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Federal Register

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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 Parts 831 and 842

RIN 3206-A125

Voluntary Early Retirement Authority; Correction

AGENCY: Office of Personnel Management.

ACTION: Interim rule; correction.

SUMMARY: The Office of Personnel Management (OPM) is correcting the date section of an interim rule published October 4, 1999 (64 FR 53581), and the technical amendment to those interim regulations issued December 27, 1999 (64 FR 72256) to indicate that the correct effective date is October 1, 1999. The interim rule and technical amendment did not correctly state the effective date of two sections and failed to remove the sunset date. This document corrects that error.

DATES: These regulations are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Gray at (202) 606-0960, FAX (202) 606-2329, e-mail cwgray@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1999, OPM published interim regulations (64 FR 53581) which amended 5 CFR 831.114 and 842.213 consistent with the section 651, Public Law 106-58 (113 Stat. 430, September 29, 1999). The October 4, 1999, interim regulations were published to remove the September 30, 1999, expiration date included in 5 CFR 831.114 and 842.213, allowing continuity of operation of the voluntary early retirement program as provided by Public Law 106-58.

However, because these regulations were published with an effective date after October 1, 1999 (*i.e.*, October 4,

1999), the interim regulations did not effectively remove the sunset date. This document corrects that error and ensures continuity of operations of voluntary early retirement regulations, programs, and authorities.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations only affect Federal employees.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The general notice of proposed rulemaking and delay in the effective date are being waived because the corrected effective date for these interim regulations allows OPM to fully implement statutory language in Sec. 651 of Public Law 106-58 governing voluntary early retirements which was effective May 1, 1998, and to give full effect to benefits extended by that statute.

In interim rule FR Doc. 99-25707 published October 4, 1999 (64 FR 53581), make the following correction:

1. The **DATES** section is revised to read as follows:

DATES: Effective October 1, 1999. This regulation removes the sunset dates for §§ 831.114 and 842.213. Comments must be received by December 3, 1999.

In interim rule FR Doc. 99-33365 published December 27, 1999 (64 FR 72256), make the following correction:

1. The **DATES** section is revised to read as follows:

DATES: These regulations are effective October 1, 1999.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

[FR Doc. 00-1060 Filed 1-13-00; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV99-966-1 FIR]

Tomatoes Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Florida Tomato Committee (Committee) for the 1999-2000 and subsequent fiscal periods from \$0.03 per 25-pound container to \$0.025 per 25-pound container of tomatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of tomatoes grown in Florida. Authorization to assess tomato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 14, 2000.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement

No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Florida tomatoes beginning August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Florida Tomato Committee for the 1999-2000 and subsequent fiscal periods from \$0.03 per 25-pound container to \$0.025 per 25-pound container of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate

budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 10, 1999, and unanimously recommended 1999-2000 expenditures of \$2,088,900 and an assessment rate of \$0.025 per 25-pound container of tomatoes. In comparison, last year's budgeted expenditures were \$1,926,000. The assessment rate of \$0.025 is \$0.005 lower than the rate previously in effect. For the previous fiscal period (1998-99), the Committee had planned to use funds from its authorized reserves to cover some of its approved expenses. The reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes during 1998-99, and instead of the reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate and using reserve funds to pay some of its operating expenses during 1999-2000.

The major expenditures recommended by the Committee for the 1999-2000 fiscal period include \$436,000 for salaries, \$241,000 for research, \$1,000,000 for education and promotion, and \$150,000 for Market Assess Program export promotion. Budgeted expenses for these items in 1998-99 were \$364,000, \$212,000, \$900,000, and \$200,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50,000,000 25-pound containers which should provide \$1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$1,879,557) will be kept within the maximum permitted by the order (\$966.44; approximately one fiscal period's expenses).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999-2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 producers of tomatoes in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on industry and Committee data for the 1998-99 season, the average annual f.o.b. price for fresh Florida tomatoes during the 1998-99 season was around \$7.17 per 25-pound container, and total fresh shipments for the 1998-99 season approximated 56.7 million 25-pound containers of tomatoes. Committee data indicates that approximately 20 percent of the Florida

handlers handle 80 percent of the total volume shipped outside the regulated area. Based on this information, the shipment information for the 1998–99 season, and the 1998–99 season average price, the majority of handlers would be classified as small entities as defined by the SBA. The majority of producers of Florida tomatoes also may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from \$0.03 per 25-pound container to \$0.025 per 25-pound container of tomatoes. The Committee unanimously recommended 1999–2000 expenditures of \$2,088,900 and an assessment rate of \$0.025 per 25-pound container. The assessment rate of \$0.025 is \$0.005 lower than the 1998–99 rate. The quantity of assessable tomatoes for the 1999–2000 season is estimated at 50,000,000 25-pound containers. Thus, the \$0.025 rate should provide \$1,250,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 year include \$436,000 for salaries, \$241,000 for research, \$1,000,000 for education and promotion, and \$150,000 for Market Assess Program export promotion. Budgeted expenses for these items in 1998–99 were \$364,000, \$212,000, \$900,000, and \$200,000, respectively.

For the 1998–99 fiscal period, the Committee decided to use reserve funds to cover some of its authorized expenses. The reserve fund was larger than the Committee believed it needed for program operations. However, there was a larger than expected supply of assessable tomatoes in 1998–99, and instead of the anticipated reduction, the amount in the reserve fund increased. In another effort to reduce the amount in the reserve fund, the Committee unanimously recommended reducing the assessment rate. The funds collected from assessments, along with money from the reserve fund will be adequate to cover the Committee's expenditures for the 1999–2000 fiscal year. Pursuant to § 966.44, the Committee is authorized to maintain an operating reserve not to exceed approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of \$2,088,900 which included increases in salaries, research, and education and promotion programs.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the Florida tomato industry. The assessment rate of \$0.025 per 25-pound container of assessable tomatoes was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 50,000,000 25-pound containers for the 1999–2000 fiscal period. This is approximately \$624,900 below the anticipated expenses, which the Committee determined to be acceptable as a means of reducing its operating reserves.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal period indicates that the grower price for 1999–2000 could range between \$6.09 and \$9.70 per 25-pound container of tomatoes. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue could range between .26 and .41 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 10, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on October 25, 1999 (64 FR

57361). Copies of that rule were also mailed or sent via facsimile to all tomato handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on December 27, 1999, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

Tomatoes Grown in Florida

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 64 FR 57361 on October 25, 1999, is adopted as a final rule without change.

Dated: January 10, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–978 Filed 1–13–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 312, 327, 350, and 381

[Docket No. 96–037C]

Sanitation Requirements for Official Meat and Poultry Establishments; Technical Corrections

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document contains five technical corrections to the final regulations governing sanitation in official meat and poultry establishments, published on October 20, 1999, in the **Federal Register** (64 FR 56400). The corrections prevent

typographical errors that otherwise would be created by the amendatory language instructions contained in the final rule.

EFFECTIVE DATES: January 25, 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 October 20, 1999, FSIS published in the **Federal Register** (64 FR 56400; "Sanitation Requirements for Official Meat and Poultry Establishments") a final rule establishing sanitation performance standards applicable to all official meat and poultry establishments. Five of the instructions for amending the meat and poultry regulations would create typographical errors in the resulting regulatory language. The amendments in this document correct those errors. None of the amendments effect substantive change to the regulations made final in the October 20, 1999, rule.

List of Subjects

9 CFR Part 304

Meat inspection, Reporting and record keeping requirements.

9 CFR Parts 312, 327, and 350

Meat inspection.

9 CFR Part 381

Poultry and poultry products inspection, Reporting and record keeping requirements.

PART 304—APPLICATION FOR INSPECTION; GRANT OR REFUSAL OF INSPECTION

1. The authority citation for Part 304 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 304.2 [Amended]

2. Amend the first sentence of § 304.2(b) by removing the phrase "of this subchapter" that was inadvertently not removed after the phrase "parts 305, 307, and 416, §§ 416.1 through 416.6, of this chapter" that was added on October 20, 1999.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

3. The authority citation for Part 312 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Revise paragraph (a)(3) of § 312.6 to read as follows:

§ 312.6 Official marks and devices in connection with post-mortem inspection and identification of adulterated products and insanitary equipment and facilities.

(a) * * *

(3) The "U.S. Rejected" mark which is used to identify insanitary buildings, rooms, or equipment as prescribed in Part 416, section 6, of this chapter and is applied by means of a paper tag (Form MP–35) bearing the legend "U.S. Rejected."

* * *

PART 327—IMPORTED PRODUCTS

5. The authority citation for Part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 327.6 [Amended]

6. In § 327.6, paragraph (e) is amended by removing the phrase "of this subchapter" that was inadvertently not removed after the phrase "416.1 through 416.6 of this chapter" that was added on October 20, 1999.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

7. The authority citation for Part 350 continues to read as follows:

Authority: 21 U.S.C. 1622, 1624; 7 CFR 2.17, 2.55.

§ 350.3 [Amended]

8. Section 350.3, paragraph (a)(2) is amended by removing the phrase "of this chapter" that follows the phrase "part 416, §§ 416.1 through 416.6 of this chapter" that was added on October 20, 1999.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

9. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 21 U.S.C. 451–470; 7 U.S.C. 2.18, 2.53.

§ 381.1 [Amended]

10. In § 381.1, the definition for "Potable water" is removed.

Done in Washington, DC, on January 11, 2000.

Thomas J. Billy,
Administrator.

[FR Doc. 00–929 Filed 1–13–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 424

[Docket No. 97–076C]

Irradiation of Meat Food Products; Technical Correction

AGENCY: Food Safety and Inspection Service.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing a technical correction to its final rule permitting the use of ionizing radiation for treating refrigerated or frozen, uncooked meat food and poultry products.

EFFECTIVE DATE: 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 December 23, 1999, FSIS published in the **Federal Register** a final rule permitting 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 (64 FR 72150). Also in that rule, FSIS revised 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. In this document, FSIS is making a correction to the amendatory instructions that appeared in the final rule.

The final rule included amendatory instructions for consolidating the revised regulations governing the irradiation of poultry products and the new regulations governing the irradiation of meat food products into a new, single § 424.22(c). FSIS also intended to issue amendatory instructions to remove all of the existing regulations governing the irradiation of poultry products, which are contained in § 381.19, 381.135, and 381.149. FSIS inadvertently omitted the instruction to remove § 381.149 from the regulations. FSIS is issuing that instruction in this technical correction document.

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.

§ 381.149 [Removed]

2. Section 381.149 is removed.

Done in Washington, DC on: January 11, 2000.

Thomas J. Billy,
Administrator.

[FR Doc. 00–928 Filed 1–13–00; 8:45 am]

BILLING CODE 3410–DM–P

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

[Docket No. 99–NM–342–AD; Amendment 39–11480; AD 99–26–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, –500, –600, –700, and –800 series airplanes. This action requires a one-time detailed visual inspection of certain wire bundles and hydraulic hoses for the electric motor driven pump (EMDP) for hydraulic system “B” located in the right main wheel well to detect discrepancies; and corrective actions, if necessary. This amendment is prompted by a report that the wire bundle to the EMDP had been chafed by the pressure hose for hydraulic system “B” on a Model 737–700 series airplane, and reports of failed or damaged case drain or pressure hoses

on the EMDP for hydraulic system “B” on Model 737–400 series airplanes. The actions specified in this AD are intended to prevent electrical arcing due to chafing between certain hydraulic hoses and adjacent wire bundles, which could result in a consequent increased risk of fire.

DATES: Effective January 31, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–342–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT:

Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received one report from an operator of a Boeing Model 737–700 series airplane describing how one of the three electrical wires in the wire bundle to the electric motor driven pump (EMDP) had chafed the pressure hose for hydraulic system “B.” The FAA also has received several reports of failed or damaged case drain or pressure hoses on the EMDP for hydraulic system “B” for Boeing Model 737–300, –400, and –500 series airplanes. Chafing between the hydraulic case drain and pressure hoses could damage the hoses, and cause a hydraulic leak and failure of the pressure hose. Chafing between the wire bundle and hydraulic hoses could damage those components, and lead to electrical arcing between the components and a consequent hydraulic leak, which could result in an increased risk of fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–29A1076, Revision 1 (for Model 737–300, –400, and –500 series airplanes), and Boeing Alert Service Bulletin 737–29A1077, Revision 1 (for Model 737–600, –700, and –800 series airplanes); both dated October 21, 1999; which describe procedures for an inspection of wire bundles W0334 and W5230, and the hydraulic case drain and pressure hoses for the EMDP for hydraulic system “B” to detect any discrepancies; and corrective actions, if necessary. Corrective actions include repair of the wire bundles if any damage is found; replacement of any hose that is damaged outside specified limits, and any incorrectly sized or loose components; and certain modifications. Modifications include adjusting or changing certain support clamps, fittings, and check valves; and installing additional clamps and spacers in the hydraulic hoses to obtain specified separation between the wire bundle and the hoses. For certain EMDP’s, modifications also include ensuring that certain components are attached correctly.

The alert service bulletins also specify a test of the EMDP if wire bundles W0334 or W5230 were repaired, or a leak test if the hydraulic case drain or pressure hoses were replaced in accordance with either Part 1 or Part 2 of the Accomplishment Instructions of the Boeing alert service bulletins, as applicable.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–300, –400, –500, –600, –700, and –800 series airplanes of the same type design, this AD is being issued to prevent electrical arcing due to chafing between certain hydraulic hoses and adjacent wire bundles, which could result in a consequent increased risk of fire. This AD requires a one-time detailed visual inspection of wire bundles W0334 and W5230 and the hydraulic case drain and pressure hoses for the EMDP for hydraulic system “B” located in the right main wheel well to detect discrepancies; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the alert service bulletins described previously, except as described below.

Differences Between This AD and the Alert Service Bulletins

Operators should note that the alert service bulletins recommend accomplishment of the inspection and corrective actions as soon as manpower and equipment are available. However, the FAA has determined that the compliance time proposed by the manufacturer would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than two hours). In light of all these factors, the FAA finds a 90-day compliance time for accomplishing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-342-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-26-21 Boeing: Amendment 39-11480. Docket 99-NM-342-AD.

Applicability: Model 737-300, -400, and -500 series airplanes, as listed in Boeing Alert Service Bulletin 737-29A1076, Revision 1, dated October 21, 1999; and Model 737-600, -700, and -800 series airplanes, as listed in Boeing Alert Service Bulletin 737-29A1077, Revision 1, dated October 21, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing due to chafing between certain hydraulic hoses and adjacent wire bundles, which could result in a consequent increased risk of fire; accomplish the following:

Actions for Model 737-300, -400, and -500 Series Airplanes

(a) For certain Model 737-300, -400, and -500 series airplanes on which the actions specified by Boeing Alert Service Bulletin 737-29A1076, dated April 2, 1998, have not been accomplished: Within 90 days after the effective date of this AD, perform a one-time detailed visual inspection of wire bundle W0334 and the hydraulic case drain and pressure hoses for the electric motor driven pump (EMDP) for hydraulic system "B" to detect any discrepancy (e.g., damage or chafing of wire bundle W0334 and the hydraulic case drain and pressure hoses, and incorrect separation between those components), in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737-29A1076, Revision 1, dated October 21, 1999.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any discrepancy is found, prior to further flight, perform corrective actions in accordance with Part 1 of the Accomplishment Instructions of the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an

intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) For certain Model 737-300, -400, and -500 series airplanes on which the actions specified by Boeing Alert Service Bulletin 737-29A1076, dated April 2, 1998, have been accomplished: Within 90 days after the effective date of this AD, perform a one-time detailed visual inspection of wire bundle W0334 and the hydraulic case drain and pressure hoses for the EMDP for hydraulic system "B" to detect any discrepancy (e.g., damage or chafing of wire bundle W0334 and the hydraulic case drain and pressure hoses; and incorrect separation between those components), in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737-29A1076, Revision 1, dated October 21, 1999.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any discrepancy is found, prior to further flight, perform corrective actions in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

Actions for Model 737-600, -700, and -800 Series Airplanes

(c) For certain Model 737-600, -700, and -800 series airplanes on which the actions specified by Boeing Alert Service Bulletin 737-29A1077, dated March 4, 1999, have not been accomplished: Within 90 days after the effective date of this AD, perform a one-time detailed visual inspection of wire bundle W5230 and the hydraulic case drain and pressure hoses for the EMDP for hydraulic system "B" to detect any discrepancy (e.g., damage or chafing of the W5230 wire bundle and the hydraulic case drain and pressure hoses; and incorrect separation between those components) in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737-29A1077, Revision 1, dated October 21, 1999.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any discrepancy is found, prior to further flight, perform corrective actions in accordance with Part 1 of the Accomplishment Instructions of the alert service bulletin.

(d) For certain Model 737-600, -700, and -800 series airplanes on which the actions specified by Boeing Alert Service Bulletin 737-29A1077, dated March 4, 1999, have been accomplished: Within 90 days after the effective date of this AD, perform a one-time detailed visual inspection of wire bundle W5230 and the case drain and pressure hoses for the EMDP for hydraulic system "B" to detect any discrepancy (e.g., damage or chafing of the W5230 wire bundles and the hydraulic case drain and pressure hoses; and incorrect separation between those components), in accordance with Part 2 of Boeing Alert Service Bulletin 737-29A1077, Revision 1, dated October 21, 1999.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any discrepancy is found, prior to further flight, perform corrective actions in

accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) The inspection and corrective actions shall be done in accordance with Boeing Alert Service Bulletin 737-29A1076, Revision 1, dated October 21, 1999; or Boeing Alert Service Bulletin 737-29A1077, Revision 1, dated October 21, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 31, 2000.

Issued in Renton, Washington, on January 7, 2000.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-876 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-318-AD; Amendment 39-11513; AD 2000-01-15]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes. For certain airplanes, this action requires modification of the electrical power supply of the landing gear anti-skid unit. For certain airplanes, this action also requires a revision to the Airplane Flight Manual (AFM) to provide the flight crew with procedures for calculating the accelerate-stop distance for certain conditions, and installation of a new ground idle stop assembly and new placards on the top cover of the pedestal, which terminates the requirements for the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent interruption of the anti-skid system function, or inadvertent selection of reverse thrust during a rejected takeoff. Either of these conditions could result in reduced controllability of the airplane.

DATES: Effective January 31, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 31, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-318-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an

unsafe condition may exist on certain Fokker Model F27 Mark 050 series airplanes. The RLD advises that analysis of flight test data has revealed that the braking performance may be less than expected in certain conditions. During a rejected takeoff (RTO), a restrictor in the pitch control unit (PCU) is activated if the power levers are moved to the full reverse position. This restrictor limits the pitch rate of change of the propeller blades, which affects the average drag and lift characteristics of the airplane. Movement of the power levers to the reverse position during an RTO, if not corrected, could result in reduced controllability of the airplane.

The RLD also advises that, for airplanes equipped with Pratt & Whitney Model PW127B engines, tests have shown that during an RTO the propeller revolutions per minute (RPM) may temporarily exceed the trip level of the generator control unit. This condition causes a loss of generator power, and possible switching to an alternate bus power source with consequent interruption of the anti-skid system function. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF50-32-031, dated December 20, 1996, which describes procedures for modification of the electrical power supply of the landing gear anti-skid unit. The modification involves revising the EPC-1 panel 2 and panel 3, and EPC-2 direct current panel, and adding wiring to the various assemblies.

Fokker also has issued Service Bulletin SBF50-76-016, dated December 20, 1996, which describes procedures for installation of a new ground idle stop assembly and new placards on the top cover of the pedestal.

Accomplishment of the actions specified in the service bulletins and the AFM revision described below is intended to adequately address the identified unsafe condition. The RLD classified these service bulletins and the AFM revision described below as mandatory and issued Dutch airworthiness directives 1996-149 (A), and 1996-150 (A), both dated December 31, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section

21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent reduced controllability of the airplane as a result of interruption of the anti-skid system function, or inadvertent selection of reverse thrust during an RTO. This AD requires accomplishment of the actions specified in the service bulletins described previously. This AD also requires a revision to the Limitations Section of the FAA-approved AFM to provide the flight crew with procedures for calculating the accelerate-stop distance for certain conditions.

Cost Impact

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

Should an affected Fokker Model F27 Mark 050 series airplane equipped with Pratt & Whitney Model PW127B engines be imported and placed on the U.S. Register in the future, it would require approximately 16 work hours to accomplish the required modification of the electrical power supply of the landing gear anti-skid unit, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$1,544 per airplane. Based on these figures, the cost impact of this AD for those airplanes would be \$2,504 per airplane.

Should an affected Fokker Model F27 Mark 050 series airplane, as listed in Fokker Service Bulletin SBF50-76-016, dated December 20, 1996, be imported and placed on the U.S. Register in the

future, it would require approximately 1 work hour to accomplish the required AFM revision, at an average labor rate of \$60 per work hour. It also would require approximately 1 work hour to accomplish the required installation of a new ground idle stop assembly and new placards, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$1,000 per airplane. Based on these figures, the cost impact of this AD for these airplanes would be \$1,120 per airplane.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-318-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000-01-15 Fokker Services B.V.:

Amendment 39-11513. Docket 99-NM-318-AD.

Applicability: All Model F27 Mark 050 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane as a result of interruption of the anti-skid system function, or inadvertent selection of reverse thrust during a rejected takeoff, accomplish the following:

Modification for Certain Airplanes

(a) For Model F27 Mark 050 series airplanes equipped with Pratt & Whitney Model PW127B engines: Within 12 months after the effective date of this AD, modify the electrical power supply of the landing gear anti-skid unit in accordance with Fokker Service Bulletin SBF50-32-031, dated December 20, 1996.

Airplane Flight Manual Revision and Installation For Certain Airplanes

(b) For Model F27 Mark 050 series airplanes, as listed in Fokker Service Bulletin SBF50-76-016, dated December 20, 1996: Accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Correct the 'available accelerate-stop distance' as follows:

For dry runways, multiply the relevant figure by 0.9; For wet runways, subtract 525 feet (160 meters) from the relevant figure; and

For contaminated and slippery runways, subtract 1,181 feet (360 meters) from the relevant figure.

Additionally, the required accelerate-stop distance, as calculated from the AFM for a given airplane weight and V1 or Vstop must be increased in accordance with the same factors given for available accelerate-stop distance, as shown above."

(2) Within 12 months after the effective date of this AD, install a new ground idle stop assembly and new placards on the top cover of the pedestal, in accordance with Fokker Service Bulletin SBF50-76-016, dated December 20, 1996. Following accomplishment of these actions, the AFM revision required by paragraph (b)(1) of this AD may be removed from the AFM.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions required by paragraphs (a) and (b)(2) of this AD shall be done in accordance with Fokker Service Bulletin SBF50-76-016, dated December 20, 1996, and Fokker Service Bulletin SBF50-32-031, dated December 20, 1996; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directives 1996-149 (A), and 1996-150 (A), both dated December 31, 1996.

(f) This amendment becomes effective on January 31, 2000.

Issued in Renton, Washington, on January 7, 2000.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-877 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-58-AD; Amendment 39-11512; AD 2000-01-14]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires the replacement of fuse pins in the attachment fittings and support fittings of the main landing gear with new, improved fuse pins. This amendment is prompted by a report of corrosion of a

fuse pin of a similar design on the main landing gear of a Boeing Model 767 series airplane. The actions specified by this AD are intended to prevent corrosion and subsequent fracture of the fuse pins, which could result in collapse of the main landing gear and the loss of the inboard flap and spoilers.

DATES: Effective February 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 2000.

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

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2772; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Boeing Model 777 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45476). That action proposed to require the replacement of fuse pins in the attachment fittings and support fittings of the main landing gear with new, improved fuse pins.

Comments

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

Request To Correct Error in Statement of Unsafe Condition

One commenter states that the unsafe condition, as stated in the notice of proposed rulemaking (NPRM), is incorrect, and requests that it be corrected. The NPRM states that fracture of the fuse pins could result in collapse of the main landing gear and the loss of the inboard flap and outboard spoilers. The commenter states that the inboard spoilers, not the outboard, could be lost. The FAA concurs with the commenter's

request and its rationale and has revised this final rule accordingly.

Request To Reference New Service Information

One commenter requests that the NPRM be revised to reference Boeing Service Bulletin 777-57A0029, Revision 1, dated August 12, 1999, as the source of service information for the accomplishment of the actions required by this AD. (The NPRM references Boeing Alert Service Bulletin 777-57A0029, dated December 22, 1998, as the appropriate source of service information.)

The FAA concurs with the commenter's request. Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 777-57A0029, Revision 1. The FAA has determined that Revision 1 of the service bulletin adds no new requirements, but provides clarification of some instructions, which will assist operators in accomplishing the requirements of this AD. Therefore, the FAA has revised paragraph (a) of the final rule to reference Boeing Service Bulletin 777-57A0029, Revision 1, in addition to the original issue of Boeing Alert Service Bulletin 777-57A0029, as appropriate sources of service information.

In addition, the FAA finds that Revision 1 of the service bulletin eliminates one airplane from the effectivity listing. (The intent of the service bulletin was accomplished on that airplane during production.) Therefore, the applicability of this final rule has been revised to state that this AD is applicable to airplanes listed in Boeing Service Bulletin 777-57A0029, Revision 1, rather than airplanes listed in the original issue of Boeing Alert Service Bulletin 777-57A0029 (as proposed in the NPRM). The FAA finds that this revision does not necessitate reopening the comment period, because it is relieving in nature (the change reduces the applicability of this AD by one airplane). Also, one airplane has been subtracted from the number of affected airplanes in the worldwide fleet, as stated in the cost impact section of the preamble of this final rule.

Request To Revise Compliance Time

One commenter requests that the FAA revise the compliance threshold of this AD from 48 months since date of manufacture to 1,500 days since the delivery date of the airplane. The commenter states that 1,500 days would better align with operators' scheduled maintenance intervals. The commenter also states that "'date of manufacture' is ill-defined."

The FAA does not concur with the commenter's requests. The FAA finds that there is no technical justification for changing the threshold from 48 months to 1,500 days, as the commenter requests. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation in the service bulletin, but the degree of urgency associated with addressing the subject unsafe condition. The FAA finds a compliance time of 48 months since date of manufacture or 18 months after the effective date of the AD, whichever occurs later, for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. In addition, the FAA points out that the compliance time proposed in the NPRM is essentially the same as that recommended by the manufacturer in the service bulletin (48 months after delivery or 18 months after receipt of the service bulletin, whichever is later). With regard to referring to the delivery date of the airplane, rather than the date of manufacture, the FAA finds that there is no technical justification for such a change. The FAA refers to "date of manufacture" rather than "delivery date" of an airplane because the airplane may not be "delivered" until long after it is manufactured. Also, the date of manufacture can be readily discovered through the serial number of the airplane. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 162 Model 777 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take between 5 and 39 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost between \$3,090 and \$8,710 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be

between \$3,390 and \$11,050 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000-01-14 Boeing: Amendment 39-11512. Docket 99-NM-58-AD.

Applicability: Model 777 series airplanes, as listed in Boeing Service Bulletin 777-

57A0029, Revision 1, dated August 12, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion and subsequent fracture of the fuse pins in the main landing gear attachment and support fittings, which could result in collapse of the main landing gear and the loss of the inboard flap and spoilers, accomplish the following:

Replacement

(a) Within 48 months since date of manufacture, or 18 months after the effective date of this AD, whichever occurs later, replace the main landing gear fuse pins with new, improved fuse pins in accordance with Boeing Alert Service Bulletin 777-57A0029, dated December 22, 1998; or Boeing Service Bulletin 777-57A0029, Revision 1, dated August 12, 1999.

Spares

(b) As of the effective date of this AD, no person shall install a main landing gear fuse pin having part number 112W1728-1, 112W1728-3, or 115W1670-1 on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 777-57A0029, dated December 22, 1998; or Boeing Service Bulletin 777-57A0029, Revision 1, dated August 12, 1999. This

incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 18, 2000.

Issued in Renton, Washington, on January 7, 2000.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-878 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29899; Amdt. No. 420]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as

the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationships

between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on January 14, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, February 24, 2000.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 420 effective date: February 24, 2000]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6001 VOR Federal Airway 1 is Amended to Read in Part		
Inlet, SC FIX	Plann, SC FIX	2000
§ 95.6005 VOR Federal Airway 5 is Amended to Read in Part		
McMin, TN FIX	Harme, TN FIX	*6000
*3700—MOCA		
Harme, TN FIX	Bowling Green, KY VORTAC	*2800
*2300—MOCA		
§ 95.6006 VOR Federal Airway 6 is Amended to Read in Part		
Selinsgrove, PA VORTAC	*Snowy, PA FIX	*5000
*5000—MRA		
**3300—MOCA		
§ 95.6012 VOR Federal Airway 12 is Amended to Read in Part		
Newcomerstown, OH VOR/DME	Allegheny, PA VOR/DME	3300
§ 95.6016 VOR Federal Airway 16 is Amended to Read in Part		
Pulaski, VA VORTAC	Roanoke, VA VORTAC	5300
§ 95.6020 VOR Federal Airway 20 is Amended to Read in Part		
Prove, NC FIX	Leaks, NC FIX	3500
Leaks, NC FIX	South Boston, VA VORTAC	3000
§ 95.6029 VOR Federal Airway 29 is Amended to Read in Part		
Dupont, DE VORTAC	Modena, PA VORTAC	*6000
*1700—MOCA		
§ 95.6039 VOR Federal Airway 39 is Amended to Read in Part		
Stuby, CT FIX	Chester, MA VOR/DME	4000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 420 effective date: February 24, 2000]

From	To	MEA
§ 95.6044 VOR Federal Airway 44 is Amended to Read in Part		
Paleo, MD FIX	Agard, MD FIX	13500
Agard, MD FIX	Speak, MD FIX	13000
Speak, MD FIX	Sea Isle, NJ VORTAC	7000
Sea Isle, NJ VORTAC	Karrs, NJ FIX	*6000
*1500—MOCA		
§ 95.6093 VOR Federal Airway 93 is Amended to Read in Part		
Patuxent, MD VORTAC	Graco, MD FIX	1900
Lancaster, PA VORTAC	Hails, PA FIX	3400
Hails, PA FIX	*Snowy, PA FIX	4000
*5000—MRA		
Snowy, PA FIX	Lytel, PA FIX	4000
Pawling, NY VOR/DME	Chester, MA VOR/DME	4000
Kennebunk, ME VORTAC	Brnns, ME FIX	*3000
*1600—MOCA		
Brnns, ME FIX	Razzr, MD FIX	3000
§ 95.6103 VOR Federal Airway 103 is Amended to Read in Part		
Greensboro, NC VORTAC	Henby, VA FIX	3500
Roanoke, VA VORTAC	*Natts, WV FIX	5600
*6000—MRA		
§ 95.6130 VOR Federal Airway 130 is Amended to Read in Part		
Norwich, CT VOR/DME	Minnk, RI FIX	2000
§ 95.6139 VOR Federal Airway 139 is Amended to Read in Part		
Sea Isle, NJ VORTAC	Avalo, NJ FIX	4500
Avalo, NJ FIX	Harbo, NJ FIX	6000
Harbo, NJ FIX	Drift, NJ FIX	7500
Drift, NJ FIX	Manta, NJ FIX	12000
§ 95.6166 VOR Federal Airway 166 is Amended to Read in Part		
Belay, MD FIX	*Bains, MD FIX	2000
*7500—MRA		
Bains, MD FIX	*Elude, MD FIX	2000
*7500—MRA		
Elude, MD FIX	Dupont, DE VORTAC	2000
Brief, NJ FIX	Leeah, NJ FIX	7000
Leeah, NJ FIX	Sea Isle, NJ VORTAC	3000
§ 95.6170 VOR Federal Airway 170 is Amended to Read in Part		
Modena, PA VORTAC	Dupont, DE VORTAC	*6000
*1700—MOCA		
§ 95.6189 VOR Federal Airway 189 is Amended to Read in Part		
Franklin, VA VORTAC	Hopewell, VA VORTAC	3000
§ 95.6243 VOR Federal Airway 243 is Amended to Read in Part		
McMin, TN FIX	Harme, TN FIX	*6000
*3700—MOCA		
Harme, TN FIX	Bowling Green, KY VORTAC	*2800
*2300—MOCA		
§ 95.6260 VOR Federal Airway 260 is Amended to Read in Part		
Hopewell, VA VORTAC	Franklin, VA VORTAC	3000
§ 95.6268 VOR Federal Airway 268 is Amended to Read in Part		
Avalo, NJ FIX	Harbo, NJ FIX	6000
Harbo, NJ FIX	Drift, NJ FIX	7500

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 420 effective date: February 24, 2000]

From	To	MEA
Drift, NJ FIX	Manta, NJ FIX	12000
§ 95.6284 VOR Federal Airway 284 is Amended to Read in Part		
Sea Isle, NJ VORTAC	Azxew, NJ FIX	*2500
*1500—MOCA		
Azxew, NJ FIX	Cedar Lake, NJ VORTAC	*2500
*1600—MOCA		
§ 95.6308 VOR Federal Airway 308 is Amended to Read in Part		
Sea Isle, NJ VORTAC	Avalo, NJ FIX	4500
Avalo, NJ FIX	Harbo, NJ FIX	6000
Harbo, NJ FIX	Drift, NJ FIX	7500
Drift, NJ FIX	Manta, NJ FIX	12000
§ 95.6378 VOR Federal Airway 378 is Amended to Read in Part		
Belay, MD FIX	Troyz, MD FIX	9500
Troyz, MD FIX	Nuggy, PA FIX	7500
Nuggy, PA FIX	Modena, PA VORTAC	*6000
*2000—MOCA		
§ 95.6413 VOR Federal Airway 413 is Amended to Read in Part		
Ironwood, MI VORTAC	*Russh, WI FIX	8000
*10000—MRA		
§ 95.6440 VOR Federal Airway 440 is Amended to Read in Part		
Winor, AK FIX	McGrath, AK VORTAC	
	SE BND	*10000
*4000—MOCA	NW BND	*5000
§ 95.6495 VOR Federal Airway 495 is Amended to Read in Part		
Corvallis, OR VOR/DME	Newberg, OR VORTAC	*4000
*3400—MOCA		
§ 95.6510 VOR Federal Airway 510 is Amended to Read in Part		
Anvik, AK NDB/DME	Abear, AK FIX	
	E BND	*10000
*6200—MOCA	W BND	*9000
Abear, AK FIX	McGrath, AK VORTAC	*10000
*6200—MOCA		
McGrath, AK VORTAC	*Winor, AK FIX	
	SE BND	*10000
*8600—MCA Winor FIX E BND	NW BND	*5000
**4000—MOCA		
Klart, AK FIX	Big Lake, AK VORTAC	
	W BND	*10000
*2500—MOCA	E BND	*6000
§ 95.6603 VOR Federal Airway 603 is Added to Read		
Elfee, AK NDB	Dillingham, AK VOR/DME	2700
§ 95.6617 VOR Federal Airway 617 is Added to Read		
Homer, AK VORTAC	Johnstone Point, AK VORTAC	*12000
*8600—MOCA		
§ 95.6621 VOR Federal Airway 621 is Added to Read		
Atqasuk, AK NDB	Barrow, AK VORTAC	2000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7189 Jet Route No. 189 is Amended to Read in Part			
Klamath Falls, OR VORTAC	Battle Ground, WA VORTAC	#19000	45000
#MEA is established with a gap in navigation signal coverage			
§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V-16 is Amended to Add Changeover Point			
From	To	Changeover points	
		Distance	From
Pulaski, VA VORTAC	Roanoke, VA VORTAC	10	Pulaski
V-603 is Amended to Add Changeover Point			
Elfee, AK NDB	Dillingham, AK VOR/DME	207	Elfee
V-617 is Amended to Add Changeover Point			
Homer, AK VORTAC	Johnstone Point, AK VORTAC	63	Homer
§ 95.8005 Jet Routes Changeover Points Airway Segment J-189 is Amended to Modify Changeover Point			
Klamath Falls, OR VORTAC	Battle Ground, WA VORTAC	78	Klamath Falls
#MEA is established with a gap in navigation signal coverage			

[FR Doc. 00-933 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121, 125**

[Docket No. FAA-1999-6140; Amendment Nos. 121-271 and 125-32]

RIN 2120-AG88

Revisions to Digital Flight Data Recorder Requirements for Airbus Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: The FAA published a final rule in the **Federal Register** on August 24, 1999, (64 FR 46117). The rule

amended the flight data recorder regulations by adding language to allow certain Airbus airplanes to record certain data parameters using resolution and sampling requirements that differed slightly from the regulation. This document makes certain corrections to Appendix E to Part 125, Airplane Flight Recorder Specifications.

EFFECTIVE DATE: August 17, 1999.

