	–	–	–	–	$2,528.40	2,601.60	2,669.70	2,739.00	2,811.60	2,875.50	2,946.30	3,119.40	3,258.00	3,467.10
E-7	$1,765.80	$1,906.20	$1,976.10	$2,045.70	$2,115.60	2,182.80	2,252.70	2,323.20	2,427.90	2,496.90	2,566.20	2,599.50	2,774.40	2,912.40	3,119.40
E-6	1,518.90	1,655.70	1,724.40	1,797.60	1,865.40	1,932.60	2,003.40	2,106.60	2,172.90	2,242.80	2,277.00	2,277.00	2,277.00	2,277.00	2,277.00
E-5	1,332.60	1,450.50	1,521.00	1,587.30	1,691.70	1,761.00	1,830.00	1,898.10	1,932.60	1,932.60	1,932.60	1,932.60	1,932.60	1,932.60	1,932.60
E-4	1,242.90	1,312.80	1,390.20	1,497.30	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70	1,556.70
E-3	1,171.50	1,235.70	1,284.60	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90	1,335.90
E-2	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40	1,127.40
E-1 **	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60	1,005.60
E-1 ***	930.30	–	–	–	–	–	–	–	–	–	–	–	–	–	–

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,719.00 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II–RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $600.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

Locality Pay Area[1]	Rate
Atlanta, GA	7.66%
Boston-Worcester-Lawrence, MA-NH,ME,CT	10.72%
Chicago-Gary-Kenosha, IL-IN-WI	11.49%
Cincinnati-Hamilton, OH-KY-IN	9.52%
Cleveland-Akron, OH	8.05%
Columbus, OH	8.55%
Dallas-Fort Worth, TX	8.59%
Dayton-Springfield, OH	7.63%
Denver-Boulder-Greeley, CO	10.54%
Detroit-Ann Arbor-Flint, MI	11.64%
Hartford, CT	11.25%
Houston-Galveston-Brazoria, TX	14.79%
Huntsville, AL	7.22%
Indianapolis, IN	6.99%
Kansas City, MO-KS	7.42%
Los Angeles-Riverside-Orange County, CA	12.76%
Miami-Fort Lauderdale, FL	9.80%
Milwaukee-Racine, WI	7.83%
Minneapolis-St. Paul, MN-WI	9.11%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	12.09%
Orlando, FL	6.79%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	9.55%
Pittsburgh, PA	7.61%
Portland-Salem, OR-WA	9.06%
Richmond-Petersburg, VA	7.60%
Sacramento-Yolo, CA	9.50%
St. Louis, MO-IL	7.08%
San Diego, CA	9.97%
San Francisco-Oakland-San Jose, CA	15.01%
Seattle-Tacoma-Bremerton, WA	9.20%
Washington-Baltimore, DC-MD-VA-WV	9.05%
Rest of U.S.	6.78%

[1]Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10–ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2000)

AL-3/A	$ 79,900
AL-3/B	86,000
AL-3/C	92,200
AL-3/D	98,300
AL-3/E	104,500
AL-3/F	110,600
AL-2	116,800
AL-1	122,400

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LIST OF PUBLIC LAWS

This is a completes the listing of public laws enacted during the first session of the 106th of Congress. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

The list will resume when bills are enacted into public law during the second session of the 106th Congress, which convenes on January 24, 2000. A cumulative list of Public Laws will be published in the **Federal Register** on December 31, 1999.

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