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

SUPPLEMENTARY INFORMATION: On August 24, 1999, the FAA published an amendment to the flight data recorder requirements of 14 CFR Parts 121 and 125 (64 FR 46117). In the amendment to Appendix E to Part 125, Airplane Flight

Recorder Specifications, one parameter listing was inadvertently omitted. This action corrects that omission.

Correction

In FR Doc. 99-21783, published on August 24, 1999 (64 FR 46117), make the following correction:

On page 46122, third column, in Appendix E to Part 125, Airplane Flight Recorder Specifications, insert parameter 21, in numerical order, to read as follows:

* * * * *

Appendix E to Part 125—Airplane Flight Recorder Specifications

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

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
* * *	*	*	*		*
21. Leading Edge Flap or Cockpit Control Selection ¹¹ .					
* * *	*	*	*		*

* * * * *

Issued in Washington, DC on January 12, 2000.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 00-1056 Filed 1-13-00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

[Docket No. 98N-0009]

Medical Devices; Exemption From Premarket Notification and Reserved Devices; Class I

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its classification regulations to designate class I devices that are exempt from the premarket notification requirements, subject to certain limitations, and to designate those class I devices that remain subject to premarket notification requirements under the new statutory criteria for premarket notification requirements. The devices FDA is designating as exempt do not include class I devices that have been previously exempted by regulation from the premarket notification requirements. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), and the FDA Modernization Act of 1997 (FDAMA). FDA is taking this action in order to implement a requirement of FDAMA. Elsewhere in this issue of the **Federal Register**, FDA is announcing that it is withdrawing proposed rules to revoke existing exemptions from premarket notification for two devices.

DATES: This regulation is effective February 14, 2000.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the act (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the 1976 amendments (Public Law 94-295), as amended by the SMDA (Public Law 101-629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device, or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, part 807 (21 CFR part 807), require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is substantially equivalent within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval. Unless exempted from premarket notification requirements, persons may not market a new device under section 510(k) of the act, unless they receive a substantial equivalence order from FDA or an order reclassifying the device into class I or class II, under section 513(f) of the act.

On November 21, 1997, the President signed FDAMA into law (Public Law

105-115). Section 206 of FDAMA, in part, added a new section 510(l) to the act. Under section 206 of FDAMA, new section 510(l) of the act became effective on February 19, 1998. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. This document refers to devices that FDA believes meet these criteria as "reserved." FDA has evaluated all class I devices to determine which device types should be subject to premarket notification requirements.

In developing the list of reserved devices, the agency considered its experience in reviewing premarket notifications for these device types, focusing on the risk inherent with the device and/or the disease being treated or diagnosed. FDA believes that the devices listed as reserved are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

II. Limitations on Exemptions

FDA believes that the generic types of class I devices listed herein, in addition to a vast majority of class I devices previously exempted, should be exempt from the premarket notification requirements under section 510(l) of the act. FDA further believes, however, that these generic device categories should be exempt only to the extent that they have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices (IVD's), only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. FDA believes that certain changes to devices within a generic device type that is generally exempt may make the device intended for a use that is of substantial importance in preventing impairment of human health or may make the device present a potential unreasonable risk of illness or injury. Accordingly, devices changed in this manner would fall within the reserved criteria under section 510(l) of the act and would require premarket notification.

FDA believes that devices that have different intended uses than legally marketed devices in that generic device type present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics

are unknown. Moreover, FDA believes that IVD's are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury, if misdiagnosis, as a result of using the device, could result in high morbidity or mortality.

Accordingly, because FDA believes that devices incorporating the characteristics described above fit within the reserved criteria under section 510(l) of the act, FDA considers any class I device to be subject to premarket notification requirements if the device: (1) Has an intended use that is different from the intended use of a legally marketed device in that generic type of device (e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals); or (2) operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type of device (e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an IVD detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization or amplification technology rather than culture or immunoassay technology); or (3) is an in vitro device that is intended: (a) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices; (b) for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism; (c) for measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy; (d) to assess the risk of cardiovascular diseases; (e) for use in diabetes management; (f) to identify or infer the identity of a microorganism directly from clinical material; (g) for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma; (h) for noninvasive testing as defined in § 812.3(k) (21 CFR 812.3(k)); and (9) for near patient testing (point of care). FDA is revising §§ 862.9, 864.9, and 866.9 (21 CFR 862.9, 864.9, and 866.9) to incorporate these revised limitations on exemptions for IVD's. FDA believes that these limitations, for

the reasons described previously, are appropriate for IVD's.

FDA is also amending all current limitations on exemptions sections (21 CFR 862.9, 864.9, 866.9, 868.9, 870.9, 872.9, 874.9, 876.9, 878.9, 880.9, 882.9, 884.9, 886.9, 888.9, 890.9, and 892.9) in two ways. First, the limitations language clarifies that these limitations apply to class II, as well as class I devices. On January 21, 1998 (63 FR 3142), FDA published a list of exempted class II devices, subject to certain limitations. Under section 510(m)(1) of the act, as added by FDAMA, FDA was provided the authority to exempt these class II devices from premarket notification upon issuance of a notice. FDA codified these exemptions, including the limitations described in the January 21, 1998, **Federal Register** notice, by issuance of a final rule on November 3, 1998 (63 FR 59222).

The limitations language in this document for class I devices is identical to those limitations for class II devices that became effective on January 21, 1998. Accordingly, the limitations sections state that the scope of these limitations apply to class II, as well as class I devices.

Second, FDA is amending the limitations language to state that premarket notifications must be submitted for class I exempt devices if the intended use is different than the "legally marketed devices in that generic type." Currently, the limitations in each classification regulation (e.g., §§ 862.9, 864.9, etc.) state that manufacturers must submit premarket notifications for class I exempt devices when "[t]he device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent;". Devices that have an intended use that differs from any legally marketed device are not exempt because those devices present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics are unknown. Manufacturers of such devices must submit a premarket notification and the agency will determine if they are substantially equivalent to other legally marketed devices in that generic device type.

In addition to the general limitations on exemptions applicable to all class I devices that are described previously, certain devices within a generic class also remain subject to the premarket notification requirements because they either are intended for a use that is of substantial importance in preventing

impairment of human health or they present a potential unreasonable risk of illness or injury. For example, elsewhere in this document, FDA states that liquid bandages are generally exempt from the premarket notification requirements, but a subcategory of those devices, those intended for treatment of burns and other open wounds, remains subject to the premarket notification requirements. FDA believes that liquid bandages intended for burns and other open wounds should remain subject to this requirement because they are of substantial importance in preventing impairment of human health by helping to prevent infections.

FDA also advises that an exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation.

The limitations in each classification regulation apply to the premarket notification exemptions for each generic device classified in each section. In addition to mentioning the limitations generally in each classification regulation, FDA specifically states in the classification sections for each generic device that is newly exempted under section 510(l) of the act that the exemptions are subject to limitations. For example, with this regulation § 862.1200 states that the corticosterone test system "is exempt from the premarket notification procedures in subpart E of part 807 of this chapter *subject to § 862.9.*" (Emphasis added.) FDA is adding this language specifically referring to the limitations language for clarity and convenience.

Individual device classification sections that have been codified previously that are exempt from premarket notification requirements, subject to limitations, do not specifically refer to the general limitations section. For these classifications, FDA intends to codify language in the near future that will mention the limitations sections in each device classification.

III. Analysis of Comments

In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA published a list of devices it considered reserved and that require premarket notification and a list of devices it believed met the exemption criteria in FDAMA. FDA invited comments on the February 2, 1998, notice.

In the **Federal Register** of November 12, 1998 (63 FR 63222), after reviewing the comments submitted on the February 2, 1998, **Federal Register**

notice, FDA proposed to designate which devices require premarket notification, and which are exempt, subject to limitations, under notice and comment rulemaking proceedings under new section 510(l) of the act. FDA received four comments in response to the proposed rule. The following is FDA's response to those comments.

1. One comment in regard to unscented menstrual pads (§ 884.5435) (21 CFR 884.5435)) stated that: (1) Interlabial pads do not contact vaginal tissue; (2) interlabial pads should not be grouped with reusable menstrual pads in the regulation because they have different risks; and (3) the term "intralabial" is not accurate and the correct nomenclature is "interlabial."

Both interlabial pads and reusable pads are types of unscented menstrual pads that meet the reserved criteria, and, therefore, must meet the premarket notification requirements. Other types of unscented menstrual pads are exempt. Although FDA agrees that interlabial pads do not contact vaginal tissue and that interlabial pads present different risks than reusable menstrual pads, both types of pads still meet the reserved criteria. FDA did not group these types of pads as reserved devices because they had the same risks but has determined both need to undergo premarket review based on their risks independently. FDA agrees that the term the term "interlabial" is more appropriate than the term "intralabial" and is using the term "interlabial" in the final rule and § 884.5435.

2. Another comment requested clarification of the scope of the classification and exemption of the blood bank centrifuge for in vitro diagnostic use (§ 864.9275 (21 CFR 864.9275)). More specifically, the comment asked whether centrifuges used to separate whole blood into its component parts for eventual transfusion to patients are exempt from premarket notification.

Section 864.9275 applies to the small tabletop centrifuges used to spin down test tubes of blood samples used in immunohematology tests. This classification does not include a centrifuge used to separate or prepare blood components for transfusion, which is classified in class II as an autotransfusion apparatus (21 CFR 868.5830) and is subject to premarket notification requirements.

3. One comment requested clarification about how the "Limitations to exemption" apply to a device labeled for general use, such as 21 CFR 862.2300 *Colorimeter, photometer, or spectrophotometer for clinical use* or 21 CFR 862.2560 *Fluorometer for clinical*

use. Section 862.9(c) states the exemption from 510(k) of the act does not apply if the device is intended, "for measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy."

The "Limitations to exemption" refer to the device, as labeled. If the device has been labeled as a general purpose device, and was exempt, and it is now to be labeled for a specific indication, such as cytomegalovirus, a new 510(k) must be submitted and cleared before that specific indication can be marketed.

4. One comment regarding the "Limitations to exemption" objected to the revocation of the premarket notification exemption for the cardiopulmonary bypass accessory equipment involving an electrical connection to the patient prior to up-classifying them into class II in order to comply with the performance standard for cables and leads. The comment stated that many of the cardiopulmonary bypass devices did not involve a cable or lead.

FDA has reviewed the devices that fall under this regulation and agrees that many of the devices do not involve electrical connections to the patient. On August 9, 1999 (64 FR 43114), FDA published a proposed rule to reclassify three devices into class II in order to make them subject to the performance standard for electrode lead wires and patient cables. These three devices are: (1) Cardiopulmonary bypass accessory equipment that involves an electrical connection to the patient, (2) the goniometer device, and (3) the electrode cable. Under this proposal, cardiopulmonary bypass accessory equipment that does not involve an electrical connection to the patient would remain in class I and would be exempt from the premarket notification requirements. Because FDA believes that compliance with the performance standard for electrode lead wires and patient cables would provide adequate assurance of the safety and effectiveness of these devices, the proposal provides that these devices would be exempt from the premarket notification requirements.

Elsewhere in this issue of the **Federal Register**, FDA is announcing that it is withdrawing the proposed rules to revoke the exemptions from premarket notification for cardiopulmonary bypass accessory equipment and the electrode cable. Under existing 21 CFR 870.4200 (cardiopulmonary bypass accessory

equipment) and 21 CFR 890.1175 (electrode cable), these devices are exempt from the premarket notification requirements. These exemptions will remain in effect. FDA expects to finalize the August 9, 1999, proposed rule to make these devices class II shortly after the comment period ends on November 8, 1999. If the rule is finalized, the devices will be exempt from the premarket notification requirements and all such devices will be subject to the performance standard for electrode lead wires and patient cables, when the second phase of that rule becomes effective on May 9, 2000. FDA believes that there is no reason to make these devices subject to premarket notification requirements for the short period of time between the revocation of the exemption from premarket notification requirements, as proposed in the November 12, 1998, **Federal Register**, and the reclassification and exemption from premarket notification requirements of these devices, as proposed in the August 9, 1999, **Federal Register**.

The goniometer device is not a subject of this rule and premarket notification is still required for these devices under existing 21 CFR 888.1500, until the August 9, 1999, rule is finalized.

5. FDA, on its own initiative, is adding all versions of the keratoscope (21 CFR 886.1350) to the list of devices exempt from premarket notification requirements. Previously, only keratoscopes that did not include computer software were exempt from premarket notification. In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA listed a keratoscope with computer software, as a device that it believed fell under the exemption criteria in section 510(l) of the act. The proposed rule, however, did not include the keratoscope with computer software under those devices FDA proposed to codify as exempt. Subsequent to the issuance of the proposed rule, FDA received an inquiry concerning the exemption status of this device. Upon consideration, FDA does not believe that the keratoscope with computer software is intended for a use that is of substantial importance in preventing impairment of human health or that it presents a potential unreasonable risk of illness or injury and therefore it is exempt from the premarket notification requirements.

6. FDA, on its own initiative, has made some minor changes in the sections of each classification, which describe the limitations to exemptions from section 510(k) of the act. In these sections, FDA lists certain intended uses or changes that will preclude a device

from falling within an exemption that is otherwise applicable to a generic class of devices.

In the final rule, FDA made some nonsubstantive changes in the introductory paragraph that clarify FDA's reasons for the types of limitations listed. In proposed sections of each classification regulation, FDA explained that it listed the limitations because those types of changes were unforeseeable, and, therefore could significantly affect safety and effectiveness. The final rule clarifies that FDA also listed certain types of limitations because any misdiagnosis using devices for the listed intended uses may be associated with high morbidity or mortality.

In addition, FDA has made minor changes in describing two of the intended uses of in vitro devices that would require a premarket notification. Proposed limitations in paragraph (c)(2) stated that premarket notifications must be submitted when a device is an in vitro device that is intended for use in "screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism." (Emphasis added.) The proposed rule may have been interpreted to require premarket notification for only devices that were used in screening or diagnosis of both familial and acquired genetic disorders.

FDA intended that devices used in connection with either familial or acquired genetic disorders be subject to premarket notification requirements because misdiagnosis of either of these disorders would be associated with high morbidity or mortality. Accordingly,

FDA has amended the final rule in each limitation section of each classification regulation to state that premarket notifications must be submitted when a device is an in vitro device that is intended for use in "screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism." (Emphasis added.)

Similarly, FDA stated in the proposed limitation in paragraph (c)(7) that it would require premarket notification for in vitro devices intended for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative * * *." The proposed rule could be interpreted to require premarket notification unless the device were intended for detection of both IgG and IgG assays. FDA is amending the final rule in the limitation in paragraph (c)(7) by replacing the word "and" with "or" to indicate that if an exempt in vitro device is intended to detect antibodies to either IgG or IgG assays, the device will remain exempt.

7. FDA, on its own initiative, has added language clarifying the description of exempted devices in § 880.5090 *Liquid bandage* (21 CFR 880.5090), § 886.4070 *Powered corneal burr* (21 CFR 886.4070), and § 886.4750 *Ophthalmic eye shield* (21 CFR 886.4750). The proposed classification descriptions state that the devices were exempt from premarket notification requirements when used for certain intended uses. FDA has added language to clarify that the exemption applies only when the device is used

exclusively for the intended uses stated in the classification descriptions.

For example, proposed § 880.5090 *Liquid bandage* stated: "When used as a skin protectant, the device is exempt from premarket notification procedures." FDA amended final § 880.5090 by adding the word "only" to the text to clarify that if the device were intended for a use in addition to protecting skin, it would not qualify for the exemption. Accordingly, final § 880.5090 states: "When used *only* as a skin protectant, the device is exempt from premarket notification procedures." Similarly, FDA has amended final §§ 886.4070 *Powered corneal burr* and 886.4750 *Ophthalmic eye shield* by adding the word "only" to clarify the exemption does not apply when the device is used for intended uses not specifically stated in the regulation.

8. Also, on its own initiative, FDA is revising the description of the exempted device, rubber dam, in 21 CFR 872.6300(a) to clarify that this device does not include a rubber dam, which is intended for prevention of sexually transmitted diseases during oral sex. Such a device is classified as a condom in 21 CFR 884.5300.

IV. Designation of Devices

The following devices are devices that FDA believes meet the reserved criteria in section 206 of FDAMA and, therefore, FDA is codifying the determination that they remain subject to premarket notification under new section 510(l) of the act:

TABLE 1—DESIGNATIONS OF RESERVED CLASS I DEVICES

21 CFR Section	Name of Device
862.1065	Ammonia test system
862.1113	Bilirubin (total and unbound) in the neonate test system
862.1310	Galactose test system
862.1410	Iron (non-heme) test system
862.1415	Iron-binding capacity test system
862.1495	Magnesium test system
862.1580	Phosphorous (inorganic) test system
862.1660	Quality control material (assayed and unassayed) ¹
862.1680	Testosterone test system
862.1730	Free tyrosine test system
862.1775	Uric acid test system
862.3050	Breath-alcohol test system
862.3110	Antimony test system
862.3120	Arsenic test system
862.3220	Carbon monoxide test system
862.3240	Cholinesterase test system
862.3280	Clinical toxicology control material (assayed and unassayed) ¹
862.3600	Mercury test system
862.3750	Quinine test system
862.3850	Sulfonamide test system
864.7040	Adenosine triphosphate release assay
864.8950	Russell viper venom reagent
864.9050	Blood bank supplies
864.9125	Vacuum-assisted blood collection system ²
864.9195	Blood mixing devices and blood weighing devices ²

TABLE 1—DESIGNATIONS OF RESERVED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
866.2390	Transport culture medium
866.2560	Microbial growth monitor ³
866.2850	Automated zone reader
866.2900	Microbiological specimen collection and transport device
866.3110	Campylobacter fetus serological reagents
866.3120	Chlamydia serological reagents
866.3235	Epstein-Barr virus serological reagents
866.3370	Mycobacterium tuberculosis immunofluorescent reagents
866.3870	Trypanosoma spp. serological reagents
872.3700	Dental mercury
872.4200	Dental handpiece and accessories
872.6250	Dental chair and accessories ⁴
872.6640	Dental operative unit and accessories ⁵
872.6710	Boiling water sterilizer
876.5160	Urological clamps for males ⁶
878.4460	Surgeon's glove
880.5090	Liquid bandage ⁷
880.5680	Pediatric position holder
880.6250	Patient examination glove
880.6375	Patient lubricant
880.6760	Protective restraint
882.1030	Ataxiagraph
882.1420	Electroencephalogram (EEG) signal spectrum analyzer
882.4060	Ventricular cannula ⁸
882.4545	Shunt system implantation instrument ⁹
884.2980(a)	Telethermographic system ¹⁰
884.2982(a)	Liquid crystal thermographic system ¹¹
884.5435	Unscented menstrual pads (interlabial pads and reusable menstrual pads)
886.4070	Powered corneal burr ¹²
886.4300	Intraocular lens guide ¹³
886.4370	Keratome
886.4750	Ophthalmic eye shield (when made of other than plastic or aluminum)
888.1500	Goniometer
890.3850	Mechanical wheelchair
890.5710	Hot or cold disposable pack ¹⁴
892.1100	Scintillation (gamma) camera
892.1110	Positron camera

¹ Meets reserved criteria for all assayed and only the unassayed when used for donor screening.

² Meets reserved criteria when automated.

³ Meets reserved criteria when automated blood culturing systems.

⁴ Meets reserved criteria when dental chair with the operative unit.

⁵ Meets reserved criteria when it is not an accessory to the unit.

⁶ Meets reserved criteria when devices are for internal use or are used for females.

⁷ Meets reserved criteria for uses other than as a skin protectant.

⁸ Meets reserved criteria if not made of surgical grade stainless steel.

⁹ Meets reserved criteria if not made of surgical grade stainless steel.

¹⁰ Meets reserved criteria if an adjunct use system.

¹¹ Meets reserved criteria if nonelectrically powered or AC-powered adjunctive system.

¹² Meets reserved criteria if for use other than for removing rust rings.

¹³ Meets reserved criteria if used as folders or injectors for soft or foldable intraocular lenses (IOL's).

¹⁴ Meets reserved criteria if indicated for use on infants.

FDA is amending the regulations to designate the following devices as exempt from premarket notification because FDA believes that they do not meet the reserved criteria under new section 510(l) of the act:

TABLE 2—DESIGNATIONS OF EXEMPTED CLASS I DEVICES

21 CFR Section	Name of Device
862.1030	Alanine amino transferase (ALT/SGPT) test system
862.1040	Aldolase test system
862.1060	Delta-aminolevulinic acid test system
862.1075	Androstenedione test system
862.1080	Androsterone test system
862.1095	Ascorbic acid test system
862.1115	Urinary bilirubin and its conjugates (nonquantitative) test system
862.1130	Blood volume test system
862.1135	C-peptides of proinsulin test system
862.1165	Catecholamines (total) test system
862.1175	Cholesterol (total) test
862.1180	Chymotrypsin test system
862.1185	Compound S (11-deoxycortisol) test system
862.1195	Corticoids test system

TABLE 2—DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
862.1200	Corticosterone test system
862.1240	Cystine test system
862.1245	Dehydroepiandrosterone (free and sulfate) test system
862.1250	Desoxycorticosterone test system
862.1260	Estradiol test system
862.1265	Estriol test system
862.1270	Estrogens (total, in pregnancy) test system
862.1275	Estrogens (total, nonpregnancy) test system
862.1280	Estrone test system
862.1285	Etiocholanolone test system
862.1300	Follicle-stimulating hormone test system
862.1325	Gastrin test system
862.1330	Globulin test system
862.1335	Glucagon test system
862.1360	Gamma-glutamyl transpeptidase and isoenzymes test system
862.1370	Human growth hormone test system
862.1375	Histidine test system
862.1385	17-Hydroxycorticosteroids (17-ketogenic steroids) test system
862.1390	5-Hydroxyindole acetic acid/serotonin test system
862.1395	17-Hydroxyprogesterone test system
862.1400	Hydroxyproline test system
862.1405	Immunoreactive insulin test system
862.1430	17-Ketosteroids test system
862.1435	Ketones (nonquantitative) test system
862.1450	Lactic acid test system
862.1460	Leucine aminopeptidase test system
862.1465	Lipase test system
862.1475	Lipoprotein test system
862.1485	Luteinizing hormone test system
862.1500	Malic dehydrogenase test system
862.1505	Mucopolysaccharides (nonquantitative) test system
862.1510	Nitrite (nonquantitative) test system
862.1520	5'-Nucleotidase test system
862.1530	Plasma oncometry test system
862.1535	Ornithine carbamyl transferase test system
862.1540	Osmolality test system
862.1542	Oxalate test system
862.1550	Urinary pH (nonquantitative) test system
862.1560	Urinary phenylketones (nonquantitative) test system
862.1570	Phosphohexose isomerase test system
862.1590	Porphobilinogen test system
862.1595	Porphyrins test system
862.1605	Pregnanediol test system
862.1610	Pregnanetriol test system
862.1615	Pregnenolone test system
862.1620	Progesterone test system
862.1625	Prolactin (lactogen) test system
862.1630	Protein (fractionation) test system
862.1645	Urinary protein or albumin (nonquantitative) test system
862.1650	Pyruvate kinase test system
862.1655	Pyruvic acid test system
862.1660	Quality control material (assayed and unassayed) ¹
862.1705	Triglyceride test system
862.1725	Trypsin test system
862.1780	Urinary calculi (stones) test system
862.1785	Urinary urobilinogen (nonquantitative) test system
862.1790	Uroporphyrin test system
862.1795	Vanilmandelic acid test system
862.1805	Vitamin A test system
862.1820	Xylose test system
862.2140	Centrifugal chemistry analyzer for clinical use
862.2150	Continuous flow sequential multiple chemistry analyzer for clinical use
862.2160	Discrete photometric chemistry analyzer for clinical use
862.2170	Micro chemistry analyzer for clinical use
862.2250	Gas liquid chromatography system for clinical use
862.2260	High pressure liquid chromatography system for clinical use
862.2270	Thin-layer chromatography system for clinical use
862.2300	Colorimeter, photometer, or spectrophotometer for clinical use
862.2400	Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use
862.2500	Enzyme analyzer for clinical use
862.2540	Flame emission photometer for clinical use

TABLE 2—DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
862.2560	Fluorometer for clinical use
862.2680	Microtiter for clinical use
862.2700	Nephelometer for clinical use
862.2730	Osmometer for clinical use
862.2750	Pipetting and diluting system for clinical use
862.2850	Atomic absorption spectrophotometer for clinical use
862.2860	Mass spectrometer for clinical use
862.2900	Automated urinalysis system
862.3280	Clinical toxicology control material (assayed and unassayed) ¹
864.2280	Cultured animal and human cells
864.3250	Specimen transport and storage container
864.5240	Automated blood cell diluting apparatus
864.6150	Capillary blood collection tube
864.9125	Vacuum-assisted blood collection system ²
864.9185	Blood grouping view box
864.9195	Blood mixing devices and blood weighing devices ²
864.9225	Cell-freezing apparatus and reagents for in vitro diagnostic use
864.9275	Blood bank centrifuge for in vitro diagnostic use
864.9320	Copper sulphate solution for specific gravity determinations
864.9750	Heat-sealing device
866.2660	Microorganism differentiation and identification device
866.3040	Aspergillus spp. serological reagents
866.3140	Corynebacterium spp. serological reagents
866.3145	Coxsackievirus serological reagents
866.3200	Echinococcus spp. serological reagents
866.3240	Equine encephalomyelitis virus serological reagents
866.3355	Listeria spp. serological reagents
866.3360	Lymphocytic choriomeningitis virus serological reagents
866.3375	Mycoplasma spp. serological reagents
866.3380	Mumps virus serological reagents
866.3405	Poliovirus serological reagents
866.3480	Respiratory syncytial virus serological reagents
866.3500	Rickettsia serological reagents
866.3600	Schistosoma spp. serological reagents
866.3680	Sporothrix schenckii serological reagents
866.3740	Streptococcus spp. serological reagents
866.3850	Trichinella spiralis serological reagents
866.5060	Prealbumin immunological test system
866.5065	Human allotypic marker immunological test system
866.5160	Beta-globulin immunological test system
866.5200	Carbonic anhydrase B and C immunological test
866.5330	Factor XIII, A, S, immunological test system ³
866.5400	Alpha-globulin immunological test system
866.5420	Alpha-1-glycoproteins immunological test system
866.5425	Alpha-2-glycoproteins immunological test system
866.5430	Beta-2-glycoprotein I immunological test system
866.5440	Beta-2-glycoprotein III immunological test system
866.5560	Lactic dehydrogenase immunological test system
866.5570	Lactoferrin immunological test system
866.5590	Lipoprotein X immunological test system
866.5715	Plasminogen immunological test system
866.5735	Prothrombin immunological test system ⁴
866.5765	Retinol-binding protein immunological test system
866.5890	Inter-alpha trypsin inhibitor immunological test system
868.1910	Esophageal stethoscope
868.5620	Breathing mouthpiece
868.5640	Medicinal nonventilatory nebulizer (atomizer)
868.5675	Rebreathing device
868.5700	Nonpowered oxygen tent
868.6810	Tracheobronchial suction catheter
872.3275(a)(1)	Dental cement (zinc oxide-eugenol)
872.3400(b)(1)	Karaya and sodium borate with or without acacia denture adhesive (less than 12 per cent sodium borate by weight)
872.3540(b)(1)	OTC denture cushion or pad ⁵
872.6300	Rubber dam and accessories ⁶
872.6390	Dental floss
874.1070	Short increment sensitivity index (SISI) adapter
874.1100	Earphone cushion for audiometric testing
874.1500	Gustometer
874.1800	Air or water caloric stimulator
874.1925	Toynbee diagnostic tube
874.3300(b)(1)	Hearing aid ⁷

TABLE 2—DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
874.3540	Prosthesis modification instrument for ossicular replacement surgery
874.4100	Epistaxis balloon
874.4420	Ear, nose, and throat manual surgical instrument
874.5300	Ear, nose, and throat examination and treatment unit
874.5550	Powered nasal irrigator
874.5840	Antistammering device
876.5160	Urological clamp for males ⁸
876.5210	Enema kit
876.5250(b)(2)	Urine collector and accessories ⁹
876.5980(b)(2)	Gastrointestinal tube and accessories ¹⁰
878.3250	External facial fracture fixation appliance
878.3910	Noninflatable extremity splint
878.3925	Plastic surgery kit and accessories
878.4040	Surgical apparel ¹¹
878.4100	Organ bag
878.4200	Introduction/drainage catheter and accessories
878.4320	Removable skin clip
878.4680	Nonpowered, single patient, portable suction apparatus
878.4760	Removable skin staple
878.4820	Surgical instrument motors and accessories/attachments
878.4960	Operating tables and accessories and operating chairs and accessories
880.5090	Liquid bandage ¹²
880.5270	Neonatal eye pad
880.5420	Pressure infusor for an I.V. bag
882.1200	Two-point discriminator
882.1500	Esthesiometer
882.1750	Pinwheel
882.4060	Ventricular cannula ¹³
882.4545	Shunt system implantation instrument ¹⁴
882.4650	Neurosurgical suture needle
882.4750	Skull punch ¹⁵
884.1040	Viscometer for cervical mucus
886.1350	Keratoscope
886.1780	Retinoscope ¹⁶
886.1940	Tonometer sterilizer
886.4070	Powered corneal burr ¹⁷
886.4300	Intraocular lens guide ¹⁸
886.5850	Sunglasses (nonprescription)
890.5180	Manual patient rotation bed
890.5710	Hot or cold disposable pack ¹⁹
892.1300	Nuclear rectilinear scanner
892.1320	Nuclear uptake probe
892.1330	Nuclear whole body scanner
892.1350	Nuclear scanning bed
892.1410	Nuclear electrocardiograph synchronizer
892.1890	Radiographic film illuminator
892.1910	Radiographic grid
892.1960	Radiographic intensifying screen
892.1970	Radiographic ECG/respirator, synchronizer
892.2010	Medical image storage device
892.2020	Medical image communications device
892.5650	Manual radionuclide applicator system
892.6500	Personnel protective shield

¹ Exemption is limited to unassayed material, except when used in conjunction with donor screening tests.

² Exemption is limited to manual devices.

³ This exemption should not be confused with 21 CFR 864.7290.

⁴ This exemption should not be confused with 21 CFR 864.5425 or 864.7750.

⁵ This exemption does not apply to class III OTC denture cushion as described in 21 CFR 872.3540(b)(2).

⁶ Exemption does not include rubber dam intended for use in preventing transmission of sexually transmitted diseases through oral sex. Those devices are classified as condoms in 21 CFR 884.5300.

⁷ Exemption is limited to air-conduction hearing aids.

⁸ Exemption does not include devices for internal use or devices used for females.

⁹ Exemption does not include class II devices for a urine collector and accessories intended to be connected to an indwelling catheter as described in 21 CFR 876.5250(b)(1).

¹⁰ Exemption is limited to dissolvable nasogastric feed tube guide for the nasogastric tube in 21 CFR 876.5980(b)(2). Exemption does not include class II devices as described in § 876.5980(b)(1).

¹¹ Exemption is limited to class I category other than surgical gowns and surgical masks.

¹² Exemption is limited to uses as a skin protectant.

¹³ Exemption is limited to devices made of surgical grade stainless steel.

¹⁴ Exemption is limited to devices made of surgical grade stainless steel.

¹⁵ Exemption should not be confused with 21 CFR 882.4305.

¹⁶ Exemption is limited to class I battery-powered devices.

¹⁷ Exemption is limited to rust ring removal.

¹⁸ Exemption does not apply if used as folders and injectors for soft or foldable IOL's.

¹⁹ Exemption does not apply if intended for use on infants

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages distributive impacts and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires, if a rule has a significant impact on a substantial number of small entities, agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In most cases, the rule would reduce a regulatory burden by exempting manufacturers of devices subject to the rule from the requirements of premarket notification. FDA is requiring premarket notification for three devices that were previously exempt from premarket notification. These devices are as follows:

A. Ophthalmic Eye Shield (When Made of Other Than Plastic or Aluminum) (§ 866.4750).

There are six manufacturers of ophthalmic eye shields other than those made of plastic or aluminum registered with FDA. FDA anticipates that any premarket notifications that are necessary for these devices would be simple because FDA would be primarily interested in information about biocompatibility. FDA estimates that preparation of such a premarket

notification would cost no more than \$5,000 and that there would be no more than 6 premarket notifications per year for a total annual cost of \$30,000.

Six manufacturers are not a substantial number of entities. Based on data compiled by the Small Business Administration, optical goods firms with fewer than 500 employees have annual receipts of \$1,524,000. Therefore, the cost per firm of complying with this regulation (\$5,000) does not have a significant impact on these small entities.

B. Quinine Test System (§ 862.3750) and Sulfonamide Test System (§ 862.3850).

At this time, there are no firms registered for manufacture of these devices.

In light of the previous discussion, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of \$100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any one year.

VII. Paperwork Reduction Act of 1995

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

List of Subjects

21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 884, 888, and 890

Medical devices.

21 CFR Part 864

Biologics, Blood, Laboratories, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892 are amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.9 is revised to read as follows:

§ 862.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

3. Section 862.1030 is amended by revising paragraph (b) to read as follows:

§ 862.1030 Alanine amino transferase (ALT/SGPT) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

4. Section 862.1040 is amended by revising paragraph (b) to read as follows:

§ 862.1040 Aldolase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

5. Section 862.1060 is amended by revising paragraph (b) to read as follows:

§ 862.1060 Delta-aminolevulinic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

6. Section 862.1075 is amended by revising paragraph (b) to read as follows:

§ 862.1075 Androstenedione test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

7. Section 862.1080 is amended by revising paragraph (b) to read as follows:

§ 862.1080 Androsterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

8. Section 862.1095 is amended by revising paragraph (b) to read as follows:

§ 862.1095 Ascorbic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

9. Section 862.1115 is amended by revising paragraph (b) to read as follows:

§ 862.1115 Urinary bilirubin and its conjugates (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

10. Section 862.1130 is amended by revising paragraph (b) to read as follows:

§ 862.1130 Blood volume test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

11. Section 862.1135 is amended by revising paragraph (b) to read as follows:

§ 862.1135 C-peptides of proinsulin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

12. Section 862.1165 is amended by revising paragraph (b) to read follows:

§ 862.1165 Catecholamines (total) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

13. Section 862.1175 is amended by revising paragraph (b) to read as follows:

§ 862.1175 Cholesterol (total) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

14. Section 862.1180 is amended by revising paragraph (b) to read as follows:

§ 862.1180 Chymotrypsin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

15. Section 862.1185 is amended by revising paragraph (b) to read as follows:

§ 862.1185 Compound S (11-deoxycortisol) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

16. Section 862.1195 is amended by revising paragraph (b) to read as follows:

§ 862.1195 Corticoids test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

17. Section 862.1200 is amended by revising paragraph (b) to read as follows:

§ 862.1200 Corticosterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

18. Section 862.1240 is amended by revising paragraph (b) to read as follows:

§ 862.1240 Cystine test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

19. Section 862.1245 is amended by revising paragraph (b) to read as follows:

§ 862.1245 Dehydroepiandrosterone (free and sulfate) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

20. Section 862.1250 is amended by revising paragraph (b) to read as follows:

§ 862.1250 Desoxycorticosterone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

21. Section 862.1260 is amended by revising paragraph (b) to read as follows:

§ 862.1260 Estradiol test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

22. Section 862.1265 is amended by revising paragraph (b) to read as follows:

§ 862.1265 Estriol test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

23. Section 862.1270 is amended by revising paragraph (b) to read as follows:

§ 862.1270 Estrogens (total, in pregnancy) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

24. Section 862.1275 is amended by revising paragraph (b) to read as follows:

§ 862.1275 Estrogens (total, nonpregnancy) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

25. Section 862.1280 is amended by revising paragraph (b) to read as follows:

§ 862.1280 Estrone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

26. Section 862.1285 is amended by revising paragraph (b) to read as follows:

§ 862.1285 Etiocholanolone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

27. Section 862.1300 is amended by revising paragraph (b) to read as follows:

§ 862.1300 Follicle-stimulating hormone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

28. Section 862.1325 is amended by revising paragraph (b) to read as follows:

§ 862.1325 Gastrin test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

29. Section 862.1330 is amended by revising paragraph (b) to read as follows:

§ 862.1330 Globulin test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

30. Section 862.1335 is amended by revising paragraph (b) to read as follows:

§ 862.1335 Glucagon test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

31. Section 862.1360 is amended by revising paragraph (b) to read as follows:

§ 862.1360 Gamma-glutamyl transpeptidase and isoenzymes test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

32. Section 862.1370 is amended by revising paragraph (b) to read as follows:

§ 862.1370 Human growth hormone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

33. Section 862.1375 is amended by revising paragraph (b) to read as follows:

§ 862.1375 Histidine test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

34. Section 862.1385 is amended by revising paragraph (b) to read as follows:

§ 862.1385 17-Hydroxycorticosteroids (17-ketogenic steroids) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

35. Section 862.1390 is amended by revising paragraph (b) to read as follows:

§ 862.1390 5-Hydroxyindole acetic acid/serotonin test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

36. Section 862.1395 is amended by revising paragraph (b) to read as follows:

§ 862.1395 17-Hydroxyprogesterone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

37. Section 862.1400 is amended by revising paragraph (b) to read as follows:

§ 862.1400 Hydroxyproline test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

38. Section 862.1405 is amended by revising paragraph (b) to read as follows:

§ 862.1405 Immunoreactive insulin test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

39. Section 862.1430 is amended by revising paragraph (b) to read as follows:

§ 862.1430 17-Ketosteroids test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

40. Section 862.1435 is amended by revising paragraph (b) to read as follows:

§ 862.1435 Ketones (nonquantitative) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

41. Section 862.1450 is amended by revising paragraph (b) to read as follows:

§ 862.1450 Lactic acid test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

42. Section 862.1460 is amended by revising paragraph (b) to read as follows:

§ 862.1460 Leucine aminopeptidase test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

43. Section 862.1465 is amended by revising paragraph (b) to read as follows:

§ 862.1465 Lipase test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

44. Section 862.1475 is amended by revising paragraph (b) to read as follows:

§ 862.1475 Lipoprotein test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

45. Section 862.1485 is amended by revising paragraph (b) to read as follows:

§ 862.1485 Luteinizing hormone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

46. Section 862.1500 is amended by revising paragraph (b) to read as follows:

§ 862.1500 Malic dehydrogenase test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

47. Section 862.1505 is amended by revising paragraph (b) to read as follows:

§ 862.1505 Mucopolysaccharides (nonquantitative) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

48. Section 862.1510 is amended by revising paragraph (b) to read as follows:

§ 862.1510 Nitrite (nonquantitative) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

49. Section 862.1520 is amended by revising paragraph (b) to read as follows:

§ 862.1520 5'-Nucleotidase test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

50. Section 862.1530 is amended by revising paragraph (b) to read as follows:

§ 862.1530 Plasma oncometry test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

51. Section 862.1535 is amended by revising paragraph (b) to read as follows:

§ 862.1535 Ornithine carbamyl transferase test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

52. Section 862.1540 is amended by revising paragraph (b) to read as follows:

§ 862.1540 Osmolality test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

53. Section 862.1542 is amended by revising paragraph (b) to read as follows:

§ 862.1542 Oxalate test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

54. Section 862.1550 is amended by revising paragraph (b) to read as follows:

§ 862.1550 Urinary pH (nonquantitative) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

55. Section 862.1560 is amended by revising paragraph (b) to read as follows:

§ 862.1560 Urinary phenylketones (nonquantitative) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

56. Section 862.1570 is amended by revising paragraph (b) to read as follows:

§ 862.1570 Phosphohexose isomerase test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

57. Section 862.1590 is amended by revising paragraph (b) to read as follows:

§ 862.1590 Porphobilinogen test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

58. Section 862.1595 is amended by revising paragraph (b) to read as follows:

§ 862.1595 Porphyrins test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

59. Section 862.1605 is amended by revising paragraph (b) to read as follows:

§ 862.1605 Pregnanediol test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

60. Section 862.1610 is amended by revising paragraph (b) to read as follows:

§ 862.1610 Pregnanetriol test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

61. Section 862.1615 is amended by revising paragraph (b) to read as follows:

§ 862.1615 Pregnenolone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

62. Section 862.1620 is amended by revising paragraph (b) to read as follows:

§ 862.1620 Progesterone test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

63. Section 862.1625 is amended by revising paragraph (b) to read as follows:

§ 862.1625 Prolactin (lactogen) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

64. Section 862.1630 is amended by revising paragraph (b) to read as follows:

§ 862.1630 Protein (fractionation) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

65. Section 862.1645 is amended by revising paragraph (b) to read as follows:

§ 862.1645 Urinary protein or albumin (nonquantitative) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

66. Section 862.1650 is amended by revising paragraph (b) to read as follows:

§ 862.1650 Pyruvate kinase test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

67. Section 862.1655 is amended by revising paragraph (b) to read as follows:

§ 862.1655 Pyruvic acid test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

68. Section 862.1660 is amended by revising paragraph (b) to read as follows:

§ 862.1660 Quality control material (assayed and unassayed).

* * * * *

(b) *Classification*. Class I (general controls). Except when used in donor screening tests, unassayed material is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

69. Section 862.1705 is amended by revising paragraph (b) to read as follows:

§ 862.1705 Triglyceride test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

70. Section 862.1725 is amended by revising paragraph (b) to read as follows:

§ 862.1725 Trypsin test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

71. Section 862.1780 is amended by revising paragraph (b) to read as follows:

§ 862.1780 Urinary calculi (stones) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

72. Section 862.1785 is amended by revising paragraph (b) to read as follows:

§ 862.1785 Urinary urobilinogen (nonquantitative) test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

73. Section 862.1790 is amended by revising paragraph (b) to read as follows:

§ 862.1790 Uroporphyrin test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

74. Section 862.1795 is amended by revising paragraph (b) to read as follows:

§ 862.1795 Vanilmandelic acid test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

75. Section 862.1805 is amended by revising paragraph (b) to read as follows:

§ 862.1805 Vitamin A test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

76. Section 862.1820 is amended by revising paragraph (b) to read as follows:

§ 862.1820 Xylose test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

77. Section 862.2140 is amended by revising paragraph (b) to read as follows:

§ 862.2140 Centrifugal chemistry analyzer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

78. Section 862.2150 is amended by revising paragraph (b) to read as follows:

§ 862.2150 Continuous flow sequential multiple chemistry analyzer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

79. Section 862.2160 is amended by revising paragraph (b) to read as follows:

§ 862.2160 Discrete photometric chemistry analyzer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

80. Section 862.2170 is amended by revising paragraph (b) to read as follows:

§ 862.2170 Micro chemistry analyzer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

81. Section 862.2250 is amended by revising paragraph (b) to read as follows:

§ 862.2250 Gas liquid chromatography system for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

82. Section 862.2260 is amended by revising paragraph (b) to read as follows:

§ 862.2260 High pressure liquid chromatography system for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

83. Section 862.2270 is amended by revising paragraph (b) to read as follows:

§ 862.2270 Thin-layer chromatography system for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9. Particular components of TLC systems, i.e., the thin-layer chromatography apparatus, TLC atomizer, TLC developing tanks, and TLC ultraviolet light, are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

84. Section 862.2300 is amended by revising paragraph (b) to read as follows:

§ 862.2300 Colorimeter, photometer, or spectrophotometer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

85. Section 862.2400 is amended by revising paragraph (b) to read as follows:

§ 862.2400 Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

86. Section 862.2500 is amended by revising paragraph (b) to read as follows:

§ 862.2500 Enzyme analyzer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

87. Section 862.2540 is amended by revising paragraph (b) to read as follows:

§ 862.2540 Flame emission photometer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

88. Section 862.2560 is amended by revising paragraph (b) to read as follows:

§ 862.2560 Fluorometer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

89. Section 862.2680 is amended by revising paragraph (b) to read as follows:

§ 862.2680 Microtiter for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

90. Section 862.2700 is amended by revising paragraph (b) to read as follows:

§ 862.2700 Nephelometer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in

subpart E of part 807 of this chapter subject to § 862.9.

91. Section 862.2730 is amended by revising paragraph (b) to read as follows:

§ 862.2730 Osmometer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

92. Section 862.2750 is amended by revising paragraph (b) to read as follows:

§ 862.2750 Pipetting and diluting system for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

93. Section 862.2850 is amended by revising paragraph (b) to read as follows:

§ 862.2850 Atomic absorption spectrophotometer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

94. Section 862.2860 is amended by revising paragraph (b) to read as follows:

§ 862.2860 Mass spectrometer for clinical use.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

95. Section 862.2900 is amended by revising paragraph (b) to read as follows:

§ 862.2900 Automated urinalysis system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

96. Section 862.3280 is amended by revising paragraph (b) to read as follows:

§ 862.3280 Clinical toxicology control material.

* * * * *

(b) *Classification*. Class I (general controls). Except when used in donor screening, unassayed material is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

97. Section 862.3750 is amended by revising paragraph (b) to read as follows:

§ 862.3750 Quinine test system.

* * * * *

(b) *Classification.* Class I.

98. Section 862.3850 is amended by revising paragraph (b) to read as follows:

§ 862.3850 Sulfonamide test system.

* * * * *

(b) *Classification.* Class I.**PART 864—HEMATOLOGY AND PATHOLOGY DEVICES**

99. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

100. Section 864.9 is revised to read as follows:

§ 864.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic

diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

101. Section 864.2280 is amended by revising paragraph (b) to read as follows:

§ 864.2280 Cultured animal and human cells.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

102. Section 864.3250 is amended by revising paragraph (b) to read as follows:

§ 864.3250 Specimen transport and storage container.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

103. Section 864.5240 is amended by revising paragraph (b) to read as follows:

§ 864.5240 Automated blood cell diluting apparatus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in

subpart E of part 807 of this chapter subject to § 864.9.

104. Section 864.6150 is amended by revising paragraph (b) to read as follows:

§ 864.6150 Capillary blood collection tube.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

105. Section 864.9125 is amended by revising paragraph (b) to read as follows:

§ 864.9125 Vacuum-assisted blood collection system.

* * * * *

(b) *Classification.* Class I (general controls). The manual device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

106. Section 864.9185 is amended by revising paragraph (b) to read as follows:

§ 864.9185 Blood grouping view box.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

107. Section 864.9195 is amended by revising paragraph (b) to read as follows:

§ 864.9195 Blood mixing devices and blood weighing devices.

* * * * *

(b) *Classification.* Class I (general controls). The manual device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

108. Section 864.9225 is amended by revising paragraph (b) to read as follows:

§ 864.9225 Cell-freezing apparatus and reagents for in vitro diagnostic use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

109. Section 864.9275 is amended by revising paragraph (b) to read as follows:

§ 864.9275 Blood bank centrifuge for in vitro diagnostic use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

110. Section 864.9320 is amended by revising paragraph (b) to read as follows:

§ 864.9320 Copper sulfate solution for specific gravity determinations.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

111. Section 864.9750 is amended by revising paragraph (b) to read as follows:

§ 864.9750 Heat-sealing device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

112. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

113. Section 866.9 is revised to read as follows:

§ 866.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro

diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

114. Section 866.2660 is amended by revising paragraph (b) to read as follows:

§ 866.2660 Microorganism differentiation and identification device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

115. Section 866.3040 is amended by revising paragraph (b) to read as follows:

§ 866.3040 Aspergillus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

116. Section 866.3140 is amended by revising paragraph (b) to read as follows:

§ 866.3140 Corynebacterium spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

117. Section 866.3145 is amended by revising paragraph (b) to read as follows:

§ 866.3145 Coxsackievirus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

118. Section 866.3200 is amended by revising paragraph (b) to read as follows:

§ 866.3200 Echinococcus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

119. Section 866.3240 is amended by revising paragraph (b) to read as follows:

§ 866.3240 Equine encephalomyelitis virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

120. Section 866.3355 is amended by revising paragraph (b) to read as follows:

§ 866.3355 Listeria spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

121. Section 866.3360 is amended by revising paragraph (b) to read as follows:

§ 866.3360 Lymphocytic choriomeningitis virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

122. Section 866.3375 is amended by revising paragraph (b) to read as follows:

§ 866.3375 Mycoplasma spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

123. Section 866.3380 is amended by revising paragraph (b) to read as follows:

§ 866.3380 Mumps virus serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

124. Section 866.3405 is amended by revising paragraph (b) to read as follows:

§ 866.3405 Poliovirus serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

125. Section 866.3480 is amended by revising paragraph (b) to read as follows:

§ 866.3480 Respiratory syncytial virus serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

126. Section 866.3500 is amended by revising paragraph (b) to read as follows:

§ 866.3500 Rickettsia serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

127. Section 866.3600 is amended by revising paragraph (b) to read as follows:

§ 866.3600 Schistosoma spp. serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

128. Section 866.3680 is amended by revising paragraph (b) to read as follows:

§ 866.3680 Sporothrix schenckii serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

129. Section 866.3740 is amended by revising paragraph (b) to read as follows:

§ 866.3740 Streptococcus spp. serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

130. Section 866.3850 is amended by revising paragraph (b) to read as follows:

§ 866.3850 Trichinella spiralis serological reagents.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

131. Section 866.5060 is amended by revising paragraph (b) to read as follows:

§ 866.5060 Prealbumin immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

132. Section 866.5065 is amended by revising paragraph (b) to read as follows:

§ 866.5065 Human allotypic marker immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

133. Section 866.5160 is amended by revising paragraph (b) to read as follows:

§ 866.5160 Beta-globulin immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

134. Section 866.5200 is amended by revising paragraph (b) to read as follows:

§ 866.5200 Carbonic anhydrase B and C immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

135. Section 866.5330 is amended by revising paragraph (b) to read as follows:

§ 866.5330 Factor XIII, A, S, immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9. This exemption does not apply to factor deficiency tests

classified under § 864.7290 of this chapter.

136. Section 866.5400 is amended by revising paragraph (b) to read as follows:

§ 866.5400 Alpha-globulin immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

137. Section 866.5420 is amended by revising paragraph (b) to read as follows:

§ 866.5420 Alpha-1-glycoproteins immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

138. Section 866.5425 is amended by revising paragraph (b) to read as follows:

§ 866.5425 Alpha-2-glycoproteins immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

139. Section 866.5430 is amended by revising paragraph (b) to read as follows:

§ 866.5430 Beta-2-glycoprotein I immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

140. Section 866.5440 is amended by revising paragraph (b) to read as follows:

§ 866.5440 Beta-2-glycoprotein III immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

141. Section 866.5560 is amended by revising paragraph (b) to read as follows:

§ 866.5560 Lactic dehydrogenase immunological test system.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

142. Section 866.5570 is amended by revising paragraph (b) to read as follows:

§ 866.5570 Lactoferrin immunological test system.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

143. Section 866.5590 is amended by revising paragraph (b) to read as follows:

§ 866.5590 Lipoprotein X immunological test system.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

144. Section 866.5715 is amended by revising paragraph (b) to read as follows:

§ 866.5715 Plasminogen immunological test system.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

145. Section 866.5735 is amended by revising paragraph (b) to read as follows:

§ 866.5735 Prothrombin immunological test system.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9. This exemption does not apply to multipurpose systems for in vitro coagulation studies classified under § 864.5425 of this chapter or prothrombin time tests classified under § 864.7750 of this chapter.

146. Section 866.5765 is amended by revising paragraph (b) to read as follows:

§ 866.5765 Retinol-binding protein immunological test system.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

147. Section 866.5890 is amended by revising paragraph (b) to read as follows:

§ 866.5890 Inter-alpha trypsin inhibitor immunological test system.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

PART 868—ANESTHESIOLOGY DEVICES

148. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

149. Section 868.9 is revised to read as follows:

§ 868.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired

immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

150. Section 868.1910 is amended by revising paragraph (b) to read as follows:

§ 868.1910 Esophageal stethoscope.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

151. Section 868.5620 is amended by revising paragraph (b) to read as follows:

§ 868.5620 Breathing mouthpiece.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

152. Section 868.5640 is amended by revising paragraph (b) to read as follows:

§ 868.5640 Medicinal nonventilatory nebulizer (atomizer).

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

153. Section 868.5675 is amended by revising paragraph (b) to read as follows:

§ 868.5675 Rebreathing device.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

154. Section 868.5700 is amended by revising paragraph (b) to read as follows:

§ 868.5700 Nonpowered oxygen tent.

* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in

subpart E of part 807 of this chapter subject to § 868.9.

155. Section 868.6810 is amended by revising paragraph (b) to read as follows:

§ 868.6810 Tracheobronchial suction catheter.

* * * * *

(b) *Classification.* Class 1 (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

PART 870—CARDIOVASCULAR DEVICES

156. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

157. Section 870.9 is revised to read as follows:

§ 870.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

PART 872—DENTAL DEVICES

158. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

159. Section 872.9 is revised to read as follows:

§ 872.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

160. Section 872.3275 is amended by revising paragraph (a)(2) to read as follows:

§ 872.3275 Dental cement.

(a) * * *

(2) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

* * * * *

161. Section 872.3400 is amended by revising paragraph (b)(1) to read as follows:

§ 872.3400 Karaya and sodium borate with or without acacia denture adhesive.

* * * * *

(b) *Classification.* (1) Class I (general controls) if the device contains less than 12 percent by weight of sodium borate. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

* * * * *

162. Section 872.3540 is amended by revising paragraph (b)(1) to read as follows:

§ 872.3540 OTC denture cushion or pad.

* * * * *

(b) *Classification.* (1) Class I if the device is made of wax-impregnated cotton cloth that the patient applies to the base or inner surface of a denture before inserting the denture into the mouth. The device is intended to be discarded following 1 day's use. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

* * * * *

163. Section 872.6300 is revised to read as follows:

§ 872.6300 Rubber dam and accessories.

(a) *Identification.* A rubber dam and accessories is a device composed of a thin sheet of latex with a hole in the center intended to isolate a tooth from fluids in the mouth during dental procedures, such as filling a cavity preparation. The device is stretched around a tooth by inserting a tooth through a hole in the center. The device includes the rubber dam, rubber dam clamp, rubber dam frame, and forceps for a rubber dam clamp. This classification does not include devices intended for use in preventing transmission of sexually transmitted diseases through oral sex; those devices are classified as condoms in § 884.5300 of this chapter.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

164. Section 872.6390 is amended by revising paragraph (b) to read as follows:

§ 872.6390 Dental floss.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

165. Section 872.6640 is amended by revising paragraph (b) to read as follows:

§ 872.6640 Dental operative unit and accessories.

* * * * *

(b) *Classification.* Class I (general controls). Except for dental operative unit, accessories are exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

PART 874—EAR, NOSE, AND THROAT DEVICES

166. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

167. Section 874.9 is revised to read as follows:

§ 874.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device;

e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

168. Section 874.1070 is amended by revising paragraph (b) to read as follows:

§ 874.1070 Short increment sensitivity index (SISI) adapter.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

169. Section 874.1100 is amended by revising paragraph (b) to read as follows:

§ 874.1100 Earphone cushion for audiometric testing.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

170. Section 874.1500 is amended by revising paragraph (b) to read as follows:

§ 874.1500 Gustometer.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

171. Section 874.1800 is amended by revising paragraph (b) to read as follows:

§ 874.1800 Air or water caloric stimulator.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

172. Section 874.1925 is amended by revising paragraph (b) to read as follows:

§ 874.1925 Toynbee diagnostic tube.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

173. Section 874.3300 is amended by revising paragraph (b) to read as follows:

§ 874.3300 Hearing Aid.

* * * * *

(b) *Classification*. (1) Class I (general controls) for the air-conduction hearing aid. The air-conduction hearing aid is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

(2) Class II for the bone-conduction hearing aid.

174. Section 874.3540 is amended by revising paragraph (b) to read as follows:

§ 874.3540 Prosthesis modification instrument for ossicular replacement surgery.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

175. Section 874.4100 is amended by revising paragraph (b) to read as follows:

§ 874.4100 Epistaxis balloon.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

176. Section 874.4420 is amended by revising paragraph (b) to read as follows:

§ 874.4420 Ear, nose, and throat manual surgical instrument.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

177. Section 874.5300 is amended by revising paragraph (b) to read as follows:

§ 874.5300 Ear, nose, and throat examination and treatment unit.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

178. Section 874.5550 is amended by revising paragraph (b) to read as follows:

§ 874.5550 Powered nasal irrigator.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

179. Section 874.5840 is amended by revising paragraph (b) to read as follows:

§ 874.5840 Antistammering device.

* * * * *

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

PART 876—GASTROENTEROLOGY—UROLOGY DEVICES

180. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

181. Section 876.9 is revised to read as follows:

§ 876.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within

that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

182. Section 876.5160 is amended by revising paragraph (b) to read as follows:

§ 876.5160 Urological clamp for males.

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for internal use or use on females, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

183. Section 876.5210 is amended by revising paragraph (b) to read as follows:

§ 876.5210 Enema kit.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

184. Section 876.5250 is amended by revising paragraph (b)(2) to read as follows:

§ 876.5250 Urine collector and accessories.

* * * * *

(b) * * *

(2) Class I (general controls) for a urine collector and accessories not intended to be connected to an indwelling catheter. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to the general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

185. Section 876.5980 is amended by revising paragraph (b)(2) to read as follows:

§ 876.5980 Gastrointestinal tube and accessories.

* * * * *

(b) * * *

(2) Class I (general controls) for the dissolvable nasogastric feed tube guide for the nasogastric tube. The class I device is exempt from the premarket notification procedures in subpart E of

part 807 of this chapter subject to § 876.9.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

186. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

187. Section 878.9 is revised to read as follows:

§ 878.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

188. Section 878.3250 is amended by revising paragraph (b) to read as follows:

§ 878.3250 External facial fracture fixation appliance.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

189. Section 878.3910 is amended by revising paragraph (b) to read as follows:

§ 878.3910 Noninflatable extremity splint.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

190. Section 878.3925 is amended by revising paragraph (b) to read as follows:

§ 878.3925 Plastic surgery kit and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

191. Section 878.4040 is amended by revising paragraph (b) to read as follows:

§ 878.4040 Surgical apparel.

* * * * *

(b) *Classification.* (1) Class II (special controls) for surgical gowns and surgical masks.

(2) Class I (general controls) for surgical apparel other than surgical gowns and surgical masks. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

192. Section 878.4100 is amended by revising paragraph (b) to read as follows:

§ 878.4100 Organ bag.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

193. Section 878.4200 is amended by revising paragraph (b) to read as follows:

§ 878.4200 Introduction/drainage catheter and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

194. Section 878.4320 is amended by revising paragraph (b) to read as follows:

§ 878.4320 Removable skin clip.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

195. Section 878.4680 is amended by revising paragraph (b) to read as follows:

§ 878.4680 Nonpowered, single patient, portable suction apparatus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

196. Section 878.4760 is amended by revising paragraph (b) to read as follows:

§ 878.4760 Removable skin staple.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

197. Section 878.4820 is amended by revising paragraph (b) to read as follows:

§ 878.4820 Surgical instrument motors and accessories/attachments.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

198. Section 878.4960 is amended by revising paragraph (b) to read as follows:

§ 878.4960 Operating tables and accessories and operating chairs and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

199. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

200. Section 880.9 is revised to read as follows:

§ 880.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies

infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

201. Section 880.5090 is amended by revising paragraph (b) to read as follows:

§ 880.5090 Liquid bandage.

* * * * *

(b) *Classification.* Class I (general controls). When used only as a skin protectant, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

202. Section 880.5270 is amended by revising paragraph (b) to read as follows:

§ 880.5270 Neonatal eye pad.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

203. Section 880.5420 is amended by revising paragraph (b) to read as follows:

§ 880.5420 Pressure infusor for an I.V. bag.
* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

PART 882—NEUROLOGICAL DEVICES

204. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

205. Section 882.9 is revised to read as follows:

§ 882.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic

diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

206. Section 882.1200 is amended by revising paragraph (b) to read as follows:

§ 882.1200 Two-point discriminator.
* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

207. Section 882.1500 is amended by revising paragraph (b) to read as follows:

§ 882.1500 Esthesiometer.
* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

208. Section 882.1750 is amended by revising paragraph (b) to read as follows:

§ 882.1750 Pinwheel.
* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

209. Section 882.4060 is amended by revising paragraph (b) to read as follows:

§ 882.4060 Ventricular cannula.
* * * *

(b) *Classification.* Class I (general controls). When made only of surgical grade stainless steel, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

210. Section 882.4545 is amended by revising paragraph (b) to read as follows:

§ 882.4545 Shunt system implantation instrument.
* * * *

(b) *Classification.* Class I (general controls). When made only of surgical grade stainless steel, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

211. Section 882.4650 is amended by revising paragraph (b) to read as follows:

§ 882.4650 Neurosurgical suture needle.
* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

212. Section 882.4750 is amended by revising paragraph (b) to read as follows:

§ 882.4750 Skull punch.
* * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. This exemption does not apply to powered compound cranial drills, burrs, trephines, and their accessories classified under § 882.4305.

PART 884—OBSTETRICAL AND GYNCOLOGICAL DEVICES

213. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

214. Section 884.9 is revised to read as follows:

§ 884.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I

or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the

assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

215. Section 884.1040 is amended by revising paragraph (b) to read as follows:

§ 884.1040 Viscometer for cervical mucus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 884.9.

§ 884.5435 [Amended]

216. Section 884.5435 *Unscented menstrual pad* is amended in the last sentence of paragraph (b) by removing the word “intralabial” and adding in its place the word “interlabial”.

PART 886—OPHTHALMIC DEVICES

217. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

218. Section 886.9 is revised to read as follows:

§ 886.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed

device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

219. Section 886.1350 is amended by revising paragraph (b) to read as follows:

§ 886.1350 Keratoscope.

* * * * *

(b) The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9. The battery-powered device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files

220. Section 886.1780 is amended by revising paragraph (b) to read as follows:

§ 886.1780 Retinoscope.

* * * * *

(b) *Classification.* (1) Class II (special controls) for the AC-powered device.

(2) Class I (general controls) for the battery-powered device. The class I

battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9. The battery-powered device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

221. Section 886.1940 is amended by revising paragraph (b) to read as follows:

§ 886.1940 Tonometer sterilizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

222. Section 886.4070 is amended by revising paragraph (b) to read as follows:

§ 886.4070 Powered corneal burr.

* * * * *

(b) *Classification.* Class I (general controls). When intended only for rust ring removal, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

223. Section 886.4300 is amended by revising paragraph (b) to read as follows:

§ 886.4300 Intraocular lens guide.

* * * * *

(b) *Classification.* Class I (general controls). Except when used as folders or injectors for soft or foldable intraocular lenses, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

224. Section 886.4750 is amended by revising paragraph (b) to read as follows:

§ 886.4750 Ophthalmic eye shield.

* * * * *

(b) *Classification.* Class I (general controls). When made only of plastic or aluminum, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9. When made only of plastic or aluminum, the devices are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

225. Section 886.5850 is amended by revising paragraph (b) to read as follows:

§ 886.5850 Sunglasses (nonprescription).

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

PART 888—ORTHOPEDIC DEVICES

226. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

227. Section 888.9 is revised to read as follows:

§ 888.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

PART 890—PHYSICAL MEDICINE DEVICES

228. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

229. Section 890.9 is revised to read as follows:

§ 890.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical

purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

230. Section 890.5180 is amended by revising paragraph (b) to read as follows:

§ 890.5180 Manual patient rotation bed.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

231. Section 890.5710 is amended by revising paragraph (b) to read as follows:

§ 890.5710 Hot or cold disposable pack.

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for use on infants, the device is exempt from the premarket notification procedures in

subpart E of part 807 of this chapter subject to § 890.9.

PART 892—RADIOLOGY DEVICES

232. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

233. Section 892.9 is revised to read as follows:

§ 892.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for

screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

234. Section 892.1300 is amended by revising paragraph (b) to read as follows:

§ 892.1300 Nuclear rectilinear scanner.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

235. Section 892.1320 is amended by revising paragraph (b) to read as follows:

§ 892.1320 Nuclear uptake probe.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

236. Section 892.1330 is amended by revising paragraph (b) to read as follows:

§ 892.1330 Nuclear whole body scanner.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

237. Section 892.1350 is amended by revising paragraph (b) to read as follows:

§ 892.1350 Nuclear scanning bed.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

238. Section 892.1410 is amended by revising paragraph (b) to read as follows:

§ 892.1410 Nuclear electrocardiograph synchronizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

239. Section 892.1890 is amended by revising paragraph (b) to read as follows:

§ 892.1890 Radiographic film illuminator.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

240. Section 892.1910 is amended by revising paragraph (b) to read as follows:

§ 892.1910 Radiographic grid.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

241. Section 892.1960 is amended by revising paragraph (b) to read as follows:

§ 892.1960 Radiographic intensifying screen.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

242. Section 892.1970 is amended by revising paragraph (b) to read as follows:

§ 892.1970 Radiographic ECG/respirator synchronizer.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

243. Section 892.2010 is amended by revising paragraph (b) to read as follows:

§ 892.2010 Medical image storage device.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

244. Section 892.2020 is amended by revising paragraph (b) to read as follows:

§ 892.2020 Medical image communications device.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

245. Section 892.5650 is amended by revising paragraph (b) to read as follows:

§ 892.5650 Manual radionuclide applicator system.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

246. Section 892.6500 is amended by revising paragraph (b) to read as follows:

§ 892.6500 Personnel protective shield.
* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

Dated: December 22, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00-884 Filed 1-13-00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8859]

RIN 1545-AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the procedures for compliance monitoring by state and local housing agencies (Agencies) with the requirements of the low-income housing credit; the requirements for making carryover allocations; the rules for Agencies' correction of administrative errors or omissions; and the independent verification of information on sources and uses of funds submitted by taxpayers to Agencies. These final regulations affect owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

DATES: *Effective Dates:* These regulations are effective January 1, 2001, except that the amendments made to §§ 1.42-5(c)(5) and (e)(3)(i), and 1.42-13 are effective January 14, 2000, and the amendment made to § 1.42-6(d)(4)(ii) is effective January 1, 2000.

Applicability Dates: For dates of applicability of the amendments to § 1.42-5, see § 1.42-5(h). For date of

applicability of the amendment made to § 1.42-6, see § 1.42-12(c). For date of applicability of the amendments made to § 1.42-13, see § 1.42-13(d). For date of applicability of § 1.42-17, see § 1.42-17(b).

FOR FURTHER INFORMATION CONTACT: Paul Handleman, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545-1357. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For § 1.42-5, the estimated annual burden per respondent varies from .5 hour to 3 hours for taxpayers and 250 to 5,000 hours for Agencies, with an estimated average of 1 hour for taxpayers and 1,500 hours for Agencies. For § 1.42-13, the estimated annual burden per respondent varies from .5 hour to 10 hours for taxpayers and Agencies, with an estimated average of 3.5 hours for taxpayers and 3 hours for Agencies. For § 1.42-17, the estimated annual burden per respondent varies from .5 hour to 2 hours for taxpayers and .5 hour to 5 hours for Agencies, with an estimated average of 1 hour for taxpayers and 2 hours for Agencies.

Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 8, 1999, the IRS published proposed regulations (REG-114664-97) in the **Federal Register** (64 FR 1143) inviting comments under section 42. A

public hearing was held May 27, 1999. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury Decision.

Public Comments

A. Compliance Monitoring

1. Inspection Requirement for New Buildings

The proposed regulations require that, by the end of the calendar year following the year the last building in a project is placed in service, the Agency conduct on-site inspections of the projects and review the low-income certification, the documentation supporting such certification, and the rent record for each tenant in the project. Most commentators view the requirement for reviewing all tenant records for all buildings in a project as unnecessary and burdensome. Most commentators suggest limiting inspections for new buildings to 20 percent of the project's low-income units.

Commentators also suggest extending the time limit for inspecting new buildings to the end of the calendar year following the first year of the credit period or at least until a reasonable time after the Agency issues Form 8609, "Low-Income Housing Credit Allocation Certification." This added flexibility would allow the Agency to combine a physical inspection with a file review of the first year of the credit period.

In response to the comments, the final regulations reduce the inspection burden for new buildings by requiring the Agency to conduct on-site inspections of all new buildings in the project and, for at least 20 percent of the project's low-income units, to inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units. To allow the Agency sufficient time to review the tenant files for the first year of the credit period, the final regulations extend the time limit for inspecting new buildings to the end of the second calendar year following the year the last building in the project is placed in service.

2. Three-year Inspection Requirement

The proposed regulations require that, at least once every 3 years, each Agency conduct on-site inspections of all buildings in each low-income housing project and, for each tenant in at least 20 percent of the project's low-income units selected by the Agency, review the low-income certification, the

documentation supporting such certification, and the rent record.

Most commentators agree with requiring physical inspections of the buildings at least once every 3 years. However, commentators recommend reviewing tenant income and rent records once every 5 years, which is one of the options under the current compliance monitoring regulations (see § 1.42-5(c)(2)(ii)(B) requiring an Agency to review tenant files for 20 percent of the low-income housing projects each year). Commentators also recommend reviewing tenant files either on-site or at other locations, including desk audits.

Although the physical inspection and file review requirements for new buildings are relaxed in the final regulations, the final regulations retain the 3-year inspection cycle for existing buildings. The final regulations do not separate the physical inspection and file review cycles (every 3 years for physical inspections and every 5 years for file reviews) as suggested by commentators because it is administratively complete to do both during the same year. The tenant income and rent restrictions in section 42(g) are equally important as the habitability standards for a low-income unit in section 42(i)(3)(B)(ii). The final regulations adopt the suggestion that the file review may be done wherever the tenant files are maintained.

3. Health, Safety, and Building Code Inspections

The proposed regulations require the Agency to determine whether the project is suitable for occupancy, taking into account local health, safety, and building codes.

Many commentators object to this requirement as too costly and unadministerable because building codes vary considerably within states. Commentators also asked for guidelines as to what constitutes an "inspection." Some commentators propose defining an inspection as looking at selected units in the building and common areas for visible problems or defects without applying the local health, safety, and building codes standards. One commentator suggests inspections based on a complaint from the local jurisdiction or from a tenant. Some commentators suggest using a uniform physical standard such as the uniform physical condition standards for public housing established by the Department of Housing and Urban Development (HUD) in 24 CFR 5.703.

Section 42(i)(3)(B)(i) excludes from the definition of a "low-income unit" a unit that is not suitable for occupancy. Under section 42(i)(3)(B)(ii), suitability of a unit for occupancy shall be

determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes. Recognizing that these codes vary considerably within states, the final regulations require an Agency to determine whether a low-income housing project satisfies these codes, or satisfies the HUD uniform physical condition standards. The HUD standards are intended to ensure that housing is decent, safe, sanitary, and in good repair. Though it would be appropriate that an Agency use HUD's inspection protocol under 24 CFR 5.705, the final regulations do not mandate use of HUD's inspection protocol because to do so could increase costs to the Agencies as well as limit their latitude in applying standards consistent with their own operating procedures and practices. The final regulations except a building from the inspection requirement if the building is financed by the Rural Housing Service (RHS) under the section 515 program, the RHS inspects the building (under 7 CFR part 1930(c)), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results. Irrespective of the physical inspection standard selected by the Agency, a low-income housing project under section 42 must continue to satisfy local health, safety, and building codes.

The proposed regulations limit an Agency's delegation of the physical inspection of a project to only a state or local government unit responsible for making building code inspections. Commentators suggest expanding the delegation of inspections to professional firms. The final regulations remove the delegation limitation and Agencies may delegate the physical inspection requirement to state or local governmental agencies, HUD, or private contractors.

4. Local Reports of Building Code Violations

The proposed regulations require the owner of a low-income housing project to certify that for the preceding 12-month period the state or local government unit responsible for making building code inspections did not issue a report of a violation for the project. If the governmental unit issued a report of a violation, the owner is required to attach a copy of the report of the violation to the annual certification submitted to the Agency.

A commentator noted that the number of violations attached to the annual owner certification would be considerable because even the highest

quality rental housing operations do not have an inspection without a report or notice of some violation. Two commentators suggest attaching reports only for violations that have not been corrected prior to filing the annual owner certification or requiring that owners only attach reports for "major" violations. The commentators suggest defining major violations as violations not corrected within 90 days of the notice of violation or violations where the cost to comply exceeds \$2,500. A commentator suggests that Agencies be allowed to distinguish between minor technical violations and serious violations (i.e., lack of heat or hot water, hazardous conditions, and security) in reporting noncompliance.

Though a minor violation will not lead to the disallowance or recapture of section 42 credits, a series of minor violations may be the equivalent of a major violation resulting in disallowance or recapture of credits. Determining the difference between a major and minor violation is subjective. The final regulations do not exclude minor violations from the reporting and recordkeeping requirement. However, to reduce the inspection violation paperwork, the final regulations require that the owner must either attach a statement summarizing the violations or a copy of each violation report to the annual owner certification submitted to the Agency. The owner must state on the certification whether the violation has been corrected. In addition, the final regulations require that the owner retain the original violation report for the Agency's physical inspection. Retention of the original violation report is not required once the Agency reviews the violation and completes its inspection, unless the violation remains uncorrected.

5. Correction of Noncompliance or Failure to Certify

The final regulations adopt commentators' suggestion to limit to a 3-year period after the end of the correction period in § 1.42-5(e)(4) the requirement that Agencies file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS reporting the correction of the noncompliance or failure to certify.

6. Compliance Monitoring Effective Dates

Commentators suggest an effective date of at least one year after the final regulations are published in the **Federal Register**. Commentators also recommend on-site inspections apply only to new buildings allocated section

42 credits after the effective date of the final regulations.

Because the amendments to the compliance monitoring regulations will require amendments to qualified allocation plans, the final regulations relating to compliance generally contain a January 1, 2001, effective date. Thus, the requirements to attach local health, safety, or building code violations to the annual owner certification and to inspect buildings and review tenant files for existing projects are effective January 1, 2001. The inspection requirement and tenant file review for new buildings is effective for buildings placed in service on or after January 1, 2001.

7. Section 8 and Federal Civil Rights Laws

Two commentators state that insufficient controls are in place to ensure that low-income housing projects adhere to the requirement in section 42(h)(6)(B)(iv) of nondiscrimination against Section 8 voucher or certificate holders. The commentators suggest that the IRS could help compensate for lack of controls by working with HUD to ensure that Section 8 voucher or certificate holders are aware of, and have access to, low-income housing projects. The commentators also suggest that Agencies provide regional HUD offices a list of low-income housing projects in that state, with information that would be helpful for prospective tenants. One commentator suggests that the prohibition on discrimination based on Section 8 status be clarified to exclude policies that bar Section 8 tenants but have no substantial business justification. For example, low-income housing projects should not be permitted to exclude Section 8 voucher or certificate holders through a rule that requires every applicant to have income equal to at least three times the total rent.

The commentators also suggest that the Agencies should be required to develop a plan for educating applicants and owners of projects of the prohibition against discrimination on the basis of Section 8 voucher or certificate status. They recommend that the Agencies should be required to have a procedure for accepting and processing complaints about discrimination against Section 8 voucher or certificate holders. They also recommend that IRS and HUD should work together to study the circumstances under which Section 8 voucher or certificate holders are, or are not, accessing projects.

Section 42(h)(6)(A) provides that no credit shall be allowed by reason of

section 42 with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year. Section 42(h)(6)(B)(iv) defines the term "extended low-income housing commitment" to include any agreement between the taxpayer and the housing credit agency that prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder. To help monitor compliance with section 42(h)(6)(B)(iv), the final regulations amend the annual owner certification relating to the extended low-income housing commitment under § 1.42-5(c)(1)(xi) to require owners to certify that the owner has not refused to lease a unit in the project to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate.

The IRS has informed HUD of the comments received about preventing discrimination based on Section 8 status. Agencies should provide HUD with publicly available information on section 42 low-income housing projects if HUD requests it.

A commentator also suggests that the compliance monitoring regulations be amended to acknowledge the authority of Title VIII of the 1968 Civil Rights Act, as well as HUD's Title VIII regulations; specify the civil rights obligations of the Agencies; and specify what developers and owners of projects must do to satisfy their civil rights obligations.

To monitor for compliance with the Fair Housing Act, the final regulations amend the annual owner certification relating to the general public use requirement in § 1.42-5(c)(1)(v) to require owners to certify that no finding of discrimination under the Fair Housing Act has occurred for the project (a finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a Federal court).

B. Sources and Uses of Funds

Section 42(m)(2)(A) requires Agencies to limit the housing credit dollar amount allocated to a project to only the amount necessary for the financial feasibility of a project and its viability as a qualified low-income project through the credit period. The proposed regulations require an Agency to evaluate the housing credit dollar amount at four times: (1) at application for the housing credit dollar amount, (2) the allocation of the housing credit dollar amount, (3) the date the building

is placed in service, and (4) after the building is placed in service, but before the Agency issues the Form 8609. Commentators recommend elimination of the evaluation at the placed-in-service date. In practice, Agencies currently evaluate the credit amount at the three other times. The final regulations adopt the recommendation by deleting the fourth time requirement and clarifying that the placed-in-service evaluation may occur not later than the date the Agency issues the Form 8609.

Commentators are concerned that the opinion by a certified public accountant, based upon the accountant's audit or examination, on the financial determinations and certifications required in the proposed regulations, could have significant cost implications, particularly for smaller developers. Commentators suggest limiting the requirement to projects with 25 or more units, or projects with total development costs of \$5 million or more.

The third-party validation on financial information was recommended in the report by the General Accounting Office (GAO), "Tax Credits: Opportunities to Improve Oversight of the Low-Income Housing Program," (GAO/GGD/RCED-97-55), dated March 28, 1997. The GAO report states on page 93 that an accounting firm with a tax credit speciality would charge in the \$5,000 to \$7,500 range per engagement for tax credit certifications (opinion on total costs, eligible basis, and tax credit amount) prepared on the basis of an audit done in accordance with AICPA audit standards even for projects costing upwards of \$5 million to \$10 million. As a percentage of development costs, the CPA tax credit certifications represent a minimal cost for validating financial information. However, in recognition that the cost may be burdensome for smaller developers, the final regulations limit the requirement for an audited schedule of costs for projects with more than 10 units.

Two commentators were concerned that the meaning of the term "financial determinations and certifications" is unclear. A CPA would not be able to evaluate what needs to be audited and whether there are relevant and reliable criteria against which the information can be evaluated. To conduct an audit or attestation engagement, CPAs require that the subject matter be defined and that such subject matter be capable of evaluation against reasonable criteria. Reasonable criteria are essential so that CPAs using the same criteria will be able to arrive at similar conclusions.

Another concern expressed by commentators involved uncertainty as

to whether the CPA is being asked to report on financial information that is only historical or whether the CPA is also being asked to examine prospective financial information. CPAs can compile or examine and report on certain types of prospective financial information. However, such engagements generally are more costly than audits of historical information because of minimum presentation guidelines required by professional standards as well as increased risk associated with future-oriented information. The commentators believe that if an Agency were to require CPAs to be associated with prospective financial information, the related costs to the taxpayer may far exceed any perceived benefits to the Agency. Accordingly, the final regulations have been revised to specify that the CPA's opinion only relates to historical project costs.

C. Correction of Administrative Errors and Omissions

Commentators recommend filing the corrected allocation document with the current year's Form 8610, "Annual Low-Income Housing Credit Agencies Report," instead of amending the Form 8610 for the year the allocation was made. Because the administrative errors covered by the automatic approval provision will not have an effect on the total amount of credit the Agency allocated to the building(s) or project, commentators view an amended Form 8610 as unnecessary. Agency recordkeeping would be simplified if all corrected allocation documents could be submitted with the current year's Form 8610. The final regulations adopt this recommendation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the burden on taxpayers is minimal and the burden on small entity Agencies is not significant. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these

regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42-17 also issued under 26 U.S.C. 42(n), * * *

Par. 2. Section 1.42-5 is amended by:

1. Removing the word "Revenue" in paragraph (b)(1)(iv) and adding "Omnibus Budget" in its place.
2. Adding paragraph (b)(3).
3. Revising paragraphs (c)(1)(v), (c)(1)(vi), (c)(1)(xi), (c)(2)(ii), and (c)(2)(iii).
4. Removing the word "project" in paragraph (c)(1)(x) and adding "building" in its place.
5. Removing the word "and" at the end of paragraph (c)(1)(x).
6. Adding paragraph (c)(1)(xii).
7. Removing the language "paragraph (c)(2)(ii)(A), (B), and (C) of this section" from the first sentence in paragraph (c)(4)(i) and adding "paragraph (c)(2)(ii) of this section" in its place.
8. Removing the language "Farmers Home Administration (FmHA)" in the first sentence in paragraph (c)(4)(i) and adding "Rural Housing Service (RHS), formerly known as Farmers Home Administration," in its place.
9. Removing the language "FmHA" in paragraph (c)(4)(ii) and adding "RHS" in its place in each place it appears.
10. Removing the language "An Agency chooses the review requirement of paragraph (c)(2)(ii)(A) of this section and some of the buildings selected for review are" from the first sentence in

the example in paragraph (c)(4)(iii) and adding "An Agency selects for review" in its place.

11. Removing the language "FmHA" in paragraph (c)(4)(iii) *Example* and adding "RHS" in its place in each place it appears.

12. Adding paragraph (c)(5).

13. Revising paragraph (d).

14. Removing the language "(c)(2)(ii)(A), (B), or (C) of this section (whichever is applicable)" from paragraph (e)(2) and adding the language "(c)(2)(ii) of this section" in its place.

15. Adding a sentence at the end of paragraph (e)(3)(i).

16. Removing the language "paragraph (e)(3) of this section" in the third sentence in paragraph (f)(1)(i) and adding "paragraphs (c)(5) and (e)(3) of this section" in its place.

17. Adding three sentences at the end of paragraph (h).

The revisions and additions read as follows:

§ 1.42-5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(b) * * *

(3) *Inspection record retention provision.* Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) * * * (1) * * *

(v) All units in the project were for use by the general public (as defined in § 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the

State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Agency under paragraph (c)(1) of this section. In addition, the owner must state whether the violation has been corrected;

* * * * *

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s (for buildings subject to section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439); and

(xii) All low-income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).

(2) * * *

(ii) Require that with respect to each low-income housing project—

(A) The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(B) At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and

(iii) Require that the Agency randomly select which low-income units and tenant records are to be

inspected and reviewed by the Agency. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, an Agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review).

* * * * *

(5) *Agency reports of compliance monitoring activities.* The Agency must report its compliance monitoring activities annually on Form 8610, "Annual Low-Income Housing Credit Agencies Report."

(d) *Inspection provision*—(1) *In general.* Under the inspection provision, the Agency must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. The inspection provision of this paragraph (d) is a separate requirement from any tenant file review under paragraph (c)(2)(ii) of this section.

(2) *Inspection standard.* For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency must review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) of this section and must determine—

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii)

to determine by inspection whether the project meets local health, safety, and building codes.

(3) *Exception from inspection provision.* An Agency is not required to inspect a building under this paragraph (d) if the building is financed by the RHS under the section 515 program, the RHS inspects the building (under 7 CFR part 1930), and the RHS and Agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the Agency of the inspection results.

(4) *Delegation.* An Agency may delegate inspection under this paragraph (d) to an Authorized Delegate retained under paragraph (f) of this section. Such Authorized Delegate, which may include HUD or a HUD-approved inspector, must notify the Agency of the inspection results.

(e) * * *

(3) * * *

(i) * * * If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, the Agency is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

* * * * *

(h) * * * In addition, the requirements in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this section (involving recordkeeping and annual owner certifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this section (involving tenant file reviews and physical inspections of existing projects, and the physical inspection standard) are applicable January 1, 2001. The requirement in paragraph (c)(2)(ii)(A) of this section (involving tenant file reviews and physical inspections of new projects) is applicable for buildings placed in service on or after January 1, 2001. The requirements in paragraph (c)(5) of this section (involving Agency reporting of compliance monitoring activities to the Service) and paragraph (e)(3)(i) of this section (involving Agency reporting of corrected noncompliance or failure to certify within 3 years after the end of the correction period) are applicable January 14, 2000.

Par. 3. Section 1.42–6 is amended by:

1. In paragraph (c)(3), second sentence, remove the language “Annual Low-Income Housing Credit Agencies Report” and add the language “‘Annual Low-Income Housing Credit Agencies Report’” in its place.

2. In paragraph (d)(1), first sentence, remove the language “Low-Income Housing Credit Allocation

Certification,” and add the language “‘Low-Income Housing Credit Allocation Certification,’” in its place.

3. Revising the first sentence in paragraph (d)(4)(ii).

§ 1.42–6 Buildings qualifying for carryover allocations.

* * * * *

(d) * * *

(4) * * *

(ii) *Agency.* The Agency must retain the original carryover allocation document made under paragraph (d)(2) of this section and file Schedule A (Form 8610), “Carryover Allocation of the Low-Income Housing Credit,” with the Agency’s Form 8610 for the year the allocation is made. * * *

* * * * *

Par. 4. Section 1.42–11 is amended by revising the last sentence in paragraph (b)(3)(ii)(A) to read as follows:

§ 1.42–11 Provision of services.

* * * * *

(b) * * *

(3) * * *

(ii) * * * (A) * * * For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless) or section 42(i)(3)(B)(iv) (relating to single-room occupancy), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

* * * * *

Par. 5. Section 1.42–12 is amended by adding paragraph (c) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

* * * * *

(c) *Carryover allocations.* The rule set forth in § 1.42–6(d)(4)(ii) relating to the requirement that state and local housing agencies file Schedule A (Form 8610), “Carryover Allocation of the Low-Income Housing Credit,” is applicable for carryover allocations made after December 31, 1999.

Par. 6. Section 1.42–13 is amended by:

1. Revising the introductory text of paragraph (b)(3)(iii).

2. Adding paragraphs (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii).

3. Adding a sentence at the end of paragraph (d).

The revisions and additions read as follows:

§ 1.42–13 Rules necessary and appropriate; housing credit agencies’ correction of administrative errors and omissions.

* * * * *

(b) * * *

(3) * * *

(iii) *Secretary’s prior approval required.* Except as provided in

paragraph (b)(3)(vi) of this section, an Agency must obtain the Secretary’s prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction—

* * * * *

(vi) *Secretary’s automatic approval.* The Secretary grants automatic approval to correct an administrative error or omission described in paragraph (b)(2) of this section if—

(A) The correction is not made before the close of the calendar year of the error or omission and the correction is a numerical change to the housing credit dollar amount allocated for the building or multiple-building project;

(B) The administrative error or omission resulted in an allocation document (the Form 8609, “Low-Income Housing Credit Allocation Certification,” or the allocation document under the requirements of section 42(h)(1)(E) or (F), and § 1.42–6(d)(2)) that either did not accurately reflect the number of buildings in a project (for example, an allocation document for a 10-building project only references 8 buildings instead of 10 buildings), or the correct information (other than the amount of credit allocated on the allocation document);

(C) The administrative error or omission does not affect the Agency’s ranking of the building(s) or project and the total amount of credit the Agency allocated to the building(s) or project; and

(D) The Agency corrects the administrative error or omission by following the procedures described in paragraph (b)(3)(vii) of this section.

(vii) *How Agency corrects errors or omissions subject to automatic approval.* An Agency corrects an administrative error or omission described in paragraph (b)(3)(vi) of this section by—

(A) Amending the allocation document described in paragraph (b)(3)(vi)(B) of this section to correct the administrative error or omission. The Agency will indicate on the amended allocation document that it is making the “correction under § 1.42–13(b)(3)(vii).” If correcting the allocation document requires including any additional B.I.N.(s) in the document, the document must include any B.I.N.(s) already existing for buildings in the project. If possible, the additional B.I.N.(s) should be sequentially numbered from the existing B.I.N.(s);

(B) Amending, if applicable, the Schedule A (Form 8610), “Carryover

Allocation of the Low-Income Housing Credit," and attaching a copy of this schedule to Form 8610, "Annual Low-Income Housing Credit Agencies Report," for the year the correction is made. The Agency will indicate on the schedule that it is making the "correction under § 1.42-13(b)(3)(vii)." For a carryover allocation made before January 1, 2000, the Agency must complete Schedule A (Form 8610), and indicate on the schedule that it is making the "correction under § 1.42-13(b)(3)(vii)";

(C) Amending, if applicable, the Form 8609 and attaching the original of this amended form to Form 8610 for the year the correction is made. The Agency will indicate on the Form 8609 that it is making the "correction under § 1.42-13(b)(3)(vii)"; and

(D) Mailing or otherwise delivering a copy of any amended allocation document and any amended Form 8609 to the affected taxpayer.

(viii) *Other approval procedures.* The Secretary may grant automatic approval to correct other administrative errors or omissions as designated in one or more documents published either in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

* * * * *

(d) * * * Paragraphs (b)(3)(vi), (vii), and (viii) of this section are effective January 14, 2000.

Par. 7. Section 1.42-17 is added to read as follows:

§ 1.42-17 Qualified allocation plan.

(a) *Requirements*—(1) *In general.* [Reserved]

(2) *Selection criteria.* [Reserved]

(3) *Agency evaluation.* Section 42(m)(2)(A) requires that the housing credit dollar amount allocated to a project is not to exceed the amount the Agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination, the Agency must consider—

(i) The sources and uses of funds and the total financing planned for the project. The taxpayer must certify to the Agency the full extent of all federal, state, and local subsidies that apply (or which the taxpayer expects to apply) to the project. The taxpayer must also certify to the Agency all other sources of funds and all development costs for the project. The taxpayer's certification should be sufficiently detailed to enable the Agency to ascertain the nature of the costs that will make up the total financing package, including subsidies and the anticipated syndication or

placement proceeds to be raised. Development cost information, whether or not includible in eligible basis under section 42(d), that should be provided to the Agency includes, but is not limited to, site acquisition costs, construction contingency, general contractor's overhead and profit, architect's and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, and developer fees;

(ii) Any proceeds or receipts expected to be generated by reason of tax benefits;

(iii) The percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries. This requirement should not be applied so as to impede the development of projects in hard-to-develop areas under section 42(d)(5)(C); and

(iv) The reasonableness of the developmental and operational costs of the project.

(4) *Timing of Agency evaluation*—(i) *In general.* The financial determinations and certifications required under paragraph (a)(3) of this section must be made as of the following times—

(A) The time of the application for the housing credit dollar amount;

(B) The time of the allocation of the housing credit dollar amount; and

(C) The date the building is placed in service.

(ii) *Time limit for placed-in-service evaluation.* For purposes of paragraph (a)(4)(i)(C) of this section, the evaluation for when a building is placed in service must be made not later than the date the Agency issues the Form 8609, "Low-Income Housing Credit Allocation Certification." The Agency must evaluate all sources and uses of funds under paragraph (a)(3)(i) of this section paid, incurred, or committed by the taxpayer for the project up until date the Agency issues the Form 8609.

(5) *Special rule for final determinations and certifications.* For the Agency's evaluation under paragraph (a)(4)(i)(C) of this section, the taxpayer must submit a schedule of project costs. Such schedule is to be prepared on the method of accounting used by the taxpayer for federal income tax purposes, and must detail the project's total costs as well as those costs that may qualify for inclusion in eligible basis under section 42(d). For projects with more than 10 units, the schedule of project costs must be accompanied by a Certified Public

Accountant's audit report on the schedule (an Agency may require an audited schedule of project costs for projects with fewer than 11 units). The CPA's audit must be conducted in accordance with generally accepted auditing standards. The auditor's report must be unqualified.

(6) *Bond-financed projects.* A project qualifying under section 42(h)(4) is not entitled to any credit unless the governmental unit that issued the bonds (or on behalf of which the bonds were issued), or the Agency responsible for issuing the Form(s) 8609 to the project, makes determinations under rules similar to the rules in paragraphs (a) (3), (4), and (5) of this section.

(b) *Effective date.* This section is effective on January 1, 2001.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (b) is amended by revising the entry for 1.42-5 and adding an entry for 1.42-17 to the table in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.42-5	1545-1357
* * * * *	* * * * *
1.42-17	1545-1357
* * * * *	* * * * *

Robert E. Wenzel,

Acting Commissioner of Internal Revenue.

Approved: December 28, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00-111 Filed 1-13-00; 8:45 am]

BILLING CODE 4830-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in February 2000. Interest assumptions are also published on the PBGC's web site (<http://www.pbgc.gov>).

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

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

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one

set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during February 2000.

For annuity benefits, the interest assumptions will be 7.10 percent for the first 25 years following the valuation date and 6.25 percent thereafter. The annuity interest assumptions represent an increase (from those in effect for January 2000) of 0.20 percent for the first 25 years following the valuation date and are otherwise unchanged.

For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions represent an increase (from those in effect for January 2000), of 0.25 percent for the period during which a benefit is in pay status and for the seven-year period directly preceding the benefit's placement in pay status; they are otherwise unchanged.

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

accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during February 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

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

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

2. In appendix B, a new entry is added to Table I, and Rate Set 76 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

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

TABLE I.—ANNUITY VALUATIONS

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

For valuation dates occurring in the month—				The values of t_t are			
				t_t	for $t =$	t_t	for $t =$
*	*	*	*	*	*	*	*
February 2000	.0710	1–25	.0625	>25	N/A	N/A	

TABLE II.—LUMP SUM VALUATIONS

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

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
76	2-1-00	3-1-00	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of January 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00-859 Filed 1-13-00; 8:45 am]

BILLING CODE 7708-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-035-FOR]

Arkansas Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Arkansas abandoned mine land reclamation plan (Arkansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of an addition to the Arkansas plan relating to the exclusion of certain noncoal reclamation sites. Arkansas intends to revise its plan to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Arkansas 74135-6547. Telephone: (918) 581-6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Plan

II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Arkansas Plan

On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. You can find background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, **Federal Register** (48 FR 19710). You can find later actions on the Arkansas plan at 30 CFR 904.25 and 904.26.

II. Submission of the Proposed Amendment

By letter dated September 22, 1999 (Administrative Record No. AAML-28), Arkansas sent us an amendment to its plan pursuant to SMCRA. Arkansas sent the amendment in response to our letter dated September 8, 1999 (Administrative Record No. AAML-27.07).

We announced receipt of the amendment in the October 18, 1999, **Federal Register** (64 FR 56179). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the adequacy of Arkansas' amendment. The public comment period closed on November 17, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, is our finding concerning the amendment.

Policies and Procedures of the State Abandoned Mine Land Reclamation Program [30 CFR 884.13(c)]

Under subheading B. Identification of Eligible Lands and Water [30 CFR 884.13(c)(2)], Arkansas proposed to add the following language as a counterpart to our Federal regulation at 30 CFR 875.16, Exclusion of certain noncoal reclamation sites:

Money from the Fund shall not be used for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

Because the above proposed revision is identical in meaning to the corresponding Federal regulation, the Director finds that Arkansas' revised plan is no less effective than the Federal regulation. Therefore, the Director is approving this amendment.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Arkansas plan (Administrative Record Nos. AAML-28.03). We received a comment from the U.S. Army Corps of Engineers dated November 5, 1999 (Administrative Record No. AAML-28.06), stating that

the amendment was satisfactory to the agency.

U.S. Environmental Protection Agency (EPA)

Under 30 CFR 884.14(a)(6), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Arkansas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment. However, we did request comments from the EPA in a letter dated October 7, 1999 (Administrative Record No. AAML-28.01). In a letter dated November 1, 1999 (Administrative Record No. AAML 28.05), the EPA responded that it did not identify any provisions in the amendment which are inconsistent with the programs it administers.

U. S. Fish and Wildlife Service (FWS)

Under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), we are required to ask the FWS to determine whether those provisions of the program amendment that relate to fish, wildlife, or plants and their habitat are likely to jeopardize the continued existence of species listed as endangered or threatened (under the authority of section 4 of the Endangered Species Act of 1973) or result in the destruction or adverse modification of their habitat. None of the revisions that Arkansas proposed to make in this amendment pertain to fish, wildlife, or plants and their habitat. Therefore, we did not ask the FWS for its determination under section 7 of the Endangered Species Act of 1973.

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

Under 30 CFR 884.14(a)(6), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 7, 1999, we requested comments on Arkansas' amendment (Administrative Record No. AAML 28.02), but neither responded to our request.

V. Director's Decision

Based on the above finding, we approve the proposed plan amendment

as submitted by Arkansas on September 22, 1999.

We approve the regulation that Arkansas proposed with the provision that it be published in identical form to the regulation sent to and reviewed by OSM and the public. To implement this decision, we are amending the Federal regulations at 30 CFR Part 904, which codify decisions concerning the Arkansas plan. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Arkansas to bring its plan into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and 30 CFR Part 884.

National Environmental Policy Act

This rule does not require an environmental impact statement since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 29, 1999.

Charles E. Sandberg,
Acting Regional Director,
Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 904 is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

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

2. Section 904.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
September 22, 1999	January 14, 2000	Subheading B. Identification of Eligible Lands and Water [30 CFR 884.13(c)(2)].

[FR Doc. 00-969 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is amending its Privacy Act regulations by revising the list of Treasury Department officials and offices which are subject to this part. In addition, the reference to the United States Savings Bonds Division's Appendix K is being removed by redesignating Appendices K and L.

EFFECTIVE DATE: January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Disclosure Services, (202) 622-0930.

SUPPLEMENTARY INFORMATION: The Department of the Treasury is updating its list of officials and offices that are subject to this part due to the organizational changes occurring since the list was last published on July 14, 1987. In addition, the United States Savings Bonds Division has been made a part of the Bureau of the Public Debt. Therefore, the United States Savings Bonds Division's Appendix K is being removed from Subpart C which redesignates Appendix L-Federal Law Enforcement Training Center, and Appendix M-Office of Thrift Supervision, of Subpart C as Appendices K and L respectively.

These regulations are being published as a final rule because the amendment does not impose any requirements on any member of the public. This amendment is the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act. Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause

for making this rule effective on the date of publication in the **Federal Register**.

In accordance with Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action" and, therefore, does not require a Regulatory Impact Analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department of the Treasury has determined that this proposed rule will not impose new record-keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

PART 1—[AMENDED]

Subpart C—Privacy Act

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.20 is amended by revising paragraphs (a)–(l) as follows:

§ 1.20 Purpose and scope of regulations.

* * * * *

(a) The Departmental Offices, which include the offices of:

(1) The Secretary of the Treasury, including immediate staff;

(2) The Deputy Secretary of the Treasury, including immediate staff;

(3) The Chief of Staff, including immediate staff;

(4) The Executive Secretary and all offices reporting to such official, including immediate staff;

(5) The Under Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(6) The Under Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(7) The Under Secretary for Enforcement and all offices reporting to such official, including immediate staff;

(8) The Assistant Secretary of the Treasury for Financial Institutions and all offices reporting to such official, including immediate staff;

(9) The Assistant Secretary of the Treasury for Economic Policy and all offices reporting to such official, including immediate staff;

(10) The Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(11) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(17) and (b) through (l) of this section;

(12) The Inspector General and all offices reporting to such official, including immediate staff;

(13) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(14) The Assistant Secretary of the Treasury for Legislative Affairs and Public Liaison and all offices reporting to such official, including immediate staff;

(15) The Assistant Secretary of the Treasury for Management and Chief Financial Officer and all offices reporting to such official, including immediate staff;

(16) The Assistant Secretary of the Treasury for Public Affairs and all offices reporting to such official, including immediate staff;

(17) The Assistant Secretary of the Treasury for Tax Policy and all offices reporting to such official, including immediate staff;

(18) The Treasurer of the United States, including immediate staff;

(19) The Treasury Inspector General for Tax Administration and all offices reporting to such official, including immediate staff.

(b) The Bureau of Alcohol, Tobacco and Firearms.

(c) The Office of the Comptroller of the Currency.

(d) The United States Customs Service.

(e) The Bureau of Engraving and Printing.

(f) The Federal Law Enforcement Training Center.

(g) The Financial Management Service.

(h) The Internal Revenue Service.

- (i) The United States Mint.
- (j) The Bureau of the Public Debt.
- (k) The United States Secret Service.
- (l) The Office of Thrift Supervision.

* * * * *

3. 31 CFR part 1, Subpart C is amended by removing Appendix K and redesignating Appendices L and M as Appendices K and L.

Dated: January 3, 2000.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 00-925 Filed 1-13-00; 8:45 am]

BILLING CODE 4810-25-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD090-3041; FRL-6506-9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOCs From Paper, Fabric, Vinyl, and Other Plastic Parts Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions consist of amendments to Maryland's regulation to control volatile organic compounds (VOC) from Paper, Fabric, Vinyl, and Other Plastic Parts Coatings. The regulation was revised to include Reasonable Available Control Technology (RACT) standards for sources that use flexographic printing presses to print on plastic (non-vinyl) and to limit the VOC content for the decorative coating of plastic bottles. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on February 28, 2000 without further notice, unless EPA receives adverse written comment by February 14, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business

hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT:

Janice M. Lewis, (215) 814-2185, or by e-mail at lewis.janice@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the SIP Revisions

On March 11, 1999, the Maryland Department of the Environment (MDE) submitted amendments to COMAR 26.11.19.07 Paper, Fabric, Vinyl, and Other Plastic Parts Coatings to EPA for approval as SIP revisions. This regulation controls VOC emissions from paper, fabric, vinyl, and other plastic parts coatings operations in Maryland. The first amendment establishes RACT standards for sources that use flexographic printing presses to print plastic (non-vinyl) substrates. This amendment was adopted by Maryland on August 6, 1997, and became effective on September 8, 1997. The second amendment limits the VOC content for the decorative coating of plastic bottles. This amendment was adopted by Maryland on August 4, 1998, and became effective on August 24, 1998. At the time of this second amendment Maryland also revised the format of COMAR 26.11.19.07 Paper, Fabric, Vinyl, and Other Plastic Parts Coatings to present the subject installations, the applicability thresholds, and the VOC emission standards in a table.

II. EPA's Evaluation of the SIP Revisions

The EPA has determined that these amendments to COMAR 26.11.19.07: Paper, Fabric, Vinyl, and Other Plastic Parts Coating meet all federal criteria for approval.

III. Final Action

EPA is approving the amendments to COMAR 26.11.19.07 submitted by the MDE on March 11, 1999, as revisions to the Maryland SIP.

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

effective on February 28, 2000 without further notice unless EPA receives adverse comment by February 14, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 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 (64 FR 43255, August 10, 1999), because it merely

approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act." Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) Is "economically significant," as defined under Executive Order 12866, and (2) The environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

D. Executive Order 13084

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

requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or

local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 14, 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 to approve revisions to Maryland's regulation to control VOC from Paper, Fabric, Vinyl, and Other Plastic Parts Coating may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(147) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(147) Revisions to the Maryland State Implementation Plan submitted on March 11, 1999, by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of March 11, 1999, from the Maryland Department of the Environment transmitting revisions to Maryland's State Implementation Plan, pertaining to Code of Maryland Administrative Regulations (COMAR) 26.11.19. Volatile Organic Compounds from Specific Processes at 26.11.19.07 Paper, Fabric, Vinyl, and Other Plastic Parts Coating.

(B) Revision to COMAR 26.11.19.07: Paper, Fabric, Vinyl, and Other Plastic Parts Coating to add at COMAR 26.11.19.07 F. "Emission Standards for Printing on Plastic Other than Vinyl." This revision was adopted on August 6, 1997, and effective on September 8, 1997.

(C) Revisions to COMAR 26.11.19.07: Paper, Fabric, Vinyl, and Other Plastic Parts Coating, adopted August 4, 1998, and effective on August 24, 1998, including the following:

(1) Revision to COMAR 26.11.19.07 B. "Applicability" at B (1) to delete previous text describing subject coating and printing operations and to add new text stating that the regulation applies to any coating or printing operation that it listed in and has VOC emissions equal to or greater than the applicability levels in subsection C. (2) and (3) of this regulation.

(2) Revision to COMAR 26.11.19.07 C. to change the title from "Emission Standards for Web, Paper, Fabric, and Vinyl Coating" to "Emission Standards for Coating or Printing Installations."

(3) Revision to COMAR 26.11.19.07 C. (1) to delete text which specified installations by substrates and listed the

associated emission standards, and to add text to refer to the installations and emission standards found in subsections C. (2) and (3) of this regulation.

(4) Revision to COMAR 26.11.19.07 to add subsection C. (2) and (3) to list in tabular format subject installations, applicability thresholds, and VOC emission standards.

(5) Revision to COMAR 26.11.19.07 to delete subsections E. D. and F. as their requirements are found in the new simplified table at COMAR 26.11.19.07 C (2) and (3).

(ii) Additional Material—Remainder of March 11, 1999 submittal pertaining to COMAR 26.11.19.07 Paper, Fabric, Vinyl, and Other Plastic Parts Coating.

[FR Doc. 00-616 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[FRL-6518-2]

Slotted Guidepoles at Certain Petroleum and Organic Liquid Storage Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Regulatory interpretation.

SUMMARY: This action provides express notice that slotted guidepoles at certain petroleum storage vessels and tanks may not comply with regulatory requirements. Slotted guidepoles are relatively simple devices for sampling the contents of a floating roof storage tank. Unless they are controlled, the slots, hollow core and the space between the guidepole and the tank's roof are observable emission pathways that violate the "no visible gap" prohibition in the Standards of Performance for Storage Vessels for Petroleum Liquids (40 CFR part 60, subpart Ka (NSPS)) and the Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) (40 CFR part 60, Subpart Kb (NSPS)).

SUPPLEMENTARY INFORMATION: NSPS Subpart Ka requires that "each opening in the roof except for automatic bleeder vents, rim space vents, and leg sleeves, is to be maintained in a closed position at all times (i.e., no visible gaps) except when the device is in actual use." 40 CFR 60.112a(a)(1)(iii). See also 40 CFR 60.112a(a)(2). NSPS Subpart Kb establishes similar (and more stringent) requirements. 40 CFR 60.112b(a)(1)(iv) and (a)(2)(ii). Thus, there must be no

"visible gap" or readily observable emission pathway in any tank roof/cover at any affected facility under NSPS Subparts Ka and Kb. The overall purpose of the Ka/Kb regulations is to reduce emissions from tanks and other petroleum storage vessels; the intent of the "no visible gap" requirement is to eliminate or minimize any pathway through which evaporative tank losses could be emitted to the atmosphere. The only exceptions to this closed cover ("no visible gap") requirement are expressly identified in the rule: automatic bleeder vents, rim space vents and leg sleeves. All other openings and emission pathways in the roof/cover, including slotted guidepoles, are subject to the "no visible gap" requirement.

Slotted guidepoles are hollow poles with holes or "slots" that perforate the length of the pole, typically a foot-long and 1.5-inch wide. Where the pole passes through the roof, there is an opening in the roof and a gap between the pole and the roof. These holes, slots and gaps have exactly the same emissions effect as any other roof opening: they constitute an emissions pathway through which volatile organic compounds (VOCs) escape from the tank. Thus, they also constitute openings in the tank roof/cover. In short, both the hole through which the guidepole passes and the slots in the guidepole constitute openings in the roof/cover (i.e., "visible gaps") that must be maintained in a closed position with appropriate coverings and closures except when in actual use.

Slotted guidepoles are a potential source of significant VOC emissions. VOCs include a wide variety of hydrocarbons, some of which are hazardous air pollutants (e.g., benzene, toluene, xylene and ethyl benzene). Depending on the size, location and contents of a tank, uncontrolled emissions from the use of slotted guidepoles can exceed 25,000 pounds per year.

The United States Environmental Protection Agency ("EPA") issued a trio of applicability determinations in which it determined that slotted guidepoles were subject to the no visible gap requirement under NSPS Subpart Ka/Kb. In the first, the Agency determined that slotted guidepoles at external floating roof tanks (NSPS Subparts Ka/Kb) were subject to the no visible gap requirement, required the use of gasketed covers (e.g., pole wipers) and recognized that gasketed floats were available. ADI Control No. 93000002 (April 27, 1993). In the second, EPA determined that the no visible gap requirement applied equally to slotted guidepoles at both external and internal

floating roof/cover tanks. It also then observed that one way to address visible gaps could be through the use of internal sleeves and pole caps, provided there were also external seals which minimized gaps and emission pathways between the liquid surface and the atmosphere:

[T]he intent of the regulations is to ensure that the liquid surface is closed off from the atmosphere by a gasketed float or other device. This requirement may be met for slotted guide poles through the use of internal and external seals which minimize gaps and pathways between the liquid surface and the atmosphere."

ADI Control No. 9400014 (November 16, 1993). The third determination reaffirmed both prior determinations, explaining that:

[s]lotted guidepoles are one type of many possible openings in a floating roof. EPA need not have specifically cited slotted guidepoles for them to be subject to the no visible gap requirement. The November 16 [1993] letter [to Chevron] is a clarification that slotted guide poles were intended to be regulated by NSPS Ka and Kb and have always been subject to the no visible gap requirement.

Letter from John Rasnic, Director, EPA Stationary Source Compliance Division, to J.B. Krider, Chevron (June 6, 1994).

Based on these determinations, EPA Region IX brought enforcement actions against 5 California refineries that had tanks with slotted guidepoles and later issued a letter to the Western States Petroleum Association in which it provided a detailed analysis of the issue, determining that slotted guidepoles are subject to the no visible gap requirement. Letter from Esteban L. Oyenque, Assistant Regional Counsel, EPA Region IX, to Western States Petroleum Association (June 30, 1995). These enforcement matters were settled by the facilities installing controls (e.g., floats and wipers) at 20 NSPS Subpart Ka/Kb tanks and 27 non-NSPS tanks.

This **Federal Register** document ensures that all members of the regulated community are aware of past EPA determinations that uncontrolled slotted guidepoles do not comply with the "no visible gap" requirement in NSPS Subparts Ka and Kb, positions we expressly reaffirm today. EPA believes there are a substantial number of facilities with slotted guidepoles that are not in compliance with this requirement. To address these sources of potentially significant VOC emissions in the most expeditious way possible, EPA is also today proposing to establish a program for reducing these emissions in a highly cost-effective and environmentally beneficial manner. Neither this document nor that program

modify or otherwise affect the currently applicable requirements identified and described above.

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 and regulatory policies 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."

This document 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. It reaffirms and publicizes prior EPA determinations concerning the applicability of certain federal requirements to the regulated community. Thus, the requirements of section 6 of the Executive Order do not apply to this document.

The Office of Air Quality Planning and Standards, Office of Air and Radiation, and the Office of Compliance, Office of Enforcement and Compliance Assurance, jointly issue this document reaffirming regulatory interpretation.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Dated: December 23, 1999.

Thomas C. Curran,

Acting Director, Office of Air Quality Planning and Standards, Office of Air and Radiation.

Dated: December 23, 1999.

Bruce R. Weddle,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 00-621 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-6523-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (we or EPA) is granting a petition submitted by BWX Technologies, Inc. (formerly Babcock & Wilcox), to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition originally submitted by BWX Technologies, Inc. to delist a wastewater treatment sludge in the form of a filter cake on a "generator specific" basis from the lists of hazardous waste.

After careful analysis, we have concluded that the petitioned waste is not hazardous waste when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste, a permitted Subtitle C landfill or a Subtitle C landfill which is operating under interim status. This exclusion applies to filter cake generated at BWX Technologies, Inc.'s Lynchburg, Virginia facility. Accordingly, this final rule excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste, a permitted Subtitle C landfill or a Subtitle C landfill which is operating under interim status, but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: January 14, 2000.

ADDRESSES: The RCRA regulatory docket for this final rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. Call David M. Friedman at (215) 814-3395 for appointments. The public may copy material from the regulatory docket at \$0.15 per page. The docket for this final rule is also located at the offices of the Campbell County Administrator's Office, P.O. Box 100, Main Street—Haberer Building 2nd floor, Rustburg,

VA, 24588, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Call Kathy Elliot at (804) 332-9619 for appointments.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, contact David M. Friedman at the address above or at (215) 814-3395.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

- A. What Action Is EPA Finalizing?
- B. Why Is EPA Approving This Delisting?
- C. What Are The Limits of This Exclusion?
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- E. When Is the Final Delisting Exclusion Effective?
- F. How Does This Action Affect States?

II. Background

- A. What Is a Delisting Petition?
- B. What Regulations Allow Facilities To Delist a Waste?
- C. What Information Must the Generator Supply?

III. EPA's Evaluation of the Waste Data

- A. What Waste Did BWX Technologies Petition EPA To Delist?
- B. How Much Waste Did BWX Technologies Propose To Delist?
- C. How Did BWX Technologies Sample and Analyze the Waste Data in This Petition?

IV. Public Comments Received on the Proposed Exclusion

- A. Who Submitted Comments on the Proposed Rule?
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V. Administrative Assessments

- A. Executive Order 12866: Regulatory Planning and Review
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- C. Paperwork Reduction Act
- D. Unfunded Mandates Reform Act
- E. The Congressional Review Act
- F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- G. Executive Order 12875: Enhancing the Intergovernmental Partnership
- H. National Technology Transfer and Advancement Act of 1995
- I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

I. Overview Information

A. What Action Is EPA Finalizing?

We are finalizing:

- (1) The decision to grant BWX Technologies, Inc.'s (hereinafter, BWX Technologies') petition to have its filter cake excluded, or delisted, from the definition of a hazardous waste; and
- (2) The use of the EPA Composite Model for Landfills as the fate and transport model to evaluate the potential impact of the petitioned waste

on human health and the environment. We used this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

After evaluating the petition, EPA proposed on August 4, 1999, to exclude BWX Technologies' waste from the lists of hazardous wastes found at 40 CFR 261.31 (see 64 FR 42317).

B. Why Is EPA Approving This Delisting?

BWX Technologies petitioned to exclude its filter cake because it does not believe that the petitioned waste meets the criteria for which it was listed.

BWX Technologies also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

For reasons stated in both the proposal and this document, we believe that BWX Technologies' filter cake should be excluded from hazardous waste control. Therefore, we are granting a final exclusion to BWX Technologies, located in Lynchburg, Virginia for its filter cake.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of appendix IX to part 261 of Title 40 of the Code of Federal Regulations are satisfied. The maximum annual volume of the filter cake is 500 cubic yards.

D. How Will BWX Technologies Manage the Waste if It Is Delisted?

The filter cake is currently disposed of in an off-site hazardous waste landfill. When delisted, the waste can be disposed of in an off-site Subtitle D industrial landfill, or it may continue to be disposed of in an off-site hazardous waste landfill.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective January 14, 2000. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces,

rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authority to establish the status of their wastes under the State law.

We have also authorized some States (for example, Delaware, Louisiana, Illinois) to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If BWX Technologies transports the petitioned waste to or manages the waste in any State with delisting authorization, BWX Technologies must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to EPA or another agency with jurisdiction to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator does not consider hazardous.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33.

Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. EPA's Evaluation of the Waste Data

A. What Waste Did BWX Technologies Petition EPA To Delist?

BWX Technologies petitioned EPA to exclude from hazardous waste control the filter cake solids generated by its wastewater treatment facility. This filter cake results from the treatment of wastewaters in the pickle acid treatment system and it is a listed hazardous waste, EPA Hazardous Waste F006. The listed constituents of concern for this EPA Hazardous Waste F006 are cadmium, hexavalent chromium, nickel and complexed cyanide (see 40 CFR part 261, appendix VII).

B. How Much Waste Did BWX Technologies Propose To Delist?

Specifically, in a March 11, 1999 update to its original petition, BWX Technologies requested that EPA grant a standard exclusion for filter cake solids generated at a rate of 300 cubic yards per calendar year.

C. How Did BWX Technologies Sample and Analyze the Waste Data in This Petition?

In support of its petition, BWX Technologies submitted detailed descriptions of its manufacturing and wastewater treatment processes, a schematic diagram of the wastewater treatment process, and analytical testing results for representative samples of the petitioned wastes, including: (1) The hazardous characteristics of ignitability and corrosivity; (2) total oil and grease; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) analysis for volatile and semi-volatile organic compounds and Toxicity Characteristic (TC) metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (4) total constituent analysis for

volatile and semi-volatile organic compounds and TC metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (5) total cyanide, total sulfide, total fluoride and total formaldehyde; and (6) TCLP analysis for fluoride. BWX Technologies developed a list of constituents of concern by comparing a list of all raw materials used in the plant that could possibly appear in the petitioned waste with those found in 40 CFR parts 261, appendix VIII and 264, appendix IX. Based on a knowledge of its metal working processes and other processes at the facility and of the treatment operation, BWX Technologies determined that certain classes of chemical constituents would not be anticipated to be present in the filter cake. These chemicals include semi-volatile organic constituents (except those constituents listed in 40 CFR 261.24), pesticides, herbicides, dioxins and furans.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

We received public comments on the August 4, 1999 proposed exclusion from only one interested party. This was the petitioner, BWX Technologies.

B. What Were the Comments?

BWX Technologies requested an increase in the maximum waste volume that is covered by this exclusion for the filter cake solids from 300 cubic yards per calendar year in the proposed exclusion to 500 cubic yards per calendar year. This request is being made in anticipation of an increase in production levels at the Lynchburg, VA facility.

C. What is EPA's Response to the Comment?

This requested change in the volume of filter cake solids will not change the results of EPA's evaluation of the petition for the following reasons.

We evaluated the potential impacts from disposal of the filter cake solids on the ground water, surface water and air exposure pathways. The model that we used for evaluating the potential ground water contamination does so by calculating a dilution/attenuation factor (DAF) which can vary from 100 for smaller annual volumes of waste (*i.e.*, less than 1000 cubic yards per year) to 10 for larger annual volumes of waste (*i.e.*, 400,000 cubic yards per year or more). Because the requested change to 500 cubic yards per year is still below the 1000 cubic yard per year threshold,

the DAF used in evaluating the potential impact on ground water will not change; that is, the DAF will remain 100 (which was the DAF used in our evaluation for the proposed rule).

In addition, there is no change in the evaluation that we did of the potential impacts from disposal of the filter cake solids on the surface water and air exposure pathways since our evaluation for the proposed rule was done using a waste volume of 500 cubic yards. The results of all these evaluations are contained in the RCRA public docket for today's rule.

Therefore, we approve the request to increase the volume of filter cake solids covered by this exclusion from 300 cubic yards to 500 cubic yards per calendar year.

V. Administrative Assessments

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the other provisions of the Executive Order. A "significant regulatory action" is one that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to Executive Order 12866 it has been determined that this rule is not a "significant regulatory action" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions).

However, no regulatory flexibility analysis is required if the head of an agency or delegated representative certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal Agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste rules. Accordingly, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

D. Unfunded Mandates Reform Act

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

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed delisting decision is deregulatory, and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments and, therefore, no small government agency plan is required under section 203 of the UMRA.

E. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (CRA) 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. Rules of particular applicability are exempt, however, from the CRA. See 5 U.S.C. 804(3). Inasmuch as this action affects only one facility, it is a rule of particular applicability which is exempt from the requirements of the CRA and the EPA is not required to submit a rule report regarding today's action under section 801.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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 economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

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

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

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs

EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting with these governments,

Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of today's proposed delisting decision. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: December 13, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region 3.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—[AMENDED]

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description.
*	*	*
BWX Technologies	Lynchburg, VA	Wastewater treatment sludge from electroplating operations (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 500 cubic yards per year, after January 14, 2000, and disposed of in a Subtitle D landfill. BWX Technologies must meet the following conditions for the exclusion to be valid: (1) Delisting Levels: All leachable concentrations for the following constituents measure using the SW-846 method 1311 (the TCLP) must not exceed the following levels (mg/l). (a) Inorganic constituents—Antimony-0.6; Arsenic-5.0; Barium-100; Beryllium-0.4; Cadmium-0.5; Chromium-5.0; Cobalt-210; Copper-130; Lead-1.5; Mercury-0.2; Nickel-70; Silver-5.0; Thallium-0.2; Tin-2100; Zinc-1000; Fluoride-400. (b) Organic constituents—Acetone-400; Methylene Chloride-0.5. (2) Verification testing schedule: BWX Technologies must analyze a representative sample of the filter cake from the pickle acid treatment system on an annual, calendar year basis using methods with appropriate detection levels and quality control procedures. If the level of any constituent measured in the sample of filter cake exceeds the levels set forth in Paragraph 1, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA. Data from the annual verification testing must be submitted to EPA within 60 days of the sampling event. (3) Changes in Operating Conditions: If BWX Technologies significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, BWX Technologies may not manage the filter cake generated from the new process under this exclusion until it has met the following conditions: (a) BWX Technologies must demonstrate that the waste meets the delisting levels set forth in Paragraph 1; (b) it must demonstrate that no new hazardous constituents listed in appendix VIII of part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA to manage the waste under this exclusion. (4) Data Submittals: The data obtained under Paragraphs 2 and 3 must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be furnished upon request by EPA or the Commonwealth of Virginia, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR 260.22(i)(12) to attest to the truth and accuracy of the data submitted.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description.
		(5) Reopener: (a) If BWX Technologies discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then BWX Technologies must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment. (6) Notification Requirements: BWX Technologies must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will be deemed to be a violation of this exclusion and may result in a revocation of the decision.

[FR Doc. 00–959 Filed 1–13–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 268

[FRA Docket No. FRA–98–4545; Notice No. 3]

RIN 2130–AB29

Magnetic Levitation Transportation Technology Deployment Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA published an Interim final rule with request for comments on October 13, 1998 (63 FR 54600), implementing the Magnetic Levitation Technology Deployment Program. An amendment to the interim final rule was published on February 12, 1999 (64 FR 7133) extending the deadline for the submission of application packages from December 31, 1998, to February 15, 1999, and making other adjustments to various dates which flow from that extension of time.

As amended, the interim final rule establishes dates for the Timing of Major Milestones and requires FRA to select one project for final design, engineering, and construction funding at the completion of Phase III. This rulemaking revises the dates established for the Timing of Major Milestones to reflect unanticipated delays in the completion of Phase I of the program, changes the description of Phase II to eliminate the requirement for each grant recipient to initiate activities aimed at

preparing a site-specific draft Environmental Impact Statement (EIS), expands Phase III to allow down-selecting to more than one project for additional study, and shifts FRA's selection of one project for final design, engineering, and construction funding to Phase IV. It also specifies that certain expenses incurred prior to the execution of a cooperative agreement to assist in the financing of pre-construction activities, but after enactment of the Transportation Equity Act for the 21st Century (TEA 21) (June 9, 1998), are eligible for reimbursement of the Federal share of the cost.

EFFECTIVE DATE: This final rule is effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Arnold Kupferman, FRA, 1120 Vermont Ave., NW, Washington, DC 20590 (telephone 202–493–6365; E-mail address:

(Arnold.Kupferman@fra.dot.gov), or Gareth Rosenau, Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW, Mailstop 10, Washington, DC 20590 (telephone 202–493–6054; E-mail address: Gareth.Rosenau@fra.dot.gov).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Transportation Equity Act for the 21st Century (TEA 21)

TEA 21 (Pub. L. No. 105–178) adds a new section 322 to title 23 of the United States Code. Section 322 provides a total of \$55 million for Fiscal Years 1999 through 2001 for transportation systems employing magnetic levitation (“Maglev”). Section 322 requires FRA to establish project selection criteria, to solicit applications for funding, to select one or more projects to receive financial assistance for preconstruction planning activities, and, after completion of such

activities, to select one of the projects to receive financial assistance for final design, engineering, and construction activities. Section 322 authorizes—but does not appropriate—additional Federal funds of \$950 million for final design and construction of the most promising project. Section 322 provides that the portion of the project not covered by the funds provided under section 322 may be covered by any non-Federal funding sources—including private (debt and/or equity), State, local, regional, and other public or public/private entities—as well as by Federally-provided Surface Transportation Program, and Congestion Mitigation and Air Quality Improvement Program funds, and from other forms of financial assistance under TEA 21, such as loans and loan guarantees.

B. The Interim Final Rule

On October 13, 1998, FRA published in the **Federal Register** an interim final rule that established, on an interim basis, the regulations governing financial assistance under the Maglev Deployment Program, including the project selection criteria. The document solicited public comments and applications for Maglev preconstruction planning grants. As noted above, the rule was amended once to extend the deadline for submission of application packages from interested States or their designated authorities. The interim final rule provides: a definition of terms used in the Interim Final Rule; a description and schedule for the various phases of the Maglev Deployment Program; identification of available funding sources for the Program; requirements for the Federal and State shares and restrictions on the uses of Federal maglev funds; identification of eligible participants; project eligibility

standards; a description of the format, content and timing of applications for preconstruction planning assistance and the criteria to be used by FRA in evaluating the applications; and a description of the criteria to be used in selecting one project for final design, engineering and construction.

II. Discussion of Comments and Conclusions

FRA received only two timely-filed public comments on the interim final rule. Set forth below is a summary of the comments received and FRA's responses to the concerns expressed in those letters to the docket.

Comment: One commenter expressed concern that the process set forth in the interim final rule appears to call for project applicants to commit to proceeding with a maglev project in advance of the environmental analysis required under National Environmental Policy Act (NEPA). The commenter alleges that under NEPA any project must involve a study of alternatives, including technology alternatives which may have different environmental effects.

Response: Under the authorizing legislation (Section 1218 of TEA 21), the authorized funding can only be used to pay the costs of preconstruction planning activities, design, engineering and construction of "transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour." It is clear that the Congressional intent is to consider only maglev technology for the use of these funds.

Comment: The second commenter expressed concern that under the schedule suggested in the interim final rule, not enough time was allowed for promulgation of appropriate safety standards and testing for safety before full construction authorization is given.

Response: Under the changes in the schedule effected by this rulemaking, the selection of one project for final design, engineering and construction is delayed until March 2001, at the earliest. In no event will construction be authorized until FRA is fully satisfied that the system will meet appropriate safety standards.

III. Summary of Revisions to the Interim Final Rule and Rationale for Such Changes

Changes in Dates

Section 268.3 (b) of the interim final rule, as amended, established April 30, 1999 as the date for the completion of Phase I—Competition for Planning

Grants. However, the selection of seven of the applicants for participation in the program was not announced by the Secretary of Transportation until May 24, 1999. Additional time has been required to negotiate suitable cooperative agreements with each of the selected participants. As a consequence, it is necessary to revise many of the dates specified in the interim final rule to reflect a realistic schedule.

Eligibility of Pre-agreement Activities

In order to continue on-going work on several projects that had been initiated prior to the execution of cooperative agreements under the Maglev Deployment Program and in response to several requests, FRA has decided to make eligible for funding certain expenses incurred subsequent to June 9, 1998 (the date of enactment of TEA 21), provided that they contributed to development of the Project Description described in Phase II. This rulemaking adds this provision to § 268.5 of the rule.

Exclusion of Requirement for Funding for Site-specific EIS in Phase II of the Project

The interim final rule required that, "After completion of the EA [Environmental Assessment], each financial assistance recipient will initiate activities aimed at preparing a site-specific draft environmental impact statement." It was intended that these activities would be included in the scope of work to be funded by the preconstruction planning grant. Because of the constraints on the available funding, there may not be sufficient funds to pay the Federal share of the costs of activities aimed at the preparation of site-specific draft EIS's for each of the seven projects selected for pre-construction planning, as specified in § 268.3 (c). Therefore, this rulemaking eliminates that requirement from the description of Phase II—Project Description Development.

Down-selection of One or More Projects in Phase III of the Program

The interim final rule, as amended, requires FRA to evaluate the information provided by the seven selected participants during Phase II of the Program and select a single project for final design, engineering, and construction funding as Phase III of the Program. FRA anticipates that after a year of study more than one of the projects being planned may meet all of the eligibility requirements of the law, and, without additional information from additional environmental studies, financial analysis, and detailed design,

it will not be possible to make a well-informed choice of the best project. This rulemaking changes the description of Phase III—Project Selection Process to permit the FRA to delay the selection of a single project for final design, engineering, and construction funding, and to down-select more than one eligible project for further study. Additional environmental studies, financial analysis, and detailed design would be funded for each of the down-selected projects.

Selection of One Project

This rulemaking also changes Phase IV—Project Development and Completion of Site-Specific EIS to require FRA to select one project, if more than one project is down-selected by FRA in Phase III.

These proposed changes have been discussed with the seven participating agencies that would be affected by the proposed change, and there is agreement that such changes are desirable.

Regulatory Analyses and Notices

This rulemaking modifies the interim final rule by:

- (1) Eliminating the requirement in § 268.3 (c) for each grant recipient to initiate activities aimed at the preparation of a site-specific EIS after completion of an Environmental Assessment (EA);
- (2) Modifying § 268.3 (d) to allow the FRA to down-select one or more projects and to finance the preparation of environmental and other additional studies for the down-selected projects before selecting one project for final design, engineering, and construction funding;
- (3) Changing § 268.3 (e) to require FRA to select one project for final design, engineering, and construction funding, if more than one project is down-selected by FRA in Phase III;
- (4) Amending the dates specified in § 268.3 to reflect a realistic schedule;
- (5) Adding paragraph (c) to § 268.5 to make some costs incurred after June 9, 1998 eligible for reimbursement; and
- (6) Amending § 268.21 to conform to the above changes.

There are no other changes to the interim final rule.

Regulatory Analyses and Notices

E.O. 12866 and DOT Regulatory Policies and Procedures

The agency has evaluated this Final Rule in accordance with existing regulatory policies and procedures and has concluded that it is a nonsignificant regulatory action under E.O. 12866, and

a nonsignificant rule under section 5(a)(4) of the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The Final Rule is not a significant regulatory action under E.O. 12866 because it will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency with an action planned or underway by another Federal agency; will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of the Executive Order. The Final Rule implements the preconstruction planning portion of a Congressionally mandated program to provide financial assistance to state and local governments in developing and implementing a transportation project involving magnetic levitation. At this time, the sum of \$55 million dollars is available to implement the program and an authorization for future appropriations totaling \$950 million is in place. However, as noted earlier, the availability of these additional funds is contingent on an appropriation by the Congress.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. Eligible applicants for the Maglev Deployment Program are limited by the enabling statute (23 U.S.C. 322(d)) to States or authorities designated by one or more States. The program implemented by the final rule has the potential to benefit some small entities who may be able to participate as consultants to States or designated authorities in the preconstruction planning activities, final design, engineering and construction activities for Maglev deployment.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and State and local government and seeks to minimize the burdens such information collection requirements might impose. A

collection of information includes requiring answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on, ten or more persons, other than agencies, instrumentalities or employees of the United States. This final rule contains information and reporting requirements that would apply to States, groups of States or designated authorities that file applications for Federal funding for preconstruction planning activities, and to grant recipients who would conduct final design, engineering and construction activities in support of Maglev deployment. As anticipated in the interim final rule, the statutory limit on the types of entities that may apply for funding (States, groups of States, and State designated authorities), the rigorous requirements for developing a viable project, and the substantial financial and resource commitment that were required of applicants, the FRA received fewer than 10 completed applications for preconstruction planning funds from qualified applicants.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. FRA has concluded that the issuance of this final rule, which establishes a process for receiving applications for planning activities associated with the Maglev Deployment Program, does not have a potential impact on the environment and does not constitute a major Federal action requiring an environmental assessment or environmental impact statement. The final rule includes requirements for the preparation of environmental assessments of proposed Maglev projects by successful applicants during the preconstruction planning stage and additional environmental reviews will be undertaken under the auspices of the FRA before one Maglev project is selected for final design and construction funding.

Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and FRA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Maglev Deployment Program provides states with the opportunity to explore the development of a new transportation

technology in a working partnership with the Federal Government.

List of Subjects in 49 CFR Part 268

Grant programs-transportation, High speed ground transportation, Maglev, Magnetic levitation.

IV. Provisions of The Final Rule

In consideration of the foregoing, FRA revises part 268 title 49 of the Code of Federal Regulations to read as set forth below:

PART 268—MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM

Subpart A—Overview

- 268.1 Definitions.
- 268.3 Different phases of the Maglev Deployment Program.
- 268.5 Federal funding sources for the Maglev Deployment Program.
- 268.7 Federal/State share and restrictions on the uses of Federal Maglev Funds.

Subpart B—Procedures For Financial Assistance

- 268.9 Eligible participants.
- 268.11 Project eligibility standards.
- 268.13 Deadline for submission of applications for preconstruction planning assistance.
- 268.15 Form and contents of applications for preconstruction planning assistance.
- 268.17 Project selection criteria.
- 268.19 Evaluation of applications for preconstruction planning assistance.
- 268.21 Down-selection of one or more Maglev projects for further study and selection of one project for final design, engineering, and construction funding.

Authority: 49 U.S.C. 322; 23 U.S.C. 322; 49 CFR 1.49.

Subpart A—Overview

§ 268.1 Definitions.

As used in this part—

CMAQ means Congestion Mitigation and Air Quality Improvement Program (23 U.S.C. 149).

Environmental assessment (“EA”) means the environmental assessment in support of the project description and containing the information listed in § 268.11(b)(6)(i).

Environmental impact statement (“EIS”) means the environmental impact statement which is required pursuant to §§ 268.3.

Eligible project costs means the costs of preconstruction planning activities and the capital cost of the fixed guideway infrastructure of a Maglev project, including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads,

and storage, repair, and maintenance facilities, but eligible project costs do not include the cost of stations, vehicles, and equipment.

Federal Maglev funds means such funds as are provided under the authority of 23 U.S.C. 322 to pay for Eligible Project Costs.

Full project costs means the total capital costs of a Maglev project, including Eligible Project Costs and the costs of stations, vehicles, and equipment.

Phase means one of the five different phases of the Maglev Deployment Program; these phases are described in § 268.3.

Maglev means transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

Maglev Deployment Program means the program authorized by 23 U.S.C. 322.

Partnership potential means the usage of the term in the commercial feasibility study of high-speed ground transportation (*High Speed Ground Transportation for America*) mandated under section 1036 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1978). Under that usage any corridor exhibiting Partnership Potential must at least meet the following two conditions:

(1) Private enterprise must be able to run on the corridor—once built and paid for—as a completely self-sustaining entity; and

(2) The total benefits of a Maglev corridor must equal or exceed its total costs.

STP means the Surface Transportation Program (23 U.S.C. 133).

TEA 21 means the Transportation Equity Act for the 21st Century (Public Law No. 105-178, 112 Stat. 107).

§ 268.3 Different phases of the Maglev Deployment Program.

(a) The Maglev Deployment Program includes five phases, as described in paragraphs (b) through (f) of this section. The current projected timing for implementing these phases is indicated to assist applicants in planning their projects. All dates beyond the first date (the deadline for the submission of preconstruction planning applications) are for planning purposes only and are subject to change—including possible acceleration of deadlines—based on the progress of the Maglev Deployment Program; grantees will be notified accordingly.

(b) *Phase I—Competition for Planning Grants (Early October 1998—September 15, 1999).*

(1) *Description.* In Phase I, States will apply for funds for preconstruction planning activities. As required by § 268.13, applications must be filed with FRA by February 15, 1999. FRA will select one or more projects to receive preconstruction planning financial assistance awarded under this part to perform Phase II of the Maglev Deployment Program.

(2) *Timing of Major Milestones.*

(i) February 15, 1999—Planning grant applications due.

(ii) May 24, 1999—FRA announces grantees for planning grants.

(iii) August 31, 1999—FRA awards planning grants for the conduct of activities listed in Phase II.

(c) *Phase II—Project Description Development (July 1, 1999—June 30, 2000).*

(1) *Description.* In Phase II, each grant recipient will prepare and submit to FRA a project description, supporting preconstruction planning reports, and an EA. Supporting reports may include demand and revenue analyses, project specification, cost estimates, scheduling, financial studies, a system safety plan (including supporting analysis), and other information in support of the project description. FRA will use this information in reaching a decision on which projects to down-select for completion of site-specific environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction. FRA will initiate documentation of environmental factors considered in the project selection process.

(2) *Timing of Major Milestones.*

(i) February 29, 2000—Deadline for submission of appropriate EA's needed by FRA for the down-selection of one or more projects under Phase III.

(ii) June 30, 2000—Deadline for submission of project descriptions and any related supporting reports needed by FRA for down-selection of one or more projects.

(d) *Phase III—Project Selection Process (July 1, 2000—September 30, 2000).*

(1) *Description.* FRA will evaluate the information provided by the grant recipients under Phase II and will down-select one or more projects for completion of additional environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction.

(2) *Timing of Major Milestones.*

September 30, 2000—FRA down-selects one or more project(s).

(e) *Phase IV—Project Development and Completion of Site-specific EIS (October 1, 2000—November 30, 2001).*

(1) *Description.* The financial assistance recipient(s) down-selected in Phase III will complete additional environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction, and address issues raised by FRA's review of system safety plans (including supporting analysis). They will also initiate final design and engineering work for the down-selected project(s). If more than one project is down-selected in Phase III, FRA will select one of them for final design, engineering, and construction funding. Detailed agreements for the construction and operation of the selected project will be negotiated.

(2) *Timing of Major Milestones.*

(i) March 31, 2001—If more than one project is down-selected in Phase III, FRA will select one project.

(ii) December 31, 2001—FRA will issue a Final Record of Decision on the site-specific EIS for the one selected project, confirming the project design.

(f) *Phase V—Completion of Detailed Engineering and Construction (January 1, 2002 and beyond).* In Phase V, the sponsoring State or State-designated authority will oversee the efforts of the public/private partnership formed to progress the selected project, to complete the detailed engineering designs, and finance, construct, equip, and operate the project in revenue service. Construction will be contingent upon the appropriation of Federal funds. In no event will construction be authorized until FRA is fully satisfied that the system will meet appropriate safety standards.

§ 268.5 Federal funding sources for the Maglev Deployment Program.

(a) *Federal Maglev Funds.* Section 322 of Title 23 provides for the following funds for the Maglev Deployment Program:

(1) *Contract authority.* Fifty-five million has been made available for the Maglev Deployment Program as contract authority from the Highway Trust Fund for Fiscal Years 1999 through 2001; this would be used to fund the competition in all its phases and could also be used for final design, engineering, and construction activities of the selected project. Of the \$55 million, the Congress has made available up to \$15 million for Fiscal Year 1999, up to \$15 million for Fiscal Year 2000, and \$25 million for Fiscal Year 2001.

(2) *Authorization for appropriations.* Nine hundred fifty million, also from the Highway Trust Fund, has been

authorized to be appropriated for the Maglev Deployment Program for Fiscal Years 2000 through 2003. Of the \$950 million, \$200 million is authorized to be appropriated for each of Fiscal Years 2000 and 2001, \$250 million for Fiscal Year 2002, and \$300 million for Fiscal Year 2003. Any decision to proceed with possible Federal funding of the construction of a Maglev system will be contingent upon the receipt of appropriations, and upon completion of appropriate environmental documentation.

(b) *Other Federal funds.* Section 322 of Title 23 provides that the portion of the Maglev project not covered by Federal Maglev Funds may be covered by any non-Federal funding sources—including private (debt and/or equity), State, local, regional, and other public or public/private entities—as well as by Federally-provided STP and CMAQ funds, and by other forms of financial assistance made available under title 23 and TEA 21, such as loans and loan guarantees.

(c) *Costs Incurred in Advance of Cooperative Agreement.* Certain costs incurred in advance of the execution of a cooperative agreement between FRA and the grantee for pre-construction planning but after enactment of TEA 21 (June 9, 1998) will be eligible for reimbursement, but such costs are allowable only to the extent that they are otherwise allowable under the terms of a fully executed cooperative agreement.

§ 268.7 Federal/State share and restrictions on the uses of Federal Maglev Funds.

(a) *Federal share.* The Federal share of Full Projects Costs shall be not more than $\frac{2}{3}$, with the remaining $\frac{1}{3}$ paid by the grant recipient using non-Federal funds. Funds made available under STP and CMAQ are considered non-Federal funds for purposes of the matching requirement.

(b) *Restrictions on the uses of Federal Maglev Funds.*

(1) Federal Maglev Funds may be applied only to Eligible Project Costs;

(2) Federal Maglev Funds provided under a preconstruction planning grant may be used only for Phase II activities, and for completion of site-specific draft EIS's; see § 268.3;

(3) Federal Maglev Funds may be used to pay for only $\frac{2}{3}$ of preconstruction planning costs; grant recipients are required to pay the remaining $\frac{1}{3}$ of the costs with non-Federal funds; and

(4) The "prevailing wages" requirement of the Davis Bacon Act (40 U.S.C. 276a-276a-5) applies to any

construction contracts under the Maglev Deployment Program.

Subpart B—Procedures For Financial Assistance

§ 268.9 Eligible participants.

Any State, or any authority designated by one or more State(s) to carry out the preconstruction planning activities under the Maglev Deployment Program is eligible to participate in the Maglev Deployment Program.

§ 268.11 Project eligibility standards.

(a) *Project eligibility standards for preconstruction planning financing.* (1) As required by 23 U.S.C. 322(d)(4), in order to be eligible to receive financial assistance, a Maglev project shall:

(i) Involve a segment or segments of a high-speed ground transportation corridor that exhibit Partnership Potential;

(ii) Require an amount of Federal funds for project financing that will not exceed the sum of Federal Maglev Funds, and the amounts made available by States under STP and CMAQ;

(iii) Result in an operating transportation facility that provides a revenue producing service;

(iv) Be undertaken through a public and private partnership, with at least $\frac{1}{3}$ of Full Project Costs paid using non-Federal funds;

(v) Satisfy applicable statewide and metropolitan planning requirements;

(vi) Be approved by FRA based on an application submitted by a State or authority designated by one or more States;

(vii) To the extent that non-United States Maglev technology is used within the United States, be carried out as a technology transfer project; and

(viii) Be carried out using materials at least 70 percent of which are manufactured in the United States.

(2) FRA recognizes that applicants for preconstruction planning grants will not have detailed information with respect to some of the requirements of paragraph (a)(1) of this section, and that the purpose of a preconstruction planning grant is to develop much of this information with respect to a particular Maglev project. As required by § 268.15, an applicant will need to provide whatever information it has with respect to each of the requirements of paragraph (a)(1) of this section, together with a certification that the applicant fully intends to comply with the requirements of this paragraph (a) should its project be selected by FRA for final design, engineering and construction financing.

(b) *Project eligibility standards for final design, engineering, and*

construction financing. FRA will select the most promising Maglev project for final design, engineering, and construction financing. To be eligible to be considered, the project must meet each of the following requirements; these requirements restate the requirements in paragraph (a)(1) of this section, but with more detail and in a different order:

(1) *Purpose and significance of the project.* (i) The project description shall point to a Maglev facility and daily operation the primary purpose of which is the conduct of a revenue-producing passenger transportation service between distinct points, rather than a service solely for the passengers' riding pleasure.

(ii) The project description shall incorporate scheduled operation at a top speed of not less than 240 mph.

(2) *Benefits for the American economy.* The project description shall include a certification as to paragraphs (b)(2) (i) and (ii) of this section and, as appropriate, a technology acquisition/transfer plan which describes the strategy for their accomplishment.

(i) Processes will be established that will enable an American-owned and -sited firm (or firms) to gain, in the course of the project, the capability to participate in the design, manufacture, and installation of the facilities and vehicles needed for a Maglev operation, if the owner of the selected version of Maglev technology is not an American-owned and -sited firm (thus meeting the technology transfer requirement of 23 U.S.C. 322).

(ii) The 70 percent U.S. content requirement content of 23 U.S.C. 322 will be carried out.

(3) *Partnership potential.* The project shall exhibit Partnership potential by satisfying the following:

(i) A private/public partnership must be in place that is ready, willing, and able to finance, construct, operate, and maintain the project;

(ii) The private/public partnership either owns the version of Maglev technology proposed to be implemented in the project, or has an agreement with the owner which affords full cooperation to the partnership in progressing the project, including implementation of the technology acquisition/transfer plan if applicable; and

(iii) The recipient of a preconstruction planning grant or the FRA has developed and endorsed a projection of system capital costs, demand, revenues, operating expenses, and total costs and benefits, that:

(A) Covers either the entire corridor in which the Maglev project is involved

("Corridor"), or the project considered independently;

(B) Demonstrates that private enterprise would be able to run the Corridor or the project—once built and paid for—as a completely self-sustaining entity, in which revenues will cover operating expenses and continuing investment needs; and

(C) Shows total benefits equal to or exceeding total costs.

(4) *Funding Limits and Sources.* The project description shall include a financing plan that demonstrates project completion with the \$950 million in Federal Maglev Funds, funds remaining unobligated from the \$55 million in contract authority, and the funds made available under STP and CMAQ. The project that is selected will be eligible for other forms of financial assistance provided under title 23 and TEA 21, including loans, loan guarantees, and lines of credit. However, at least 1/3 of Full Project Costs must come from non-Federal Funds.

(5) *Project Management.* The State, the technology owner, and all other relevant project partners must include in the project description, an agreed upon—

(i) *Management plan* that defines the partnership, responsibilities, and procedures for accomplishing the project;

(ii) *Project schedule* that shows how timely implementation of the project will be accomplished, including, to the extent possible, a construction plan and schedule; and

(iii) *Financial plan* that shows how funds will flow, in accordance with the other requirements of this subsection.

(6) *Planning/environmental process.*

(i) *Assessment of environmental consequences of the proposed project.* Recipients of preconstruction planning grants shall conduct an EA in support of the project description; and will prepare additional environmental studies for the project. The EA shall include information to support the grantee's decision to pursue the proposed project. The grantee shall develop the information and discuss the environmental consequences of the proposed technology and route in sufficient detail for the preparation of appropriate documentation by FRA to support selection of one project. This shall include: the identification of potential positive and negative environmental effects resulting from the technology (e.g. energy consumption compared to other transportation options); generic noise emissions at various distances from the centerline of the guideway; changes in electromagnetic field levels at various

distances from the centerline of the guideway; and environmental screening of the proposed route (e.g., identification of land use; identification of endangered species possibly present and location of their critical habitat; identification of navigable waterways, wetlands and other sensitive water resources; and identification of the location of parks, wildlife refuges, historic and archaeological sites of National, State or local significance and other sites protected by section 4(f) of the Department of Transportation Act). The latter information and analysis shall be submitted four months in advance of the remainder of the project description. The above list is illustrative only. Grantees will be expected to review proposed work statements with FRA at pre-application meetings or through some other means to develop the final scope of this environmental review.

(ii) The project description must also include letters of endorsement of project implementation from all the State departments of transportation involved, and from all Metropolitan Planning Organizations for metropolitan areas that would be served by the project.

§ 268.13 Deadline for submission of applications for preconstruction planning assistance.

Completed application packages shall be returned to FRA by December 31, 1998. Applications shall be submitted to: Honorable Jolene M. Molitoris, Administrator, Federal Railroad Administration, ATTN: Maglev Project, RDV-11, 400 Seventh Street, SW, Stop 20, Washington, DC 20590.

§ 268.15 Form and contents of applications for preconstruction planning assistance.

States, groups of States, or designated authorities that have Maglev projects are invited to submit applications in Phase I of the Maglev Deployment Program, the competition for preconstruction planning grants. The applications shall contain:

(a)(1) If submitted by a State: name, address, responsible party, telephone, fax number, and e-mail address of the State agency submitting the application; or

(2) If submitted by a designated authority: name, address, responsible party, telephone, fax number, and e-mail address of the designated authority and of the State agency or agencies on whose behalf the designated authority is submitting the application, together with letters from the State(s) evidencing all such designations;

(b) A description of the project concept, identifying its likely location,

market area, length, and the transportation service that it would perform, and a preliminary estimate of the time that would be required—if funds are made available—to bring the project to the start of construction and then to the initiation of full revenue service. At its option, the applicant may include any reports already completed on the project as well as any additional descriptive material that would assist the FRA in evaluating the application;

(c) Whatever information the applicant has to demonstrate that the project meets the project eligibility standards in § 269.11(a), and the project selection criteria in § 268.17, together with a certification that the applicant fully intends to comply with the requirements in § 269.11 should its project be selected by FRA for final design, engineering and construction financing.

(d) A statement of work for the preconstruction planning activities to be accomplished under the planning grant. The statement shall describe the work to be performed, including but not necessarily limited to:

(1) Preconstruction planning work as is needed to develop a Maglev project, and project description that will satisfy the project eligibility standards in § 268.11(b), and the project selection criteria in § 268.17; and

(2) Preparation of EAs, as described in § 268.11(b)(6)(i);

(e) Management plan, schedule, and financial plan for accomplishing the preconstruction planning work under the planning grant;

(f) Letters supporting the application from the heads of all State departments of transportation involved, as well as from responsible officials of the Metropolitan Planning Organizations of all metropolitan areas to be served by the proposed project;

(g) A certification from the State, or from the authority designated by one or more States, that the 1/3 matching funds required for work under the planning grant are, or will be, available by the time the grants are announced. The source(s) of the matching must be shown in the financial plan under paragraph (e); and

(h) If the applicant has made a definitive choice of the particular Maglev technology proposed to be included, a description of that technology and the degree to which it has been produced and tested should be submitted. Further, if the applicant has identified organizations that would form members of the team that would implement the project, the names of those organizations and the persons

representing them should also be submitted.

§ 268.17 Project selection criteria.

Except as qualified by § 268.19, the following criteria will govern FRA's selection of projects to receive funding under the Maglev Deployment Program.

(a) *Purpose and significance of the project.*

(1) The degree to which the project description demonstrates attractiveness to travelers, as measured in passengers and passenger-miles.

(2) The extent to which implementation of the project will reduce congestion, and attendant delay costs, in other modes of transportation; will reduce emissions and/or energy consumption; or will reduce the rate of growth in needs for additional highway or airport construction. Measures for this criterion will include but not be limited to the present value of congestion reduction, pollution reduction, and/or facility cost-avoidance benefits.

(3) The degree to which the project will demonstrate the variety of operating conditions which are to be expected in the United States.

(4) The degree to which the project will augment a Maglev corridor or network that has been identified, by any State, group of States, or the FRA, as having Partnership Potential.

(b) *Timely implementation.* The speed with which the project can realistically be brought into full revenue service, based on the project description and on the current and projected development status of the Maglev technology selected by the applicant for the project.

(c) *Benefits for the American economy.* The extent to which the project is expected to create new jobs in traditional and emerging industries in the United States.

(d) *Partnership potential.* The degree to which the project description demonstrates Partnership Potential for the corridor in which it is involved, and/or for the project independently.

(e) *Funding limits and sources.*

(1) The extent and proportion to which States, regions, and localities commit to financially contributing to the project, both in terms of their own locally-raised, entirely non-Federal funds, and in terms of commitments of scarce Federal resources from non-Maglev funds; and

(2) The extent and proportion to which the private sector contributes financially to the project.

Note to § 268.17: FRA recognizes that applicants for preconstruction planning assistance may not have detailed information with respect to each of these criteria, and that

the purpose of the preconstruction planning assistance is to develop much of this information with respect to a particular Maglev project. The preconstruction planning application requirements of this part 268 are designed to elicit whatever information an applicant may have pertaining to these criteria.

§ 268.19 Evaluation of applications for preconstruction planning assistance.

The FRA will evaluate the applications for their completeness and responsiveness to the requirements listed in § 268.15. In addition, applicants are advised that the Maglev Deployment Program contains a number of project eligibility standards (minimum threshold standards) and project evaluation criteria that will guide the FRA's review of the project descriptions produced under the Planning Grants. The FRA's implementation of these standards and criteria appears in § 268.11 and § 268.17, respectively. Although subject to revision, the information in § 268.11 and § 268.17 should assist the States in completing their applications in the competition for planning grants, since the project descriptions will need to respond to the standards and criteria. In evaluating the applications for planning grants, FRA will consider how consistent the applicant's project is to the standards and criteria, and the application's likelihood of leading to a project that meets all the standards and criteria.

§ 268.21 Down-selection of one or more Maglev projects for further study and selection of one project for final design, engineering, and construction funding.

(a) Upon completion of Phase III of the Maglev Deployment Program, FRA will down-select one or more projects to complete additional environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction. Final design and engineering work will also be initiated for the down-selected project(s). To be down-selected a project must appear to meet the project eligibility standards contained in § 268.11 (b), rate highly in the project selection criteria specified in § 268.17, be judged by FRA to have a good chance of being constructed with the Federal funds authorized for this program, and be successfully operated by a public/private partnership.

(b) Only one project will be selected in Phase IV of the Maglev Deployment Program and be eligible for any Federal construction funds that Congress chooses to make available. That one project must meet each and every project eligibility standard contained in

§ 268.11 (b). If more than one project down-selected in Phase III and funded through Phase IV meets all of these standards, then FRA will evaluate and compare the eligible projects according to the set of project selection criteria contained in § 268.17.

(c) In reviewing competing projects under the project eligibility standards and project selection criteria, the FRA will exercise particular vigilance regarding the following elements of the preconstruction planning process, although not to the exclusion of others:

(1) The credibility of the demand and revenue forecasts, cost estimates, and benefit/cost comparisons; and

(2) The credibility of the financial plan.

(d) FRA intends to make periodic reviews of the processes and products of grant recipients. Such reviews may include, at the FRA's option, reviews at key milestones in the preparation of project descriptions.

Issued in Washington, DC on January 4, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 00-613 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE39

Endangered and Threatened Wildlife and Plants; Final Rule To List Two Cave Animals From Kauai, Hawaii, as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two animals—the Kauai cave wolf spider (*Adelocosa anops*), and the Kauai cave amphipod (*Spelaeorchestia koloana*). These two species are found on the Hawaiian island of Kauai. The Kauai cave wolf spider is known from three populations, and the Kauai cave amphipod is known from five populations. These animals and their habitats have been variously affected or are currently threatened by the following—habitat degradation and loss through the removal of perennial vegetation, soil fill, grading, paving, quarrying, and other activities

associated with development and agriculture; predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining populations and their limited distribution. This final rule implements the Federal protection and recovery provisions provided by the Act for these animal taxa.

EFFECTIVE DATE: This rule takes effect February 14, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment during normal business hours, at the office of the U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3-122, P.O. Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Pacific Islands Ecoregion Manager, at the above address (808/541-3441); facsimile: 808/541-3470.

SUPPLEMENTARY INFORMATION:

Background

The Kauai cave wolf spider (*Adelocosa anops*) and Kauai cave amphipod (*Spelaeorchestia koloana*) are known only from the Hawaiian island of Kauai. The Kauai cave wolf spider is known from three populations, and the Kauai cave amphipod, from five populations.

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain (the Northwestern Hawaiian Islands). Each island was built sequentially from frequent, voluminous basaltic lava flows (Stearns 1985). The youngest island, Hawaii, is still volcanically active and retains its form of coalesced, gently sloping, relatively unweathered shield volcanoes. Volcanism on the older islands has long since ceased, and subsequent erosion formed numerous valleys with steep walls and well-developed streams and soils (Zimmerman 1948).

In the formation of the islands, the lava flows created caves, cracks, gas pockets, and smaller, interconnected subterranean spaces or mesocaverns (Howarth 1973; 1987a). While unique subterranean faunas have long been known from temperate continental cave systems, until the 1970s obligate cave-inhabiting (dependent on cave habitat)

animals were thought to be absent from tropical and island systems (Howarth 1987a). In the last 3 decades, however, a remarkable assemblage of about 50 species of cave-adapted animals have been discovered in Hawaiian caves (Howarth 1972; 1987a, b). Cave-adapted species evolved directly from native surface-dwelling ancestors in at least 12 groups of Hawaiian arthropods (Howarth 1991a).

These obligate cave-dwellers are generally found on the younger islands where an abundance of young lava flows exist (Howarth 1983a). On older islands, soil formation, erosion, and siltation have filled in most subterranean voids, thus eliminating the habitat for cave animals. The island of Kauai is the oldest of the eight major Hawaiian islands and was formed by a single shield volcano (formed by one volcano) approximately 5.6 million years ago (Stearns 1985). Four million years of weathering eliminated most cave habitats formed during this initial vulcanism. Between 0.6 and 1.4 million years ago, the Koloa series of post-erosional lava flows again provided available habitat for subterranean animals. Subsequent erosion also filled in most of the habitat in the Koloa series, leaving only a small area of suitable cave habitat along the arid southern coast.

Because of the age of Kauai and the extensive erosion, it was not originally expected to harbor any cave animals. However, in 1971, two eyeless cave arthropods, a spider and amphipod were discovered in caves of the Koloa series lava flows. These animals are known only from a single exposed lava flow in the "very rocky" to "extremely rocky" Waikomo soil series (U.S. Department of Agriculture, Soil Conservation Service 1972). The lava flow covers approximately 10.5 square kilometers (sq km) (4 sq miles (mi)), and exhibits no covering by erosional sediments. The amphipod also occurs in a younger limestone cave formed on top of a portion of the exposed Koloa series flow. These animals are restricted to the dark, moist areas of larger caverns and smaller subterranean spaces. The amphipod is a detritivore, feeding primarily on rotting tree roots, whereas the spider is a carnivore, preying upon the amphipod and alien arthropods that venture underground. The land supporting these two animal species is privately owned, as are adjacent areas with potentially suitable habitat.

Discussion of the Two Animal Taxa Included in This Final Rule

Frank Howarth first discovered the Kauai cave wolf spider (*Adelocosa*

anops) in Koloa Cave # 2 in 1971 (Gertsch 1973), and Willis Gertsch (Gertsch 1973) formally described the spider. This species is a member of the wolf spider family (Lycosidae). Spiders in this family are characterized by a distinct eye pattern, including two particularly large eyes in the middle row (Foelix 1982). The most conspicuously diagnostic character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and its distinction justifies the recognition of a separate genus for this taxon. A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent. Adults of the Kauai cave wolf spider are about 12.7 to 19.0 millimeters (mm) (0.5 to 0.75 inches (in)) in total length with a reddish-brown carapace (hard outer covering), pale abdomen, and bright orange legs. The hind margin of each chelicera (biting jaw) bears three large teeth: Two situated basally (on the bottom), and the third at the distal (far) end of the chelicera. The tibiae (inner large bone of the leg) of the two anterior pairs of legs have four pairs of ventral spines, and tarsi (ultimate segments) and metatarsi (penultimate segments) of all legs bear unusually long and silky trichobothria (sensory hairs).

The Kauai cave wolf spider is a predator and, although blind, can detect the presence of potential food items by touch or by detecting chemical compounds; this species actively stalks its prey (Howarth 1983b). Although predation has not been observed in the field, the spider probably feeds primarily on the Kauai cave amphipod and, to a lesser extent on alien species of arthropods that enter the cave system. Compared to most wolf spiders, the reproductive capacity of the Kauai cave wolf spider is extremely low, with only 15 to 30 eggs laid per clutch (Howarth 1981; Wells *et al.* 1983). Newly hatched spiderlings are unusually large, and carried on the back of the female for only a few days (Howarth 1991a; Howarth and Mull 1992).

Biologists found the Kauai cave wolf spider only in two lava tube systems in the Koloa area of Kauai; specifically the Koloa Caves and Kiahuna Caves (Gertsch 1973; Frank Howarth, Bishop Museum, *in litt.* 1979). The spider is restricted to the dark zones (Howarth 1981) of the caves and adjoining fissures. Similar to other Hawaiian cave-adapted spiders, this species is highly susceptible to desiccation (Hadley *et al.* 1981; Ahearn and Howarth 1982). The spider is active in the large caverns only

during wetter times of the year (Howarth, *in litt.* 1979) or in smaller areas of the cave that maintain a saturated atmosphere (Howarth 1981). Because of the seasonal and spatial movement of the spider, as well as an inability to mark or tag the animals, survey methods have not been developed to obtain accurate population estimates. However, survey counts of the spider have ranged from 12 to 28 in Koloa Cave #2, 0 to 4 in Kiahuna Cave Makai (cave #210), and 0 to 2 in Kiahuna Cave Mauka (Service, unpublished data, 1998–99).

Frank Howarth also discovered the Kauai cave amphipod (*Spelaeorchestia koloana*) along with the Kauai cave wolf spider in Koloa Cave #2 in 1971 (Bousfield and Howarth 1976). Because of the unusual attributes of a highly reduced pincher-like condition of the first gnathopod (cephalothoracic appendage—an appendage located on the part of the amphipod which is the fused head and thorax (the middle region)) and the second gnathopod being mitten-like in both sexes, this taxon is placed in its own unique genus (*Spelaeorchestia*) within the family Talitridae (Bousfield and Howarth 1976). This species is also distinctive in its lack of eye facets (lenslike division of a compound eye) and pigment, and extremely elongate, spiny, postcephalic (behind the head) appendages. Adult amphipods are 7 to 10 mm (0.25 to 0.4 in) in length and very slender-bodied, with a hyaline cuticle (translucent outer layer). Gnathopod 1 is highly reduced, and gnathopod 2 is mitten-like. Antenna 2 is slender and elongate, with the flagellum (long thread-like structure used for movement) only slightly longer than the peduncle (a stalklike structure). Peraeopods (abdominal walking legs) are very elongate, with slender, attenuated claws. All pleopods (swimming legs) are reduced, with branches vestigial (small rudimentary part, usually non-functioning) or lacking. Uropods (tail-like appendages) 1 and 2 have well developed prepeduncles, and brood plates in the mature female are vestigial or entirely absent (Bousfield and Howarth 1976).

The Kauai cave amphipod is a detritivore (feeds on organic debris from decomposing plants, animals, and fecal material) and has been observed feeding on rotting roots of *Pithecellobium dulce* (Manila tamarind) and *Ficus* sp. (fig); rotting sticks, branches, and other plant material washed into the caves; and arthropod fecal material. In large cave passages, most individuals are found on or underneath roots or rotting debris. However, this amphipod does not appear to be particularly gregarious.

When disturbed, this species typically moves slowly away rather than jumping like other amphipods. Nothing is known of the reproductive biology of this amphipod, but the vestigial brood plates of the female suggest they give birth to a small brood of large offspring (Bousfield and Howarth 1976; Poulson and White 1969).

While found in the same caves as the Kauai cave wolf spider, the cave amphipod is also known from a short lava tube (cave #210) located 1 km (0.6 mi) inland of the seaward Kiahuna Cave, the Limestone Quarry Cave 7 km (4.5 mi) to the east at Mahaulepu, and most recently from a small cave that was exposed during construction of the Koloa Town road (Adam Asquith, Service, pers. comm. 1999; Jan Tenbruggencate, Honolulu Star Bulletin, *in litt.* 1999). The Mahaulepu Cave occurs in a calcareous (containing calcium) sandstone hill formed from a cemented sand-dune that was deposited on top of a disjunct exposure of the Koloa lava formation during a higher stand of the sea (Stearns 1985). The limestone cave was formed by water erosion from the ocean and a still-active freshwater stream that runs through the lowest cave level. The amphipod probably colonized this cave by migrating from the underlying Koloa lava formation. Due to the inability to mark amphipods for demographic studies, no attempt has been made to estimate the population sizes of the cave amphipod. However, survey counts for this species in the caves where they have been surveyed regularly range from 8 to 27 in Koloa Cave #2 and 11 to 71 in Kiahuna Cave Mauka (Service, unpublished data, 1998–99).

The two cave animals are restricted to dark, moist areas of larger caverns and smaller subterranean spaces or mesocaverns (Howarth 1983a). As with the subterranean animals on younger Hawaiian islands (Howarth 1991a), the small mesocaverns may be the primary habitat for these species. For example, the Kauai cave amphipod was not seen during initial surveys of Kiahuna cave #210 (Miura and Howarth 1978). On a subsequent survey however, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns (Howarth, *in litt.* 1979; Howarth 1983a). On younger islands, these mesocaverns also allow animals to move among larger, adjacent lava tubes (Howarth 1991a). However, because these smaller voids become filled with erosional sediment in older flows like Koloa and as a result of surface disturbance (Hammatt *et al.*

1988; Adam Asquith, *in litt.* 1994a), it is unlikely that the Kauai cave animals can move among separate lava tube systems. Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns (Hoch and Howarth 1993), it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. Thus, the Koloa Caves #1 and #2 and adjacent areas are considered to harbor one population of the spider and one population of the amphipod. The seaward Kiahuna Caves #267 and #276 harbor another population of both the spider and amphipod; the Kiahuna Cave #210 harbors a separate population each of the spider and amphipod; the Mahaulepu Cave harbors a population of the cave amphipod (Service, unpublished data, 1998–99); and a small cave near the Koloa Town road harbors a fifth amphipod population.

The restricted area where these animals occur is rapidly undergoing development. The shallow cave habitat is degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, and other activities associated with development and agriculture. In fact, the Koloa cave systems are considered to be 1 of the 10 most endangered cave ecosystems worldwide (Culver *in litt.*, 1998). These animals are also increasingly at risk from predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities associated with residential and golf course development; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals and populations and their limited distribution.

Previous Federal Action

On June 16, 1978, we published a proposal in the **Federal Register** (43 FR 26084) to list the Kauai cave wolf spider as an endangered species and the Kauai cave amphipod as threatened. We withdrew that proposal on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of the proposal or within 1 year after passage of the Amendments, whichever period was longer. We published an initial comprehensive Notice of Review for invertebrate animals on May 22, 1984 (49 FR 21664),

in which we treated the Kauai cave wolf spider and Kauai cave amphipod as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). In this notice, we treated the Kauai cave wolf spider and Kauai cave amphipod as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the Notice of Review for all animal taxa we published on November 21, 1991 (58 FR 58804), we again listed the two Kauai cave arthropods as category 2 candidates. In the November 15, 1994, Notice of Review for all animal taxa (59 FR 58982), we elevated the two Kauai cave arthropods to category 1 candidates. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we stopped using category designations and included the two cave arthropods simply as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. We also included the two cave arthropods as candidate species in the September 19, 1997 (62 FR 49398), Notice of Review. We published a proposed rule to list these two species as endangered on December 5, 1997 (62 FR 64340).

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the December 5, 1997, proposed rule (62 FR 64340), we requested interested parties to submit comments or information that might contribute to the final listing determination for these two species. The public comment period ended on February 3, 1998. We contacted and sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published announcements of the proposed rule in the following newspapers—the Garden Island on December 18, 1997, the Honolulu Advertiser on December 24, 1997, and the Honolulu Star-Bulletin on December 24, 1997.

We received a total of seven comments. Two individuals and one conservation organization supported the proposal. Two commenters did not support the proposal. Two commenters neither supported nor objected to the proposal, including a Kauai county agency that asked us to identify habitat areas for the two cave species so that the agency's concerns about potential utility easements could be discussed.

In addition, we solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy (59 FR 34270). We requested three qualified and independent specialists to review the proposed rule and comment on the pertinent scientific and/or commercial data and assumptions relating to the taxonomy, demography, and supportive biological and ecological information of the Kauai cave wolf spider and Kauai cave amphipod. We received written comments from one of these experts; that information is incorporated into this final rule.

We grouped and discussed comments of a similar nature under the following issue headings. In addition, we considered and incorporated, as appropriate, into the final rule, all biological and commercial information obtained through the public comment period.

Issue 1: One commenter suggested that these species would be better protected if a Candidate Conservation Agreement (CCA) or Habitat Conservation Plan (HCP) was developed for the animals.

Our Response: We are required to base listing decisions on the best available scientific and commercial information. In this regard, we reviewed information from the scientific literature as well as commercial information. Based on this information, we conclude

that the Kauai cave wolf spider and Kauai cave amphipod are in danger of extinction throughout a significant portion of their ranges. In addition, no new information was submitted during the public comment period that indicated other viable populations of these animals existed or that the remaining populations are not at risk. HCPs provide excellent opportunities for conservation of species. We encourage landowners and managers to explore all the conservation mechanisms available.

Issue 2: One commenter opposed the listing of the Kauai cave wolf spider and Kauai cave amphipod because of economic impacts of the listing on the local economy.

Our Response: In accordance with 16 U.S.C. sec. 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word “solely” to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The legislative history of the 1982 amendments states: “The addition of the word ‘solely’ is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of species. * * *” H.R. Rep. No. 567, Part I, 97th Cong., 2d Sess. 20 (1982). Therefore, we have not considered the impacts of listing on economic development in making this listing determination.

Issue 3: One commenter argued that we lacked authority to list the Kauai cave wolf spider and Kauai cave amphipod under the Endangered Species Act because such power would exceed the scope of Federal Commerce Clause power.

Our Response: We believe that listing these species is within the scope of the Commerce Clause for the reasons contained in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997) *cert. denied*, 1185 S.Ct. 2340 (1998). That case involved a challenge to the application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) under the Act. As with these two Kauai cave species, the Delhi Sands flower-loving fly is endemic only to one State. However, Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a

proper exercise of Commerce Clause power to regulate the use of channels of interstate commerce, and activities substantially affecting interstate commerce, because it prevented destruction of biodiversity and destructive interstate competition. Judge Henderson concluded that the protection of the Delhi Sands flower-loving fly was within the Federal Government's Commerce Clause authority because the listing of the fly prevents harm to the ecosystem upon which interstate commerce depends, and because doing so regulates commercial development that is part of interstate commerce.

Summary of Factors Affecting These Species

After a thorough review and consideration of all information available, we determined that the Kauai cave wolf spider and Kauai cave amphipod should be classified as endangered species. We followed the procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. These animals are restricted to a 10.5 sq km (4 sq mi) coastal section of the Koloa series lava flows that have not been filled with erosional sediment. Surface modifications in this area directly impact the subterranean habitat that supports the spider and amphipod (Hammatt *et al.* 1988; Miller and Burgett 1995; Asquith, *in litt.* 1994). Prior to arrival of Polynesians in Hawaii, the aboveground habitat of this area probably comprised a coastal dry shrubland and would have included plants such as *Sida fallax* (ilima), *Myoporum sandwicense* (naio), *Chamaesyce celastroides* (akoko), and *Santalum ellipticum* (iliahialoe) (Gagne and Cuddihy 1990). On the islands of Maui and Hawaii, these plants are known to produce extensive root systems into underlying lava tube fissures, and probably also formed the primary nutrient source for the cave ecosystem at Koloa.

The first thousand years of Polynesian habitation in Hawaii had little significant impact on the cave system at Koloa. However, with a rapid

population increase after 1400 A.D., heavy modification of most leeward areas of the Hawaiian Islands probably occurred (Kirch 1982; Cuddihy and Stone 1990). This modification was due to the subsequent expansion of agriculture from more favorable, mesic (an environment that is neither extremely wet nor extremely dry) valleys and the use of fire to clear plant communities. A perennial stream flowing directly through the Koloa area allowed Polynesians to develop extensive irrigated fields of *Colocasia esculenta* (taro), *Ipomoea batatas* (sweet potato), and *Saccharum officinarum* (sugar cane) and to cultivate sweet potato on dry land (Handy and Handy 1972; Hammatt and Tomonari 1978; Hammatt *et al.* 1988; Sinoto 1975).

Field irrigation of traditional crops continued in the Koloa area until 1835, when the first sugar plantation in the Hawaiian Islands was established at Koloa. Thereafter, most of the land with suitable topsoil was used for large-scale sugar cane cultivation (Hammatt *et al.* 1988). This activity included the mechanical clearing of stones and boulders and consolidation of smaller field plots. The surface modifications associated with these past agricultural activities greatly reduced underground root biomass through the destruction of perennial vegetation (Howarth 1981; Miller and Burgett 1995), which removes the necessary food base for the amphipod and other cave-dwelling herbivores (Howarth 1973, 1981, 1982). Large-scale agricultural practices brought on by the sugar cane industry also increased the amount and mobility of the overlying sediments. As a consequence, the rate of sediment deposition into the underlying subterranean voids increased, eliminating or greatly reducing the amount of available cave habitat (Howarth 1973; Hammatt *et al.* 1988; Asquith, *in litt.* 1994).

Thus, with the exception of a narrow 0.5 km-wide (0.25 mi-wide) strip of particularly rocky land immediately along the coast, most of the habitat for both the spider and the amphipod was heavily modified prior to the 1950s. On interior lands, small areas of exposed pahoehoe lava, rock outcrops, and the entrances to lava tubes were generally unsuited for cultivation of crops and were left less disturbed. In areas improved for pasture use, however, some cave entrances were filled or covered (Hammatt *et al.* 1988; Howarth, *in litt.* 1977). The remaining pockets of uncultivated land around collapsed lava tubes and exposed lava probably served as refugia for the cave animals. Significantly, all the known populations

of both the spider and amphipod are in areas never used for plantation sugar cane cultivation.

In the last 5 decades, the Koloa area changed from an agriculture-based economy to one increasingly dependent on tourism (Kauai Office of Economic Development, *in litt.* 1994). Approximately 75 percent of the original habitat available for the cave animals is now designated as "urban" or "urban residential" (County of Kauai, *in litt.* 1994), and the human population of the Koloa area is expected to double by the year 2015 (KPMG Peat Marwick 1993). This population growth has led to rapid development of homes, condominiums, and resort hotels originally centered along the coastal strip. In recent years, interior lands supporting both populations of the spider and all but one population of the amphipod have been rezoned from agriculture to urban usage and are undergoing development. With the construction of roads, residences, and golf courses, the subterranean habitat is degraded through the removal of perennial vegetation and its root systems, the collapse of lava tubes from heavy construction equipment, and increased siltation of caves from grading and filling activities (Howarth 1973; Hammatt *et al.* 1988; Asquith, *in litt.* 1994a). The population of the Kauai cave wolf spider in Koloa Cave #2 is threatened by a proposed bypass road, as well as blasting and excavation of a drainage ditch from an adjacent housing development (David Hopper, Service, *in litt.* 1998, 1999). The recent uncovering of a lava tube during the construction of the Koloa bypass road exemplifies the continuing threat posed by ongoing development (Jan Tenbruggencate, *in litt.* 1999). Until recently, the disjunct population of the amphipod in the limestone cave was threatened by a quarrying operation directly above and adjacent to the cave system (Howarth, *in litt.* 1977, 1978). Thus, most of the land that potentially harbored these animals has been highly modified, and an estimated 75 percent of the area has probably been rendered uninhabitable. The remaining habitat, harboring virtually all known populations of the spider and amphipod, is being degraded by current land use or is threatened with degradation and destruction from proposed development.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Direct overutilization of the organisms is not known to be a factor, but unrestricted collecting for scientific purposes or excessive visits by individuals interested in exploring the lava tubes could result from increased

publicity associated with listing under the Act.

Increased human use of caves can result in the direct trampling, intentional or otherwise, of cave animals as well as indirect impacts due to destruction of root systems (Howarth 1982; Culver 1992). In addition to direct habitat destruction, human impacts include the use of campfires (D. Hopper, pers. comm. 1988) as well as introduction of cigarette smoke into the cave environment. Cigarette smoke contains a strong insecticide which, within the enclosed cave, is likely to negatively impact the resident cave animals (Howarth 1982). Both the smoke from cigarettes and fires dries the cave air, and studies and observations have shown that reduced cave humidity is detrimental to cave organisms (Ahearn and Howarth 1982; Howarth 1981, 1982). Such disturbances by human visitation can also promote greater invasion by alien arthropod species, such as cockroaches and their predators, through the introduction of trash (Howarth 1982; D. Hopper, pers. comm. 1998). Howarth (1982) indicated that species diversity and population levels of cave invertebrates are inversely related to human visitation and disturbance.

C. Disease and predation. Several alien spiders including the brown violin spider (*Loxosceles rufescens*), spitting spider (*Scytodes longipes*), and *Dysdera crocata* (no common name (NCN)) have invaded the cave habitats in Koloa (Gerstch 1973; F. Howarth, pers. comm. 1994; Asquith, *in litt.* 1994b), and prey on immature stages of the Kauai cave wolf spider and probably all life stages of the cave amphipod (Howarth 1981). The American cockroach (*Periplaneta americana*) is abundant in some of the caves (Bousfield and Howarth 1976; Asquith, *in litt.* 1994a) and probably opportunistically preys on immature cave amphipods (F. Howarth, pers. comm. 1994) and competes for space at amphipod food sources (Asquith, *in litt.* 1994a). In the Limestone Quarry Cave, the introduced amphipod *Talitroides topitotum* (NCN) may compete with the Kauai cave amphipod for detritus food (Bousfield and Howarth 1976; F. Howarth, pers. comm. 1994).

In addition, as noted in the Background section of this final rule, the Kauai cave wolf spider is a predator. Although predation has not been observed in the field, this spider probably feeds primarily on the Kauai cave amphipod and, to a lesser extent, on alien species of arthropods that periodically enter the cave system.

D. The inadequacy of existing regulatory mechanisms. The Kauai cave

wolf spider and the Kauai cave amphipod are found entirely on private land. One population of the cave spider is provided some protection by a County ordinance requiring the landowner to conserve two Kiahuna lava tubes known to harbor the spider (County of Kauai Development Plan 1979). However, existing conservation measures under this ordinance protect only the cave entrances and not the surface footprint, adjacent mesocaverns, or surrounding aboveground habitat that help to maintain the microhabitat conditions within the caves that the animals need to survive. Evaluation of one of the caves conserved under this ordinance showed significant degradation from surface disturbance over the dark zone of the cave (Asquith, *in litt.* 1994). In addition, this ordinance protects only a single population of each of the cave animals, which is not sufficient to ensure the continued existence of these species, given the range of threats that affect all remaining populations.

No State laws or existing regulatory mechanisms at the present time protect or prevent further decline of these animals. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies (see "Hawaii State Law" section of this final rule).

E. Other natural or manmade factors affecting its continued existence. Insecticide use, coincident with the change to urban land development, poses a serious threat to the cave animals (Howarth and Stone 1993). While plantation-scale sugar cane cultivation in the Koloa area involves seasonal use of herbicides, intensive usage is generally limited to spot applications of glyphosate (trademark name, Roundup), and generally no insecticides are used (Murdoch and Green 1989). Furthermore, in recent years most sugar cane cultivation in the area has been restricted to land with deep soil, which is generally unsuitable habitat for the cave animals.

Golf courses exist on, or are proposed for, the land directly above or adjacent to both populations of the spider and all but one population of the amphipod. At least 30 different pesticides are used on golf courses in Hawaii, including insecticides to control pests of turf grass (Murdoch and Mitchell 1975; Murdoch and Green 1989). Most golf courses in Hawaii apply the insecticide chlorpyrifos at the rate of 453 grams active ingredient per 0.41 hectares (1 pound active ingredients per acre), 1 to 3 times per year, but rates and frequency of applications are sometimes much higher (Murdoch and Green 1989;

Brennan *et al.* 1992). Predators, such as the Kauai cave wolf spider, are generally more susceptible to insecticides than the target pests (Croft 1990). Even if not killed outright, the sublethal effects of both insecticides and herbicides on the cave animals could include reduced fecundity (reproductive capacity), reduced lifespan, slowed development rate, and impaired mobility and feeding efficiency (Messing and Croft 1990).

In addition to the use of pesticides on golf courses, pesticide usage on residential property also poses a threat. It is estimated that residential lots use more pesticides per unit area than either sugar cane cultivation or golf courses and that 90 percent of this use involves insecticides. Much of this insecticide is applied directly to the ground for termite control (Hawaii Office of State Planning 1992). With an estimated increase of 4,000 houses in the Koloa area by the year 2015 (KPMG Peat Marwick 1993), residential pesticides are considered a serious threat to the cave animals.

These cave animals are particularly susceptible to pesticides because of their tendency to seek water sources (Howarth 1983a; Asquith, *in litt.* 1994a). Even if pesticides are not used directly above a lava tube, pesticides that leach into adjacent subterranean caverns with water from runoff or irrigation are serious threats because the animals may be attracted to the water and come into contact with the chemicals.

Biological control agents (living organisms used to control pests) are usually perceived as preferable to the use of chemicals because they represent less of a threat to human health and generally do not stimulate resistance in pests. Some of these organisms, however, attack species other than their intended targets and have caused or contributed to the decline and extinction of several Hawaiian insects (Gagne and Howarth 1985; Howarth 1983b; Howarth 1991b). The nematode *Steinernema carpocapsae* (NCN) is marketed for use against turf pests and has been petitioned for use on golf courses in Hawaii (Faust 1992). This nematode can infect at least 250 species of arthropods (Poinar 1979), including arachnids such as the Kauai cave wolf spider (Poinar and Thomas 1985). Other biocontrol agents such as *Bacillus* bacteria, which have been used for mosquito control, have caused serious damage to nontarget species of insects (Howarth 1991b). Unlike most chemical pesticides, biocontrol agents will not break down or decay. Should such biocontrols become established, they will likely remain resident in the area, spread to new areas with suitable host

arthropods, and become impossible to eliminate. Lastly, biocontrol agents may undergo great proliferations in the presence of ubiquitous and numerous arthropod pests and other species. The resultant population increase of biocontrol predators or parasites would have devastating impacts on species such as the Kauai cave spider and cave amphipod, given their restricted ranges and low fecundities. Biological controls have been emphasized for golf course management in the Koloa area (Townscape 1993) and are a potential threat to the cave spider and amphipod.

The small number of populations and small numbers of observed individuals of the Kauai cave wolf spider (three populations) and Kauai cave amphipod (five populations) increases the risk of extinction from naturally occurring events such as storms or earthquakes.

At present, there are a number of conservation activities that are planned for three of the Koloa caves. In 1995, we signed a Cooperative Agreement with the Kukui'ula Development Company (a subsidiary of Alexander & Baldwin), which includes a number of conservation activities for two caves (Koloa Caves # 1 & 2). These activities include gating of the cave openings to restrict human access and reduce air-flow (to increase ambient humidity) and planting of native plant species over the caves to develop a root system that will serve as a food base for the cave animals. Kukui'ula Development Company agreed to set aside the land area above these two caves as either a limited-use park or reserve. The entire land area to be protected includes a 45.7-meter (150-foot) wide buffer area around both caves, in which restricted or no development will occur. In addition, no pesticides or dumping will be allowed within this buffer area or above the caves. At present, the National Resource Conservation Service (NRCS) is planning to assist the Kukui'ula Development Company in more extensive planting of native plants in the park/reserve area. We and the NRCS are currently working with a second landowner (Sport Shinko Group) to conduct similar conservation activities over a single cave located below a portion of their golf course (Kiahuna Golf Club). We are currently reviewing a Cooperative Agreement between us and the Sport Shinko Group.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species and determined that the Kauai cave wolf spider and Kauai cave amphipod should be listed as endangered. These two species are threatened by one or more of

the following—habitat degradation and loss through the removal of perennial vegetation, soil fill, grading, paving, quarrying, and other activities associated with development and agriculture; predation and competition for space, water, and nutrients by introduced, alien animals; direct or indirect mortality from the use of biological control agents and chemical pesticides; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining populations and their limited distribution. Because the two species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered, as defined in the Act. Therefore, the determination of endangered status for the Kauai cave wolf spider and Kauai cave amphipod is warranted.

Critical Habitat

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

In the proposed rule, we indicated that designation of critical habitat was not prudent for the Kauai cave wolf spider and Kauai cave amphipod because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase human visitation to their highly sensitive cave habitats which could lead to incidents of vandalism and destruction of habitat. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp.

2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for the Kauai cave wolf spider and Kauai cave amphipod would be prudent.

Due to the small number of populations, the Kauai cave wolf spider and Kauai cave amphipod are vulnerable to collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for the Kauai cave wolf spider and Kauai cave amphipod and have not found specific evidence of taking, vandalism, collection, or trade of these species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, at this time we cannot make a finding that the identification of critical habitat will increase the degree of threat to these species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of these species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to these species, there may be a few instances where section 7 consultation would be triggered only if critical habitat is designated, such as habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, while we believe the benefits of designating critical habitat for these species would not be significant, we find that critical habitat is prudent for the Kauai cave wolf spider and Kauai cave amphipod.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other

section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for the Kauai cave wolf spider and Kauai cave amphipod will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the Kauai cave wolf spider and Kauai cave amphipod without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the Kauai cave wolf spider and Kauai cave amphipod as soon as feasible, considering our workload priorities.

Available Conservation Measures

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

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being

designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

All known populations of the Kauai cave wolf spider and the Kauai cave amphipod are located on private property. Federally supported activities that could affect these taxa and their habitat in the future include, but are not limited to, the following—construction of roads and highways; construction of public or private facilities; construction of diversions for flood control; pesticide use; and the release of biological control agents.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to

increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. We believe that, based on the best available information, the following actions will not likely result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport, involving no commercial activity, of dead specimens of these taxa that were collected prior to the publication in the **Federal Register** of the final regulation adding these taxa to the list of endangered species; and

(2) Landscaping that does not include filling or grading the area above or adjacent to the surface footprint of the caves.

Potential activities involving these taxa that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Collection of specimens of these taxa for private possession or deposition in an institutional collection;

(2) The use of chemical insecticides that results in killing or injuring these taxa;

(3) The unauthorized release of biological control agents that attack any life stage of these taxa; and

(4) Habitat modification that results in actually killing or injuring these taxa by significantly impairing essential life-sustaining requirements such as breeding, feeding, and shelter. Such habitat modification may include but may not be limited to—removal or destruction of perennial vegetation within or adjacent to the surface footprint of the caves; construction, clearing, grading, digging, or filling within or adjacent to the surface footprint of the caves; blasting for construction in proximity to the caves; and alteration of the natural drainage of surface and subsurface water flow into the caves.

You should direct any questions regarding whether specific activities will constitute a violation of section 9 of the Act to the Field Supervisor of the Service's Pacific Islands Ecoregion (see **ADDRESSES** section). Address your requests for copies of the regulations concerning listed wildlife and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232-4181 (telephone 503/231-6241; facsimile 503/231-6243).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's

Endangered Species Act (HRS, Sect. 195D–4(a)) states, “Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the (Federal) Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the (Federal) Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter.” Listing of these two arthropod species will, therefore, also invoke protection available under State law, which prohibits the taking of listed wildlife species in the State, encourages conservation of such species by State agencies, and triggers other State regulations to protect the species (HRS, sect. 195AD–4 and 5).

National Environmental Policy Act

We determined that we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of

1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. On October 25, 1983, we published in the **Federal Register** (48 FR 49244), a notice outlining our reasons for this determination.

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references we cited is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** above).

Author

The primary author of this final rule is Mr. David Hopper, with significant contributions by Dr. Adam Asquith, U.S. Fish and Wildlife Service (phone

808/541-3441; or facsimile 808/541–3470) (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgated

Amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.
2. We amend section 17.11(h) by adding the following, in alphabetical order under ARACHNIDS and CRUSTACEANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
ARACHNIDS:							
*	*	*	*		*		*
Spider, Kauai cave wolf	<i>Adelocosa anops</i>	U.S.A. (HI)	NA	E	676	NA	NA
*	*	*	*		*		*
CRUSTACEANS:							
*	*	*	*		*		*
Amphipod, Kauai cave	<i>Spelaeorchestia koloana</i>	U.S.A. (HI)	NA	E	676	NA	NA
*	*	*	*		*		*

Dated: December 31, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00-982 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-55-P

Proposed Rules

Federal Register

Vol. 65, No. 10

Friday, January 14, 2000

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

RIN: 0584-AC81

Food Distribution Program on Indian Reservations: Income Deductions and Miscellaneous Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would amend regulations for the Food Distribution Program on Indian Reservations. The changes would improve program service by allowing households two income deductions when proper verification is provided. The first income deduction would be given to households that pay legally required child support for a nonhousehold member. This change conforms to an income deduction allowed under the Food Stamp Program. The second income deduction would be provided to households that pay the premium for their Medicare Part B medical insurance. This deduction was prompted by a resolution passed by the National Association of Food Distribution Programs on Indian Reservations. This rule would also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed.

DATES: Send your comments to reach us on or before March 14, 2000. Comments received after the above date will not be considered in making our decision on the proposed rule.

ADDRESSES: You can mail or hand-deliver comments to Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302-1594.

FOR FURTHER INFORMATION CONTACT:

Lillie F. Ragan at the above address or telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Procedural Matters
- III. Background and Discussion of the Proposed Rule

I. Public Comment Procedures

Your written comments on this 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 or paragraph of the proposal you are addressing. Comments received after the close of the comment period (see **DATES**) will not be considered or included in the Administrative Record for the final rule.

The comments, including names, street addressees, and other contact information of respondents, will be available for public review at the Food and Nutrition Service, 4501 Ford Avenue, Room 612, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5 p.m.), Mondays through Fridays, except Federal holidays.

II. Procedural Matters

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. President Clinton's Presidential memorandum of June 1, 1998, requires us to write new regulations in plain language. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) make it more or less clear?

(4) Would the rule be easier to understand if it was divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How

could this description be more helpful in making the rule easier to understand?

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Public Law 104-4

Title II of the Unfunded Mandates 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 the UMRA, the Food and Nutrition Service (FNS) 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 Food and Nutrition Service 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 of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.570, 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 notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

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). The Administrator of the Food and Nutrition Service has

certified that this action will not have a significant impact on a substantial number of small entities. While program participants and Indian Tribal Organizations and State agencies that administer the Food Distribution Program on Indian Reservations (FDPIR) will be affected by this rulemaking, the economic effect will not be significant.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the applications of its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this proposed rule will contain information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of 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.

To be assured of consideration, comments must be postmarked on or before March 14, 2000. Please send

comments to Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302-1594, and to Lori Schack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. All comments will be summarized and included in the request for OMB approval of the proposed changes in the information collection burden. All comments will become a matter of public record. For further information, or for copies of the information collections discussed below, please contact Ms. Ragan at the above address or telephone (703) 305-2662.

Title: Food Distribution Forms (This information collection burden consolidates the reporting and recordkeeping requirements for 7 CFR parts 240, 247, 250, 251, 252, 253 and 254.)

OMB Number: 0584-0293.

Expiration Date: 1/31/2001.

Type of Request: Revision of a currently approved collection.

Abstract: The reporting requirement currently approved for 7 CFR 253.7, which addresses the certification of households to participate, would be modified by this proposed rule. The rule would allow income deductions for legally required child support payments for a nonhousehold member and Medicare Part B premium payments, and would require verification of these household expenses. The current reporting burden estimates associated with the certification of households to participate in FDPIR (7 CFR 253.7) must be modified to include the proposed verification requirements. We estimate that the verification requirements of this rule will increase the reporting burden by approximately 2 minutes for those application/recertification actions affected by this rule. When averaged with application/recertification actions not affected by this rule, the manhours per response is increased by .01 hours.

The proposed income deductions and the reporting burden associated with the proposed verification requirements are not expected to affect a large percentage of FDPIR households. In regard to the

income deduction for legally obligated child support payments, we expect that only 1 percent of the participant population will receive this deduction. This projection is based on the March 28, 1998, *Characteristics of Food Stamp Households, Fiscal Year 1996*, which reports that approximately 1 percent of food stamp households receive a child support deduction. We applied this percentage in determining the number of FDPIR participants that would be affected by this proposed rule, and we increased the reporting burden estimate for that group accordingly. Our estimate also reflects applicant households that would become eligible as a result of the proposed child support income deduction.

In regard to the income deduction for Medicare Part B premium payments, we note that approximately 29 percent of FDPIR participating households receive Social Security payments (*Evaluation of the Food Distribution Program on Indian Reservations, Volume 1: Final Report*, (June 15, 1990)). We assume that all of these households have the Medicare Part B premium automatically withheld from their monthly Social Security payments. Our proposed estimate for the reporting burden associated with this income deduction reflects an increase for this subgroup—FDPIR participants that receive Social Security payments. Our estimate also reflects applicant households that would become income eligible as a result of the proposed income deduction for Medicare Part B premium payments.

Respondents: State, Local, or Tribal Government; Individuals or households; business or other for-profit; Not-for-profit institutions; Federal Government.

Estimated Number of Respondents: Total package—368,523 (Current); total package—368,590 (Proposed).

Estimated Number of Responses per Respondent: Total package—918,526 (Current); total package—918,593 (Proposed).

Estimate of Burden: Total package—1,154,502 (Current); total package—1,154,581 (Proposed).

The present and proposed estimates of the reporting burden for information collections affected by this rule are detailed below:

	Responses per respondents	Manhours per response	Total manhours
253.7 Certification of Households to Participate:			
Present	4500	0.5	2250
Proposed ...	4567	0.51	2329

II. Background and Discussion of the Proposed Rule

The Food and Nutrition Service (FNS) is proposing to amend the regulations for the Food Distribution Program on Indian Reservations (FDPIR) at 7 CFR part 253. The changes would improve program service by allowing households two income deductions when proper verification is provided. The first income deduction would be given to households that pay legally required child support for a nonhousehold member. The second income deduction would be provided to households that pay the premium for their Medicare Part B medical insurance. This rule would also make technical amendments, such as changing outdated terminology, and revising or removing provisions that are obsolete or have changed. These amendments are discussed in more detail below.

In the following discussion and regulatory text, we use the term "State agency," as defined at 7 CFR 253.2, to include Indian Tribal Organizations (ITOs) authorized to operate FDPIR.

1. Income Deduction for Child Support Payments

This proposed rule would amend 7 CFR 253.6(f) to allow an income deduction for legally required child support payments made by a household member to or for a nonhousehold member. This includes payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward overdue child support (arrearages). Alimony payments are not considered child support payments. This provision is intended to encourage non-custodial parents to fully comply with their child support obligations. At the same time, the deduction would result in a more accurate reflection of the paying household's reduced ability to buy food. The Food Stamp Program already treats child support payments this way.

2. Income Deduction for Medicare Part B Premium

FNS is also proposing to amend the regulations at 7 CFR 253.6(f) to allow an income deduction to cover the full amount of the Medicare Part B (Medical Insurance) premium. In most cases, the amount of the premium is withheld automatically from the Social Security, Railroad Retirement, or Civil Service Retirement payments. In some cases, Medicare beneficiaries are billed quarterly for this premium. (In 1999, the monthly premium for Part B is \$45.50).

This income deduction would not be allowed in those cases where a State has

opted to pay the Medicare premium on behalf of its low-income residents. In addition, household members who are not Medicare beneficiaries because they receive their health care through the Indian Health Service would not be allowed this income deduction.

This income deduction was developed in consultation with the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR). NAFDPIR requested implementation of this income deduction on May 4, 1998, in one of several resolutions passed at its 1998 annual meeting in San Diego, California. The deduction in this rule addresses a clear and present need identified by NAFDPIR. It would positively impact an extremely needy segment of the participant population: low-income elderly and disabled Native Americans subsisting on fixed incomes and often living in isolated areas without access to supplemental sources of nutrition such as the Emergency Food Assistance Program, the Child and Adult Care Food Program, and the Commodity Supplemental Food Program. Appropriate nutrition supplementation and nutrition education through FDPIR may help them to live independently and reduce the possibility that they will need costly institutional care. This income deduction is similar, but not identical, to the deduction allowed under the Food Stamp Program for medical expenses.

3. Mandatory Verification

FNS is also proposing to amend the regulations at 7 CFR 253.7(a)(6)(i) to require the verification of the two income deductions that would be implemented by this rule:

a. Legal obligation and actual child support payments—The State agency must obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household's legal obligation to pay child support, such as a court order, cannot be used to verify the household's actual monthly child support payments.

b. Medicare Part B Premium—The State agency must obtain verification of the household's payment of the Medicare Part B Premium. Documentation of this expense could include a copy of the Social Security benefit statement for the current calendar year (SSA-4926-SM), which identifies the amount of the Medicare Part B Premium deducted from the monthly Social Security benefit, or a

paid receipt for Medicare Part B Premium payments paid directly to Medicare by the household.

4. Miscellaneous Technical Changes

Nomenclature Corrections—

§ 253.3(d); § 253.5(a)(2)(vii); § 253.6(e)(2)(i)(C); § 253.6(e)(2)(ii)(A); § 253.6(e)(2)(iii)(B).

Legislative changes in recent years have resulted in revisions to program titles referenced in 7 CFR part 253. Other FNS program initiatives have prompted changes in terms commonly used among FNS programs. This rule would amend the FDPIR regulations to replace the title "Aid to Families with Dependent Children Program" with the title "Temporary Assistance for Needy Families Program," and replace the acronym "AFDC" with the acronym "TANF" wherever the outdated terms appear. Similarly, 7 CFR part 253 would be amended to replace the title "Comprehensive Employment and Training Act" with the title "Job Training Partnership Act," and to replace the acronym "CETA" with the acronym "JTPA" wherever the outdated terms appear. In addition, § 253.3(d) would be amended to replace the phrase "the four food groups" with the phrase "USDA Food Guide Pyramid."

References to Obsolete Food Stamp Program Provisions—§ 253.6(e)(1)(ii); § 253.5(f)(2) 7 CFR part 253 references Food Stamp Program provisions that have changed or become obsolete. This rule would correct these references. First, § 253.6(e)(1)(ii) would be amended to reflect an earlier change under the Food Stamp Program to adjust the income eligibility standards once a year on October 1, rather than twice a year on January 1 and July 1. The change to an annual adjustment under the Food Stamp Program was effective on July 1, 1988 (see interim rule and correction published on September 29, 1987 [52 FR 36390]). We have been making annual adjustments to the FDPIR income eligibility standards since that time, but the regulations at § 253.6(e)(1)(ii) had not been corrected.

In addition, § 253.5(f)(2) references an obsolete Food Stamp Program requirement that State agencies allow public attendance at formal certification training sessions. This rule would delete § 253.5(f)(2), accordingly.

Obsolete Sources of Income and Resources—§ 253.6(d)(2)(iv); § 253.6(e)(3)(x) § 253.6(d)(2)(iv) and § 253.6(e)(3)(x) list sources of income that are excluded under Federal statute from consideration as income or resources, respectively. We are aware that two of these types of payments have been discontinued and wish to take this

opportunity to delete them from the FDPIR regulations. First, the resource and income exclusion provisions at § 253.6(d)(2)(iv)(F) and § 253.6(e)(3)(x)(G) would be deleted. These paragraphs refer to payments provided under the Comprehensive Employment and Training Act (CETA). Also, § 253.6(e)(3)(x)(F), which references payments by the Community Services Administration for the Crisis Intervention Program, would be deleted.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 253 is proposed to be amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2032).

2. In § 253.3, revise the third sentence of paragraph (d) to read as follows:

§ 253.3 Availability of commodities.

* * * * *

(d) * * * The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size—Vegetables, Fruit, Bread-Cereal-Rice-Pasta, Meat-Poultry-Fish-Dry Beans-Eggs-Nuts, Milk-Yogurt-Cheese, and Fats-Oils-Sweets. * * *

§§ 253.5 and 253.6 [Amended]

3. In § 253.5(a)(2)(vii) and § 253.6(e)(2)(iii)(B), remove the acronym “AFDC” and add in its place the acronym “TANF”.

§ 253.5 [Amended]

4. In § 253.5, remove paragraph (f)(2), and redesignate paragraph (f)(3) as paragraph (f)(2).

5. In § 253.6:

a. Remove paragraph (d)(2)(iv)(F);
b. Amend paragraph (e)(1)(ii) by removing the words “January 1 and July 1” and adding, in their place, the words “October 1”;

c. Amend paragraph (e)(2)(i)(C) by removing the words “Comprehensive Employment and Training Act” and adding, in their place, the words “Job Training Partnership Act”;

d. Amend paragraph (e)(2)(ii)(A) by removing the words “Aid to Families with Dependent Children (AFDC)” and adding, in their place, the words “Temporary Assistance for Needy Families (TANF)”;

e. Remove paragraphs (e)(3)(x)(F) and (e)(3)(x)(G); and

f. Add new paragraphs (f)(3) and (f)(4) to read as follows:

§ 253.6 Eligibility of households.

* * * * *

(f) * * *

(3) Households will receive a deduction for legally required child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) Households will receive a deduction for the full amount of the Medicare Part B medical insurance premium that is withheld from the Federal retirement or disability payment of a household member or is paid by a household member directly to Medicare. This income deduction is not allowed in situations where the premium is paid by the State on behalf of the Medicare beneficiary or where household members are not Medicare beneficiaries because they receive their health care through the Indian Health Service.

6. In § 253.7, revise paragraph (a)(6)(i) to read as follows:

§ 253.7 Certification of households.

(a) * * *

(6) * * *

(i) *Mandatory verification.*—(A) *Gross non-exempt income.* The State agency must obtain verification of each household’s gross non-exempt income prior to certification. Households certified under the expedited service processing standards at paragraph (a)(9) of this section are not subject to this requirement. Income does not need to be verified to the exact dollar amount unless the household’s eligibility would be affected, since Food Distribution Program benefits are not reduced as income rises. If the eligibility worker is unable to verify the household’s income, the worker must determine an amount to be used for certification purposes based on the best available information. Reasons for inability to verify income include failure of the person or organization providing the

income to cooperate with the household and the State agency, or lack of other sources of verification.

(B) *Legal obligation and actual child support payments.* The State agency must obtain verification of the household’s legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documentation that verifies the household’s legal obligation to pay child support, such as a court order, cannot be used to verify the household’s actual monthly child support payments.

(C) *Medicare Part B medical insurance premium.* The State agency must obtain verification of the household’s payment of the Medicare Part B medical insurance premium. Documentation of this expense could include:

(1) A copy of the Social Security benefit statement for the current calendar year (SSA–4926–SM), which identifies the amount of the Medicare Part B premium deducted from the monthly Social Security benefit; or

(2) A receipt for Medicare Part B premium payments paid directly to Medicare by the household.

* * * * *

Dated: January 6, 2000.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 00–936 Filed 1–13–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF ENERGY

10 CFR Parts 960 and 963

[Docket No. RW–RM–99–963]

RIN 1901–AA72

Office of Civilian Radioactive Waste Management; General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories; Yucca Mountain Site Suitability Guidelines

AGENCY: Office of Civilian Radioactive Waste Management (OCRWM). U.S. Department of Energy (DOE).

ACTION: Proposed Rule; Announcement of Extension of Public Comment Period and Rescheduling of Public Hearings.

SUMMARY: On November 30, 1999, the U.S. Department of Energy (DOE) published a Supplemental Notice of Proposed Rulemaking to amend the general guidelines for evaluating the suitability of Yucca Mountain, Nevada as a site for development of a nuclear waste repository (64 FR 67054). That notice established a 75-day public comment period ending February 14,

2000, and announced that DOE would hold two public hearings on the proposal. On December 15, 1999, DOE published a notice announcing the dates, times and locations for two public hearings on the proposed rule (64 FR 69963). This notice announces a 14-day extension of the public comment period to February 28, 2000, cancellation of the public hearings previously scheduled for January 18 and 19, 2000, and new dates, times and locations for the public hearings.

DATES: Written comments must be received by February 28, 2000. DOE will consider comments after February 28, 2000, to the extent practicable. DOE requests one copy of the written comments. Public hearings have been rescheduled for the following dates and locations:

1. February 2, 2000, from 11:00 a.m. to 2 p.m. and 6 p.m. to 10 p.m.
2. February 3, 2000, from 11:00 a.m. to 2 p.m. and 6 p.m. to 10 p.m.

ADDRESSES: Written comments should be addressed to Dr. William J. Boyle or Dr. Jane Summerson, U.S. Department of Energy, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036-0307, or provided by electronic mail to 10CFR963@notes.ymmp.gov, or by Facsimile at 1-800-967-0739. The public hearings will be held at the following locations:

1. February 2, 2000, Terrible's Lakeside Casino, 5870 South Homestead Road, Pahrump, Nevada 89048.
2. February 3, 2000, St. Tropez-All Suite Hotel, 455 East Harmon Avenue, Las Vegas, Nevada 89109.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Boyle or Dr. Jane Summerson, U.S. Department of Energy, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, Nevada 89036-0307, Telephone 1-800-967-3477.

SUPPLEMENTARY INFORMATION: To schedule a time to provide oral comments during the hearings, please call Dr. Summerson at 1-800-967-3477. Persons wishing to provide oral comments who have not registered in advance may register at the hearings.

Issued in Washington, D.C. on January 12, 2000.

Ivan Itkin,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 00-1071 Filed 1-13-00; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-321-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC-8-100 series airplanes. This proposal would require changing the power supply for the thunderstorm lights from the left secondary bus to the left essential bus. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a failure of the thunderstorm lights in the cockpit after loss of all generated electrical power. This condition could result in the cockpit instruments not being visible to the flight crew during certain emergency procedures, and consequent reduced controllability of the airplane.

DATES: Comments must be received by February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-321-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or the New York Aircraft Certification Office.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York

11581; telephone (516) 256-7535; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-321-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-321-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC-8-100 series airplanes. The thunderstorm lights on these airplanes are supplied with electrical power from the left secondary bus. TCCA advises that the loss of all generated power under this condition would result in no cockpit instrument lighting. Loss of electrical power, if not corrected, could result in the cockpit instruments not being visible to the flight crew during certain emergency procedures, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–24–69, Revision ‘A’, dated June 11, 1999, which describes procedures for changing the power supply for the thunderstorm lights in the cockpit from the left secondary bus to the left essential bus.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–99–21, dated July 22, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA’s Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$306 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$4,374, or \$486 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 99–NM–321–AD.

Applicability: Model DHC–8–100 series airplanes, serial numbers 003 through 020 inclusive; certificated in any category; except those on which Modification 8/0198 has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a failure of the thunderstorm lights in the cockpit after loss of all generated electrical power, which could result in the cockpit instruments not being visible to the flight crew during certain emergency procedures, and consequent reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD, accomplish Bombardier Modification 8/0198 (including changing the power supply for the thunderstorm lights from the left secondary bus to the left essential bus) in accordance with Bombardier Service Bulletin S.B. 8–24–69, Revision “A”, dated June 11, 1999.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–99–21, dated July 22, 1999.

Issued in Renton, Washington, on January 10, 2000.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 00–949 Filed 1–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 870 and 890

[Docket No. 98N-0009]

Medical Devices; Revocation of Exemptions from Premarket Notification for Certain Cardiovascular and Physical Medicine Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal in part.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing in part its proposed rule that published in the *Federal Register* of November 12, 1998 (63 FR 63222), to revoke the exemptions from the requirement of premarket notification of a cardiovascular device (cardiopulmonary bypass accessory equipment) and a physical medicine device (electrode cable). Elsewhere in this issue of the *Federal Register*, FDA is issuing a final rule to exempt other devices from the requirement of premarket notification.

DATES: The proposed rule that published at 63 FR 63222, November 12, 1998, is withdrawn in part for §§ 870.4200 and 890.1175 as of January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

SUPPLEMENTARY INFORMATION: On November 21, 1997, the President signed the Food and Drug Administration Modernization Act of 1997 (FDAMA) into law (Public Law 105-115). Section 206 of FDAMA, in part, added a new section 510(l) to the Federal Food, Drug, and Cosmetic Act (the act). Under section 206 of FDAMA, new section 510(l) of the act became effective on February 19, 1998. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. FDA refers to devices that FDA believes meet these criteria as "reserved." FDA has evaluated all class I devices to determine which device types should be subject to premarket notification requirements.

In the *Federal Register* of February 2, 1998 (63 FR 5387), FDA published a list of devices it considered reserved and that require premarket notification and a list of devices it believed met the exemption criteria in FDAMA. FDA invited comments on the February 2, 1998, notice.

FDA had proposed two rules that relate to the classification and premarket notification status of cardiopulmonary bypass accessory equipment (21 CFR 870.4200) and electrode cables (21 CFR 890.1175). In the November 12, 1998, proposed rule after reviewing the comments submitted on the February 2, 1998, notice, FDA proposed to designate which devices require premarket notification, and which are exempt, subject to limitations, under notice and comment rulemaking proceedings under new section 510(l) of the act. At that time, FDA also proposed to revoke existing exemptions for certain devices from premarket notification, including those for cardiopulmonary bypass accessory equipment and the electrode cable.

In the *Federal Register* of August 9, 1999 (64 FR 43114), FDA published a proposed rule to reclassify three devices into class II in order to make them subject to the performance standard for electrode lead wires and patient cables, including cardiopulmonary bypass accessory equipment that involves an electrical connection to the patient and the electrode cable. Because FDA believes that compliance with the performance standard for electrode lead wires and patient cables will provide adequate assurance of the safety and effectiveness of these devices, the proposal provides that these devices would be exempt from the premarket notification requirements.

Under the August 9, 1999, proposed rule, cardiopulmonary bypass accessory equipment that does not involve an electrical connection to the patient would remain in class I and would be exempt from the premarket notification requirements. FDA expects to finalize the August 9, 1999, proposed rule in the very near future. If the rule is finalized, the devices will be exempt from the premarket notification requirements and all such devices will be subject to the performance standard for electrode lead wires and patient cables, when the rule becomes effective for those devices on May 9, 2000.

If FDA were to finalize the November 12, 1998, proposed rule to revoke the existing premarket notification exemptions for cardiopulmonary bypass accessory equipment and the electrode cable, the manufacturers of these devices would have to comply with the

premarket notification requirements only during the interim period until the proposed rule to make these devices class II exempt is finalized. FDA believes that there is no reason to require premarket notification for these devices during the short interval between these two final rules.

Therefore, FDA is withdrawing in part its proposed rule to revoke the exemption from the premarket notification requirements for the cardiopulmonary bypass accessory equipment and the electrode cable.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the proposed rule published on November 12, 1998 (63 FR 63222) is withdrawn in part for §§ 870.4200 and 890.1175.

Dated: December 22, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00-885 Filed 1-13-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT-038-FOR]

Utah Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Utah regulatory program (the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah's amendment proposes to change the State's rules pertaining to: Definitions of "abandoned site," "other treatment facilities," "previously mined area," "qualified laboratory," and "significant recreational, timber, economic, or other values incompatible with coal mining and reclamation operations;" engineering requirements for impoundments and for backfilling and grading; hydrologic requirements for impoundments; requirements for bond release applications; prime farmland acreage; inspection frequency for abandoned sites; and the period in which to pay a penalty when requesting

a formal hearing. Utah wants to revise its program to make it consistent with the corresponding Federal regulations.

DATES: Will accept written comments on this amendment until 4:00 p.m. mountain standard time on February 14, 2000. If requested, will hold a public hearing on the amendment on Tuesday February 8, 2000. Will also accept requests to speak at the hearing until 4:00 p.m. mountain standard time on January 31, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to James F. Fulton, Denver Field Division Chief, at the address listed below.

You may review copies of the Utah program, this amendment, a listing of any scheduled public hearings, and all written comments we received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining, 1999 Broadway, suite 3320, Denver, Colorado, 80202-5733, telephone (303) 844-1400, extension 1424.

Lowell P. Braxton, Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah, 84114-5801 telephone (801) 538-5370.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Denver Field Division Chief; telephone: (303) 844-1400, extension 1424; e-mail: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

1. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. You can find background information about Utah's program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments can be found at 30 CFR 944.15 and 944.30.

II. What Utah Proposes In This Amendment

By letter dated December 23, 1999, Utah sent to us an amendment (UT-038-FOR, administrative record No.

UT-1133) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The State sent the amendment in response to a June 19, 1997, letter (administrative record No. UT-1093) that we sent to Utah in accordance with 30 CFR 732.17(c). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**. Changes to the Utah Administrative Rule (Utah Admin. R.) that the State proposes to make are summarized below.

A. Changes to Definitions at Utah Admin. R.645-100-200

1. *"Abandoned site"*: Utah proposes to revise its definition of this term by changing the conditions sites must meet to be considered abandoned and allowing the Division of Oil, Gas and Mining (the Division) to decide if it wants to inspect abandoned sites less than 12 times a year. The proposed changes also require the division to make written findings on specific topics to justify a decision to set an alternative inspection frequency;

2. *"Other treatment facilities"*: The State proposes to change this definition to include neutralization and precipitators. Utah also proposes to include in this definition those facilities used to prevent additional contributions of dissolved solids to streamflow or runoff outside the permit area or to comply with all applicable State and Federal water quality laws and regulations;

3. *"Previously mined area"*: Utah proposes to change its definition of this term to mean land affected by coal mining and reclamation operations prior to August 3, 1977, that has not been reclaimed to the standards of Utah Admin. R.645 or 30 CFR Chapter VII;

4. *"Qualified laboratory"*: The State proposes to change this definition to include those facilities that can provide other services specified at Utah Admin. R.645-302-299;

5. *"Significant recreational, timber, economic, or other values incompatible with coal mining operations"*: Utah proposes to change its definition of this term by removing the qualifying statement that damage to these values caused by mining must be beyond an operator's ability to repair or restore in order for these values' significance to be evaluated;

B. Changes to Engineering Requirements for Impoundments

1. At Utah Admin. R.645-301-514.320 and -514.330, Utah proposes to change its description of inspection requirements for impoundments that meet, and those that don't meet, the Class B or C criteria of the Natural

Resources Conservation Service's (NRCS) Technical Release 60 (TR-60) or the size or other criteria of 30 CFR 77.216;

2. At Utah Admin. R.645-301-531, the State proposes to require permit applications to certain detailed design plans for siltation structures, water impoundments, and coal processing waste banks, dams, or embankments located inside the permit area;

3. At Utah Admin. R.645-301-533.100 and -533.110, Utah proposes to include references to provisions of TR-60 in its descriptions of safety factors required for different sizes and types of impoundments;

4. At Utah Admin. R.645-301-533.200 and -533.210, the State proposes to include references to provisions of TR-60 for, and expand its description of, foundation safety factors and stability, investigation, and testing requirements for different sizes and types of impoundments;

5. At Utah Admin. R.645-301-533.610, Utah proposes to include TR-60 in its rules by reference and to require impoundments meeting the Class B or C criteria of TR-60 or the size or other criteria of 30 CFR 77.216 to comply with this section of its rules. Further, at Utah Admin. R.645-301-533.610 through -533.714, Utah proposes to change its description of the information to be included in detailed design plans for various types and sizes of impoundments;

C. Changes to Engineering Requirements for Backfilling and Grading

1. At Utah Admin. R.645-533.700 and -533.800, the State proposes to revise its definitions of "thin overburden" and "thick overburden", respectively, for the purposes of surface coal mining and reclamation activities;

D. Changes to Hydrologic Requirements for Impoundments

1. At Utah Admin. R.645-301-733.100, Utah proposes to require permit applications to contain detailed design plans for water impoundments located inside the permit area;

2. At Utah Admin. R.645-301-733.210, the State proposes to allow the Division to develop design standards for impoundments not included in Utah Admin. R.645-301-533.610 (discussed previously under Part II.B.5 of this document), that ensure stability comparable to a minimum static safety factor of 1.3 in lieu of requiring engineering tests to ensure that level of safety;

3. At Utah Admin. R.645-301-742.200, Utah proposes to require siltation structures to comply with the

design criteria for sediment control measures in Utah Admin. R.645–301–742;

4. At Utah Admin. R.645–301–742.224, the State proposes to allow construction of temporary impoundments as sedimentation ponds that will contain and control all runoff from a design precipitation without using spillways, as long as they meet certain conditions;

5. At Utah Admin. R.645–301–742.225.1, for impoundments that meet the NRCS Class B or C criteria for dams in TR–60 or the size of other criteria of 30 CFR 77.216(a), Utah proposes to require them to be designed to control the probable maximum precipitation of a 6-hour event, or a greater event if specified by the Division;

6. At Utah Admin. R.645–301–742.225.2, for impoundments that don't fall under subsection –742–225.1 (described above in Part II. D.5 of this document), Utah proposes to require them to be designed to control the precipitation of the 100-year, 6-hour event, or a greater event if specified by the Division;

7. At Utah Admin. R.645–301–743.100, the State proposes to require impoundments that meet the NRCS Class B or C criteria for dams of TR–60 to comply with this section of Utah's rules and the table in TR–60 entitled, "Minimum Emergency Spillway Hydrologic Criteria;"

8. At Utah Admin. R.645–301–743.120, Utah proposes to require impoundments that meet the NRCS Class B or C criteria for dams of TR–60 to comply with the freeboard hydrograph criteria in the TR–60 table entitled, "Minimum Emergency Spillway Hydrologic Criteria;"

9. At Utah Admin. R.645–301–743.131.3 through –743.131.6, the State proposes spillway design precipitation events for temporary and permanent impoundments of different types and size that meet the spillway requirements of Utah Admin. R.645–301–743.130;

E. Adding Requirements for Bond Release Applications at Utah Admin. R.645–301–880.130

This proposed rule will require permittees to include in a bond release application a notarized statement certifying that all applicable reclamation activities have been completed as required by the Utah Code Annotated Section 40–10–1 *et seq.*, the regulatory program, and the approved reclamation plan. Also, each application for each phase of bond release must include this certification;

F. Adding Requirements for Prime Farmland Acreage at Utah Admin. R.645–302–316.500

This proposed rule doesn't allow a decrease in the aggregate total acreage of prime farmland after reclamation from the acreage that existed before mining. It requires Division approval of water bodies built during mining and reclamation along with the consent of all affected property owners in the permit area. Also, the proposed rule requires water bodies to be located in parts of the permit area that won't be reclaimed to prime farmland;

G. Adding an Alternative Inspection Frequency for Abandoned Sites at Utah Admin. R.645–400–132

Utah proposes to allow the Division to inspect abandoned sites on a frequency that it sets using procedures proposed under the definition of "abandoned site" at Utah Admin. R.645–100–200. The State's proposed definition changes are described in Part II.A of this document; and

H. Changing the Time in Which To Pay a Penalty When Requesting a Formal Hearing at Utah Admin. R.645–401–800

The State proposes to extend to 30 days the period in which a permittee, charged with a violation, must pay a reassessed or affirmed civil penalty to the Division when requesting a formal hearing. The 30-day period begins with the date of service of a conference officer's action.

III. How You Can Comment on This Amendment

Under the provisions of 30 CFR 732.17(h), we are requesting your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah regulatory program.

Send Written Comments to Us

Send your written comments to us at the location shown under **ADDRESSES**. We'll make the comments, and the names and addresses of people who send us comments, available for public review during normal business hours. If you, as an individual, comment on the amendment and want us to keep your name and/or address confidential, you must state this prominently at the beginning of your comments. We'll honor your request to the extent allowed by law. However, we won't consider anonymous comments. Also, we'll make all submissions from organizations or businesses, and from individuals who identify themselves as representatives or officials of organizations or businesses,

available for public review in their entirety.

Please submit Internet comments to us as an ASCII file and don't use special characters and any form of encryption. Please also include "Attn: SPATS No. UT–R038–FOR" and your name and return address in your Internet message. If you don't receive a confirmation that we've received your Internet message, contact the Denver Field Division at (303) 844–1400, extension 1424.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. Please explain your reasons for any changes you recommend. In the final rulemaking, we won't necessarily consider or include in the Administrative Record any comments we received after the time indicated under **DATES** or at locations other than the Denver Field Division.

Speak at a Public Hearing

If you want to speak at a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., mountain standard time on January 31, 2000. If you're disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We'll arrange when and where to hold a hearing with those persons who request the hearing. If no one asks for an opportunity to speak at a public hearing, we won't hold one.

To help the transcriber and ensure an accurate record, we ask, if possible, that each person who speaks at a public hearing give us a written copy of his or her testimony. The public hearing will continue on the specified date until everyone scheduled to speak and want to, you'll be allowed to after those who have been scheduled. We'll end the hearing after everyone scheduled to speak and others who want to speak have been heard.

Attend a Public Meeting

If only one person requests an opportunity to speak at a hearing, we might hold a public meeting instead. If you want to meet with us to discuss the amendment, ask for a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public. If possible, we'll post meeting notices at the locations listed under **ADDRESSES**. We'll make a written summary of each meeting part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards don't apply to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementation Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

This rule doesn't require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions aren't major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule doesn't contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior determined that this rule won't have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. Therefore, this rule will ensure that the State will implement existing requirements that OSM previously published. In determining whether this

rule would have a significant economic impact, the Department relied on the data and assumptions for the corresponding Federal regulations.

6. Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule won't impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2000.

Brent Wahlquest,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00-970 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD090-3041; FRL-6507-1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOCs From Paper, Fabric, Vinyl, and Other Plastic Parts Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Maryland for the purpose of amending its regulation to control volatile organic compounds (VOC) from Paper, Fabric, Vinyl, and Other Plastic Parts Coating. The regulation was revised to include Reasonable Available Control Technology (RACT) standards for sources that use flexographic printing presses to print on plastic (non-vinyl) and to limit the VOC content of the decorative coating of plastic bottles. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in

relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 14, 2000.

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

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

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

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 00-617 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96-98; FCC 99-238]

Revision of the Commission's Rules Specifying the Portions of the Nation's Local Telephone Networks that Incumbent Local Telephone Companies Must Make Available to Competitors

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment from interested parties on issues surrounding the ability of competitive carriers to use combinations of unbundled network elements as a

substitute for the incumbent LECs' special access services. It also seeks comment on the policy implications, if any, of a significant reduction in special access revenues for the Commission's universal service program. It also requests additional comment on the Third Reconsideration Order and Further Notice of Proposed Rulemaking regarding the use of shared transport to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service.

DATES: Comments are due on January 19, 2000 and reply comments are due on February 18, 2000.

FOR FURTHER INFORMATION CONTACT:

Jodie Donovan, Attorney, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1580 or via the Internet at JDonovan@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking* (FNPRM) in Docket No. 96-98, (62 FR 45611, August 28, 1997), and FCC 99-238, adopted on September 15, 1999, and released on November 5, 1999.

Specifically, it seeks comment on the argument that the "just and reasonable" terms of section 251(c) or section 251(g) of the 1996 Act permit the Commission to establish a usage restriction on combinations of unbundled loops and transport network elements and entrance facilities. It also seeks comment on whether there is any other statutory basis for limiting an incumbent LEC's obligation to provide combinations of loops and transport facilities or entrance facilities as unbundled network elements. The Commission acknowledges in the Fourth FNPRM that resolution of this issue potentially could have a large financial impact on incumbent local exchange carriers, and seeks comment on the extent to which any such impact should be considered in reaching a decision on this issue. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY-B400, 445 12th Street, S.W., Washington, D.C.

1. Synopsis of the Fourth Further Notice of Proposed Rulemaking

2. The Commission's First Report and Order in CC Docket No. 96-98 (61 FR 45476, August 29, 1996) found that for all unbundled network elements, including combinations of network

elements, incumbent LECs may not impose any usage restriction on the use of such elements, or combinations thereof. In the Third Reconsideration Order and Further Notice of Proposed Rulemaking the Commission required incumbent LECs to provide access to shared transport as an unbundled network element in conjunction with local and tandem switching. The Commission limited the obligation of incumbent LECs to provision shared transport to end users to whom the requesting carrier was providing local exchange service. The Commission sought comment on whether requesting carriers may use unbundled dedicated or shared transport facilities, in conjunction with unbundled switching, to originate or terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service.

3. The Fourth FNPRM, as modified in the Supplemental Order, seeks comment on the argument that the "just and reasonable" terms of section 251(c) or section 251(g) of the 1996 Act permit the Commission to establish a usage restriction on combinations of unbundled loops and transport network element and entrance facilities. It also seeks comment on whether there is any other statutory basis for limiting an incumbent LEC's obligation to provide combinations of loops and transport facilities or entrance facilities as unbundled network elements. The Commission acknowledges in the Fourth FNPRM that resolution of this issue potentially could have a large financial impact on incumbent local exchange carriers. It seeks comment on this issue, and on the extent to which any such impact should be considered in reaching a decision on this issue. It also seeks comment on the policy implications, if any, of a significant reduction in special access revenues for the Commission's universal service program, and urges parties to address what long term solutions may be necessary to avoid adverse effects on special access revenues that support universal service in light of the fact that it is not clear that the 1996 Act permits any restrictions to be placed on the use of unbundled network elements.

4. Because the record developed in the Third Reconsideration Order and Further Notice of Proposed Rulemaking is two years old, the Commission, in the Fourth FNPRM also invites parties to refresh the record on whether requesting carriers may use unbundled dedicated or shared transport facilities in conjunction with unbundled switching to originate or terminate interstate toll traffic to customers to whom the

requesting carrier does not provide local exchange service.

Supplemental Initial Regulatory Flexibility Analysis; Supplemental Order Regarding Use of Unbundled Network Elements; To Provide Exchange Access Services; Initial Regulatory Flexibility Analysis (IRFA)

5. As required by the Regulatory Flexibility Act, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Supplemental Order. This IRFA supplements the IRFA in the Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, paras. 510 through 519 (rel. Nov. 5, 1999) (*Local Competition Third R&O and Fourth FNPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Fourth Further Notice of Proposed Rulemaking. The Commission will send a copy of the Supplemental Order, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, the Supplemental Order and IRFA, or summaries thereof, will be published in the **Federal Register**. *Id.*

(1) Need for, and Objectives of, the Proposed Rules

6. In the Third R&O, commenters have argued that allowing requesting carriers to obtain combinations of loop and transport unbundled network elements based on forward-looking cost would provide opportunities for arbitrage of special access services. We recognize that special access has historically been provided by incumbent local exchange carriers at prices that are higher than the unbundled network element pricing scheme of section 252(d)(1) in the Telecommunications Act of 1996. Accordingly, in the Fourth Further Notice of Proposed Rulemaking, as modified by the Supplemental Order, the Commission seeks comment on the legal and policy bases for precluding requesting carriers from substituting combinations of unbundled network elements for special access services. We ask whether there is any basis in the statute or our rules under which incumbent LECs could decline to provide combinations of loops and

transport network elements at unbundled network element prices.

(2) Legal Basis

7. Sections 1 through 4, 10, 201, 202, 251 through 254, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151 through 154, 160, 201, 202, 251 through 254, 271, and 303(r).

(3) Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. In the FRFA in the Third R&O and in the IRFA in the Fourth Further Notice of Proposed Rulemaking, we described in detail the entities possibly affected by those items. These entities consist of incumbent local exchange carriers and small incumbent local exchange carriers, competitive local exchange carriers and competitive access providers. We anticipate that the same entities, as well as those described below, could be affected by any action taken in response to the Fourth Further Notice of Proposed Rulemaking, as modified by the Supplemental Order. We therefore incorporate the description and estimates used in the FRFA and IRFA in the Third R&O and Fourth FNPRM, and add the following descriptions.

9. *Interexchange carriers (IXCs).* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. See Federal Communications Commission, Carrier Locator: Interstate Service Providers,

Fig. 1 (Jan. 1999). Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules adopted in response to the Fourth Further Notice of Proposed Rulemaking.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. If the Commission does not establish any restrictions on the use of unbundled network elements or combinations of network elements, no additional compliance requirements are anticipated from further consideration of this issue. If, however, restrictions on access to network elements are imposed, and depending on how the restrictions are imposed, interexchange carriers, competitive LECs, CAPs and other purchasers of unbundled network elements, including small entities, may be subject to additional reporting, recordkeeping and other compliance requirements. Incumbent LECs, including small incumbent LECs, would also be impacted because they would have to keep track of competitive LEC filings and whether the use of the unbundled network element changed in such a way that a restriction would attach. If restrictions are placed on the use of unbundled network elements or combinations of such elements, compliance with these requests may require the use of engineering, technical, operational, accounting, billing, and legal skills.

(5) Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. If requesting carriers can substitute combinations of unbundled

network elements for special access service, incumbent LECs, including small entities, may be significantly economically impacted. On the other hand, substituting combinations of unbundled network elements for special access services could benefit competitive LECs, CAPs, and other purchasers of unbundled network elements. The Commission will evaluate in this proceeding whether there are legal grounds for restricting such access. If no such grounds exist, and instead if the statute requires unrestricted access to these unbundled network elements or combinations, then the Commission will have no alternative other than implementation of the statutory requirements for unrestricted access.

(6) Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

12. None.

Ordering Clauses

13. The Commission will send a copy of this *Fourth Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

14. *It is ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the *Supplemental Order*, including the Final Regulatory Flexibility Certification and the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-460 Filed 1-13-00; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 65, No. 10

Friday, January 14, 2000

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. DA-00-04]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Reporting Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Dairy Products.

DATES: Comments on this notice must be received by March 14, 2000, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact F. Tracy Schonrock, USDA/AMS/Dairy Programs, Dairy Grading Branch, Room 2746-South Building, P.O. Box 96456, Washington, D.C. 20090-6456; Tel: (202) 720-3171, Fax: (202) 720-2643.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Number: 0581-0126.

Expiration Date of Approval: July 31, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The dairy grading program is a voluntary user fee program authorized under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) The regulations governing

inspection and grading services of manufactured or processed dairy products appear at 7 CFR part 58. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, there must be written requirements and rules for both Government and industry. The information collections are essential to carry out and administer the inspection and grading program. The information requested is used to identify the product offered for grading, to identify a request from an equipment manufacturer of equipment used in the dairy, meat or poultry industries for evaluation regarding sanitary design and construction, to identify and contact the party responsible for payment of the inspection, grading or equipment evaluation fee and expense and, to identify applicants who wish to be authorized for the display of official identification on product packaging materials, equipment, utensils, or on descriptive or promotional materials.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0431 hours per response.

Respondents: Distributors, manufacturers and packers of butter and cheese; and manufacturers of processing equipment used in the dairy, meat and poultry industries.

Estimated Number of Respondents: 2300.

Estimated Number of Responses per Respondent: 5.1083.

Estimated Total Annual Burden on Respondents: 506 hours. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should reference OMB No. 0581-0126 and the Dairy Inspection and

Grading Program and be sent to the Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968-S, PO Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at 14th and Independence Ave. SW, Washington, DC, Room 2968 South Building.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: January 10, 2000.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 00-979 Filed 1-13-00; 8:45 am]

BILLING CODE 3410-02-U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99-062N]

Draft Report—The Future of FSIS Veterinarians: Public Health Professionals for the 21st Century

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public meeting on February 1, 2000, to discuss and receive comments on the draft report, *The Future of FSIS Veterinarians: Public Health Professionals for the 21st Century*.

DATES: The public meeting will be held February 1, 2000, from 9 a.m. to 5 p.m. Written comments must be received by February 14, 2000.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW. (at Massachusetts Avenue and 14th Street), Washington, DC 20009, telephone (202) 842-1300. If a sign language interpreter or other special accommodation is necessary, contact Ms. Linda Russell, USDA/FSIS Planning Staff, Telephone (202) 501-7136. The draft report is available on the FSIS web page at <http://www.fsis.usda.gov>. Submit one original and two copies of comments to the FSIS Docket Clerk,

Docket No. 99-062N, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250-3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Hicks, Deputy Administrator, Office of Management, Food Safety and Inspection Service at (202) 720-4425.

SUPPLEMENTARY INFORMATION: In early 1999, FSIS convened a Task Force to develop recommendations on the roles of veterinarians carrying out the Agency's Programs, particularly with the implementation of Hazard Analysis and Critical Control Point systems and pathogen reduction requirements for meat and poultry products. Moreover, the Task Force was requested to look beyond current statutory and regulatory limitations. The Task Force included a diverse group of individuals, including veterinarians from inside and outside of FSIS, a variety of FSIS management personnel, and individuals affiliated with academia, non-government organizations, and foreign governments. The Task Force developed a draft report, *The Future of FSIS Veterinarians: Public Health Professionals for the 21st Century*. This report makes recommendations concerning issues such as the future roles of the FSIS veterinarians; training programs; animal identification; and international credibility.

Additional Public Notification

Public awareness of 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 public meeting notice, FSIS will announce it and provide copies of this **Federal Register** publication 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.

Done at Washington, DC, on January 11, 2000.

Thomas J. Billy,
Administrator.

[FR Doc. 00-930 Filed 1-13-00; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

South Bend Weigh and Safety Station, Deschutes National Forest, Deschutes County, 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) to evaluate a request by Oregon Department of Transportation (ODOT) to construct and operate a vehicle weigh and safety inspection station on Deschutes National Forest under authority of a Special Use Permit. The proposed area is located on the northbound lane of Highway 97, south of Bend, Oregon, between milepost 145 and 148. The legal location is Township 19S, Range 11E, Section 1, NE $\frac{1}{4}$, Willamette Meridian.

DATES: Issues and comments concerning the scope of analysis of the Proposed Action should be received by February 14, 2000.

ADDRESSES: Submit written comments regarding the Proposed Action to Mollie Chaudet, Project Team Leader, Bend-Fort Rock Ranger District, 1230 NE 3rd Street, Suite A-262, Bend, Oregon 97701.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Proposed Action and EIS to Chris Mickle, Attention: South Bend Weigh and Safety Station, Bend-Fort Rock Ranger District, 1230 NE 3rd Street, Suite A-262, Bend, Oregon 97701, phone 541-383-4721.

SUPPLEMENTARY INFORMATION: The Forest Service Proposed Action would include clearing of approximately one acre of brush and trees to accommodate construction of a building, bypass lanes for vehicle acceleration and deceleration, and related areas for parking and inspections. The size of the trees to be removed would average 14

inches diameter at chest height. The building is approximately 210 square feet and 12 feet high. The bypass lanes would measure 16 feet by 3,800 feet. The maximum width of the asphalt lanes, building, and gravel shoulder would be 60 feet, tapering to 16 feet on both the approach and exit lanes. A fuel break would be created east of the cleared area for a perimeter of 10 feet around the facility where dead fuels would be removed, trees would be pruned of limbs to at least eight feet in height. Brush would be mechanically treated as needed. Noxious weed control would emphasize early prevention and detection.

A Weigh in Motion (WIM)/Automatic Vehicle Identification (AVI) system would be sited within one mile of the weigh station facility. Equipment would include in-road sensors, a roadside computer cabinet (77 inches $\times$ 44 inches $\times$ 26 inches), two overhead detectors (10 inches $\times$ 10 inches $\times$ 10 inches) mounted on two overhead detector poles (14 feet 2 inches high $\times$ 4 inches diameter), an AVI cabinet (24 inches $\times$ 2 inches $\times$ 10 inches) mounted on a 5 foot tall AVI cabinet pole (10 inches diameter), and two AVI poles that overhang the highway spaced 600 feet apart from each other. Power would be supplied by extending less than two miles of underground service in the existing right-of-way along the east side of Highway 97. Highway signing would include information about distances to the upcoming weigh station and whether the facility is open, or not.

The Forest Service has agreed to consider a weigh station on National Forest System lands based on the public need for the facility. The facility cannot reasonably be served by the development on non-National Forest System land. Analysis has indicated a high violation rate in Central Oregon, especially trucks with a Bend and/or Redmond destination that originate locally. The proposed location of the weigh station and WIM sensors are within the Deschutes National Forest boundary and cannot be easily bypassed via other routes. The Deschutes National Forest Land and Resource Management Plan (LRMP) presently allocates the proposed location to a management area that emphasizes Scenic Views (Retention). The location is outside the boundary of the Newberry National Volcanic Monument.

Alternatives to be considered will include the no action alternative plus action alternatives that may include a modification of the design or location of the proposed site. The selected alternative may result in an amendment to the LRMP (Forest Plan).

Preliminary issues that have been identified include: (1) Placement of a truck scale at this location could unnecessarily subject nearby property owners and the High Desert Museum to an increased risk of fire. (2) The proposed site could introduce hazardous traffic weaving movements and speed differentials, and could promote traffic congestion. (3) The truck scale could be contrary to Forest Plan Visual Quality Objectives under the current land allocation (scenic views) and could be an eyesore.

Public scoping will include a 30 day comment period in response to a scoping letter mailed to interested people and posted on the Deschutes National Forest website (www.fs.fed.us/r6/dechutes), and open house, and additional public meetings as needed.

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. 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 a specified number of days.

The draft EIS is expected to be completed in September, 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 rulings 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 by January, 2001. 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 South Bend Weigh and Safety Station.

The Forest Service is the lead agency. Sally Collins, Forest Supervisor, is the Responsible Official. The Responsible Official will determine which alternative best meets the purpose and need for this project and addresses the key issues raised about this project. The decision and rationale will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: January 6, 2000.

Rebecca Heath,

Deputy Forest Supervisor.

[FR Doc. 99-914 Filed 1-13-00; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Chattanooga, Tennessee, February 24-26, 2000. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 24-26, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn Chattanooga Choo Choo, 1400 Market Street, Chattanooga, Tennessee. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonoma, CA 95370.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536-9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. A tour of local projects will be held on February 24 from 8:30 a.m. to 5:00 p.m. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided, and individuals who have made written requests by February 18 will have the opportunity to address the Council at those sessions. Council discussion is limited to Forest Service staff and Council members.

Dated: January 7, 2000.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc 00-891 Filed 1-13-00; 8:45 am]

BILLING CODE 3410-11-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 14, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Paper Holder & Micro Note Holder
7510-00-NIB-0386 (Paper Holder)
7510-00-NIB-0385 (Micro Note Holder)
NPA: The Lighthouse for the Blind, Inc.,
Seattle, Washington

Services

Commissary Shelf Stocking, Custodial and Warehousing
Hanscom Air Force Base, Massachusetts
NPA: Work, Incorporated, North Quincy, Massachusetts
Cutting and Assembly of FTESFB System for P-3 Aircraft
1560-00-NSH-0001
Department of the Navy, Fleet and Industrial Supply Center, Jacksonville, Florida
NPA: Middle Georgia Easter Seal Society, Inc., Dublin, Georgia

Food Service

Marine Corps Base, Messhall #210802, Camp Pendleton, California
NPA: Job Options, Inc., San Diego, California

Reprographics

(GPO Program #C464-S)
Department of Energy, Washington, DC
NPA: Sinai Hospital of Baltimore (Vocational Services Program), Baltimore, Maryland
(GPO Program #C560-S)
Department of Energy, Washington, DC
NPA: Alliance, Inc., Baltimore, Maryland

Warehouse Operation

2031 Idorek Street, Building 783 S and T, McClellan AFB, California
NPA: PRIDE Industries, Roseville, California

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Pen, Twist Action, Blue and Black Ink
M.R. 040 (Black Ink)
M.R. 041 (Blue Ink)
Bag, Tote, Canvas
M.R. 511
M.R. 512
M.R. 513
Sweatshirt and Sweatpants, Private Label
M.R. 630 (Sweatshirt)

M.R. 631 (Sweatpants)
M.R. 632 (Sweatshirt)
M.R. 633 (Sweatpants)
Sweatshirt and Sweatpants, Recruit, USMC
M.R. 640 (Sweatshirt)
M.R. 641 (Sweatshirt)
M.R. 642 (Sweatshirt)
M.R. 643 (Sweatshirt)
M.R. 644 (Sweatshirt)
M.R. 645 (Sweatpants)
M.R. 646 (Sweatpants)
M.R. 647 (Sweatpants)
M.R. 648 (Sweatpants)
M.R. 649 (Sweatpants)
Sweatsuit, Recruit, Marine Corps
M.R. 650 (Sweatshirt)
M.R. 651 (Sweatshirt)
M.R. 652 (Sweatshirt)
M.R. 653 (Sweatshirt)
M.R. 654 (Sweatshirt)
M.R. 655 (Sweatpants)
M.R. 656 (Sweatpants)
M.R. 657 (Sweatpants)
M.R. 658 (Sweatpants)
M.R. 659 (Sweatpants)
Desk, Lap
M.R. 750
Mitt, Barbecue
M.R. 891
Mop, Stick, Rayon Head, Wet
M.R. 927
Broom, Fiber
M.R. 952
Broom, Patio
M.R. 954
Aerosol Paint, Lacquer
8010-00-598-5455
Enamel, Lacquer
8010-00-133-5901
8010-00-702-1053
8010-00-181-7791
8010-00-664-1914
8010-00-851-5525
Aerosol Paint, Lacquer
8010-00-958-8150
8010-00-721-9750
8010-00-721-9753
8010-00-141-2951
8010-00-883-5329
8010-00-515-2487
8010-00-965-2391
8010-00-721-9749
8010-00-721-9754
8010-00-721-9748
8010-00-835-7215
8010-00-965-2390
8010-00-141-2958
8010-00-079-2756
8010-00-721-9746
8010-00-721-9745
8010-00-079-2754
8010-00-958-8151
Enamel
8010-01-060-6461
8010-00-935-7156
8010-01-332-3735
8010-01-336-5064
8010-01-332-3740
8010-01-331-6118
8010-01-336-5065
8010-01-333-1441
8010-01-336-3979
8010-01-336-5059
8010-01-336-3977
8010-01-336-5058
8010-01-336-5060

8010-01-332-3746
 8010-01-332-3738
 8010-01-332-3737
 8010-01-332-3741
 8010-01-332-3736
 8010-01-363-3374
 8010-01-363-3373
 Enamel, Aerosol, Waterbase
 8010-01-350-5259
 8010-01-350-5256
 8010-01-350-6258
 8010-01-350-4757
 8010-01-350-4749
 8010-01-350-5261
 8010-01-350-5253
 8010-01-350-4750
 8010-01-350-4751
 8010-01-350-4756
 8010-01-350-4758
 8010-01-350-4764
 8010-01-350-5246
 8010-01-350-5250
 8010-01-350-5252
 8010-01-350-6257
 8010-01-350-5260
 8010-01-350-4763
 8010-01-363-1631
 8010-01-363-1633

Beverly L. Milkman,
Executive Director.

[FR Doc. 00-934 Filed 1-13-00; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: February 14, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On September 3, November 15 and 19, and December 3, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 48345, 61819, 63283 and 67842) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Candle, Illuminating
 6260-00-161-4296

Services

Commissary Shelf Stocking, Custodial, Receiving/Storage/Holding
 Portsmouth Naval Shipyard
 Portsmouth, New Hampshire

Laundry Service

Seymour-Johnson Air Force Base, North Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Filter, Air Conditioning

4130-00-870-8796
 4130-00-720-4143
 4130-00-542-4482
 4130-00-756-0978
 4130-00-541-3220
 4130-00-203-3318
 4130-00-959-4734
 4130-00-274-7800
 4130-00-249-0966
 4130-00-756-1840
 4130-00-203-3321

Pen Set, Desk

7520-00-106-9840

Beverly L. Milkman,
Executive Director.

[FR Doc. 00-935 Filed 1-13-00; 8:45 am]

BILLING CODE 6353-01-P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting; Notice

DATE AND TIME: January 19, 2000; 9:30 a.m.-5 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. If necessary, the meeting will continue the following day, January 20, 2000, from 8 a.m. to 12 noon. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept

secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401-3736.

Dated: January 11, 2000.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 00-1016 Filed 1-11-00; 4:36 pm]

BILLING CODE 8230-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1-2000]

Foreign-Trade Zone 22—Chicago, IL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting authority to expand its zone in the Chicago, Illinois area, within the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 4, 2000.

FTZ 22 was approved on October 29, 1975 (Board Order 108, 40 FR 51242; 11/4/75). The zone was expanded in 1987 (Board Order 353, 52 FR 12217; 4/15/87) and 1992 (Board Order 614, 57 FR 61044 12/23/92). It currently consists of four sites in the Chicago, Illinois, area:

Site 1: (19 acres)—within the Port's 2,250-acre Lake Calumet Harbor Terminal facility;

Site 2: (578 acres)—industrial park at One Diversatech Drive in Manteno, Illinois;

Site 3: (175,000 sq. ft.)—warehouse and open storage facility located within the southern portion of a 340,000 square foot warehouse complex at 703 Foster Avenue, Bensonville, Illinois, operated by Gotoh Distribution Services, Inc. (expires 12/31/00); and

Site 4: (8 acres) at Gerry Drive and Hansen Court in Wood Dale, Illinois, 6 miles west of O'Hare International Airport, owned and operated by Meiko America, Inc.

The applicant is now requesting authority to expand Site 3 to include the

entire Foster Avenue parcel (8 acres) within the zone project on a permanent basis. The facility will continue to be operated as a FTZ public warehouse facility by Gotoh Distribution Services, Inc.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 14, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 29, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 610 S. Canal Street, Chicago, Illinois 60607

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: January 5, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00-972 Filed 1-13-00; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011100B]

Submission for OMB Review; Proposed Information Collection; Request for Comments

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Commercial Harvesters and Recreational Party and Charter Boat Socio-cultural and Economic Data Collection Pilot Study.

OMB Approval Number: None.

Agency Form Number: None.

Type of Request: New Collection.

Burden Hours: 793 hours.

Number of Respondents: 323 (but multiple responses).

Average Hours Per Response: Ranges between 15 and 20 minutes depending on the requirement.

Needs and Uses: This information collection will request social, economic and cultural information from fishing enterprises affected by the management of federal commercial fisheries on the east coast. This pilot study will determine the best and most efficient ways to collect data to ensure that national goals, objectives and requirements of the Magnuson-Stevens Act are met. The information is vital in assessing the economic and social effects of fishery management decisions and regulations on fishing enterprises.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: Quarterly, semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: January 6, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00-956 Filed 1-13-00; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010599B]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of Pacific harbor seals and possibly California sea lions, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay, (the Bay) CA.

DATES: This authorization is effective from September 1, 2000, through August 31, 2001.

ADDRESSES: A copy of the application and an Environmental Assessment (EA) may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, or Christina Fahy, Southwest Regional Office, NMFS, (562) 980-4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 9, 1998, NMFS received an application from CALTRANS, requesting reauthorization of an IHA issued on December 16, 1997 (62 FR 6704, December 23, 1997). This authorization would be for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*) incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend through December 2003. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project. (CALTRANS, 1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, a reauthorization of the IHA is warranted.

The duration for the seismic retrofit of foundation and towers on piers 52 through 57, which did not take place as planned during 1998, will be approximately 7 to 8 months.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on February 16, 1999 (64 FR 7627), and a 30-day public comment period was provided on the application and proposed authorization. Comments were received from two environmental organizations, two research scientists, and one Federal agency.

On May 19, 1999, CALTRANS requested a delay in the issuance of the IHA with an effective date of September 1, 1999. On July 7, 1999, CALTRANS requested a modification of condition 5(d) that was contained in its 1997 IHA to allow pile installation during the night for construction of the Concrete Trestle Section (CTS) of the Bridge, provided the noise does not exceed 86 dBA at the edge of the work exclusion zone at Castro Rocks. NMFS review of this request is also contained in this section. Finally, in December, 1999, CALTRANS informed NMFS that work on the Bridge would not begin until September, 2000.

Comment 1: Earthwatch provided detailed scientific evidence and information that the stock of Pacific harbor seals (*Phoca vitulina richardsii*) should be considered by NMFS as a separate population stock, including reduced gene flow with other populations, and geographic and demographic isolation.

Response: The scientific evidence and information provided by Earthwatch has been forwarded to NMFS scientists for review and evaluation. If experts on harbor seal genetics agree that the data support the conclusion, NMFS will present the case to the Pacific Scientific Review Group before revising the stock assessment reports to change Pacific harbor seal stock structure.

Comment 2: Earth Island Institute (EII)/Earthlaw letters contend that the Boat Exclusion Zone (BEZ), which is a mitigation requirement in the prior IHA, has no scientific basis and does little to eliminate seal disturbance due to boat traffic. Scientific information from Bolinas Lagoon indicates that harbor seals often flush into the water when boats or other craft come within 200 m (656.2 ft) of a haulout site, and using that example, Earthlaw contends that boats will come close enough to Castro Rocks to flush harbor seals approximately 95 percent of the time. Data summarized by EII suggest that an exclusion zone of 200 m (656.2 ft) will

still result in at least a partial flush of seals of between 24 and 63 percent of the time.

Response: The requirement of the MMPA is that, through mitigation, impacts on marine mammals be reduced to the lowest level practicable; it is not a requirement to eliminate those impacts. The 1997 IHA required the northern boundary of the exclusion zone to be located 76 m (250 ft) from the most northern tip of Castro Rocks and the southern boundary to be located 76 m (250 ft) from the most southern tip of Castro Rocks. The eastern boundary was located 91 m (300 ft) from the most eastern tip of Castro Rocks and the western boundary was located 91 m (300 ft) from the most western tip of Castro Rocks. These distances were greater than initially proposed (see 62 FR 46480, September 3, 1997). In actuality, the BEZ is a rectangle with minimum distances set at 109 m (357.6 ft) to the west of the haulout site, 182 m (597 ft) to the east, 80 m (262.5 ft) to the north and 48 m (157.5 ft) to the south.

Data collected by the harbor seal survey team at Castro Rocks indicate that watercraft passing within 100 m (328 ft) of the haul-out site caused at least a partial flush 30 percent of the time. Watercraft passing between 100 and 200 m (328 and 656.2 ft) from the rocks caused at least a partial flush 20 percent of the time. Combined, watercraft passing within 200 m (656.2 ft) of the rocks caused at least a partial flush 27 percent of the time. While Earthlaw references Bolinas Lagoon to justify a minimum BEZ for Castro Rocks, harbor seal responses to disturbance vary depending upon location. Bolinas Lagoon is a different situation and may not be comparable to Castro Rocks (Sarah Allen, pers commun. to the harbor seal survey team). For example, at Castro Rocks, harbor seals located on the rocks closest to the shipping channel to the west of the haulout appear to have habituated to the presence of boats within the channel. However, the behavior of the watercraft, in conjunction with the distance, often dictates whether seals are disturbed (Green and Grigg, 1999; see Suryan and Harvey, 1999).

As a result of the comment however, NMFS reviewed the dimensions of the BEZ and determined that the northern and southern boundaries do not conform with NMFS guidelines for California that boats must remain at least 91 m (300 ft) from seals and sealions that are on land or rocks. As a result the northern and southern boundaries of the BEZ have been extended in the IHA from 76 m (250 ft)

to 91 m (300 ft). Nevertheless, it should be noted neither the extension of the northern edge of the BEZ, nor the previous BEZ will prohibit work boats from accessing the Bridge from the north side for scheduled work on the Bridge.

Comment 3: The IHA requires that the BEZ will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year (2–5(b)). Although construction activities have been ongoing for many months now, no warning buoys or signs identifying the BEZ have been installed. NMFS should ensure that buoys and signs are in place before it issues any new IHA.

Response: According to CALTRANS, seismic retrofit construction has not begun on the Richmond-San Rafael Bridge. Once construction begins, the buoys and warning signs will be installed and the BEZ will become a controlled access area in accordance with the IHA.

Comment 4: The sources of disturbance and the distance between the haul-out and the disturbance event are critical pieces of information since they may be used to evaluate the effectiveness of mitigation. This information should be recorded and provided in the weekly reports. In addition, disturbance events caused by workmen should not be grouped with disturbance caused by natural events. Workman disturbances are directly relevant to potential future impacts and mitigation.

Response: Because seismic retrofit work has not yet begun on the Bridge, the instances of recorded “other construction” disturbances (e.g., routine bridge maintenance) in the area of the haul out site are very rare, and were therefore combined with other miscellaneous categories for the purposes of the interim report. Once seismic retrofit work begins, the monitoring protocol will enable CALTRANS observers to distinguish between disturbance which may be caused by the CALTRANS retrofit construction, and those due to all other causes.

Comment 5: The monitoring program currently makes no provision for enforcing noise restrictions contained in the IHA. The IHA includes a year-round limit on construction noise of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m. It also includes an unquantified limit on construction noise levels for 24 hours per day in the vicinity of Castro Rocks during the work closure period (pupping/molting season). The limit on construction noise levels during the pupping season needs to be quantified

by NMFS. In addition, for both the nighttime and work closure noise restriction periods, noise levels should be defined in term of dBA at the haulout site.

Response: Because NMFS is unaware of any single noise level that will not result in adult and/or pup harbor seals remaining on the beach and still allow work on the Bridge to proceed, at this time NMFS has chosen not to establish sound pressure level (SPL) limits at the Castro Rocks haulout as recommended by Earthlaw. NMFS believes, based on information collected at Vandenberg Air Force Base, that the noise level sufficient for harbor seals to leave the beach is around 80 dBA, but this may depend upon the type of noise, intensity, and duration, which could be different at the Bridge from that experienced by harbor seals at Vandenberg. With a limit of 86 dBA at 50 ft (15 m) for work on the Bridge between 9 p.m. and 7 a.m., NMFS believes that noise levels have been mitigated to the greatest extent practicable. However, NMFS intends to monitor the activity at the Bridge to ensure that 86 dBA is the lowest level practicable. NMFS also believes that the pupping on Castro Rocks during the period of this IHA will be protected from excessive noise levels because work on the Bridge will not begin until September, 2000, and proceed from west to east. CALTRANS does not expect to begin retrofit work in the vicinity of Castro Rocks until approximately August, 2001. This date will allow CALTRANS’ biological observers time to assess impacts from construction on harbor seals prior to reaching the area affecting Castro Rocks. NMFS believes that the noise issue is more likely to be relevant in any IHA authorized after August 31, 2001, when work will continue on the portion of the Bridge nearest to Castro Rocks. As a result, NMFS believes that a reassessment of this concern should be made during the next IHA renewal.

Contrary to the statement, NMFS enforces mitigation measures contained in IHAs. Violations of IHAs may result in suspension or revocation of the IHA; it may also result in penalties under the MMPA. However, NMFS does not believe that biological observers, hired by CALTRANS and/or NMFS, should be expected to monitor compliance with Federal or state regulations or permits. Generally, if calibrated sound monitoring equipment is used by an observer(s) in order to quantify the sound pressure level as seals leave the haulout, then that data could later be used during an enforcement proceeding.

Comment 6: On July 7, 1999, CALTRANS requested a modification to condition 5(d), that was contained in its 1997 IHA, to allow pile installation during the night (i.e., during the 9 p.m. to 7 a.m. time period) for construction of the CTS of the Bridge, provided the noise does not exceed 86 dBA at the edge of the work exclusion zone at Castro Rocks.

Response: NMFS has reviewed the request by CALTRANS and has determined that, because the CTS is located over 2.5 miles (4.0 km) from Castro Rocks it should not have an effect on seals hauled out there. Also, because the 9 p.m. to 7 a.m. pile driving prohibition is a mitigation measure imposed for the welfare of humans, it should not be required as a mitigation measure for marine mammal protection when and where it is not necessary. Data provided by CALTRANS indicated that noise levels from the pile driving equipment planned to be used at the CTS will exceed the 86 dBA at 50 ft SPL limitation. The 86 dBA SPL will be around 200 ft (61 m). Because of the distance between the CTS and Castro Rocks, NMFS does not believe that the noise will be sufficient to flush harbor seals off Castro Rocks. However, because sound monitor equipment on Castro Rocks will monitor noise levels during this time, if, because pile driving will continue after 9 p.m. at the CTS, seals are not able to haul out at night, NMFS may need to amend the IHA, on an emergency basis, to provide additional protection for the harbor seals at Castro Rocks in order for the seals to haul out at night in compensation for disruptions during the daytime. This haul-out ability is apparently important for the seals. This concern was also expressed by two seal biologists during the comment period. As a result, NMFS has conditioned the IHA to limit construction noise levels 86 dBA no greater than 50 ft (15 m) year-round between 9 p.m. and 7 a.m. for all parts of the Bridge other than the CTS. At this time, NMFS has insufficient information to waive this restriction for other sections of the Bridge. Additional waivers would be considered a request for a modification of the IHA, and, as such, would allow the public an opportunity for comment.

Comment 7: It has been recommended that monitoring compliance with noise restrictions be conducted by mounting a sound monitor on Rock A at Castro Rocks with a remote recording system.

Response: A monitoring recorder will be established on Castro Rocks to correlate SPLs with animal behavior.

Comment 8: Ongoing monitoring of only two of the alternative haul-out sites

in the Bay is insufficient to determine whether harbor seals use alternative haulout sites as a result of disturbance at Castro Rocks. EII recommends aerial counts, conducted three times per season, over the entire Bay to determine whether seals are using other primary or secondary haul-out sites in the Bay due to disturbance at Castro Rocks. Unless all haulout sites are monitored, CALTRANS will not be able to determine whether a decline in numbers at Castro Rocks due to Project disturbance is resulting in a decline in the overall harbor seal population in the Bay. Given the budget for the Project, 12 aerial surveys per year will not be unduly burdensome or prohibitively expensive, and will provide a much better understanding of Bay harbor seal movement and status, as well as increased general knowledge of the species (see 50 CFR § 216.104) - monitoring should increase general knowledge of the species).

Response: In the 1997/1998 IHA, NMFS required CALTRANS to monitor harbor seal behavior on at least one additional haulout. CALTRANS established monitoring programs on two alternative haulouts, at Yerba Buena Island and Mowry Slough. Yerba Buena Island is in the central Bay, Mowry Slough is in the southern part of the Bay. In addition, seal biologists are monitoring the haulout at Corte Madera. Because these four haulouts have the largest populations of seals, and because other haul-outs cannot contain large numbers of seals, if seals abandon Castro Rocks, it is likely that they will haul out on one or more of these three haulouts.

At this time, NMFS scientists do not believe that aerial surveys will provide sufficient scientific information on the impacts from construction at the Bridge to warrant the expense. Primarily, aerial surveys will detect only that portion of the harbor seal population that has hauled out at the time of the overflight and at altitudes necessary to avoid startling seals (1,000 ft (305 m)), pups would not be detectable. Secondly, without additional studies, such as a mark-recapture study, aerial surveys are unlikely to detect a decline in harbor seal numbers due to a potential short-term abandonment of Castro Rocks. Finally, while aerial surveys would provide information on the current status of Bay harbor seals, a cause-and-effect relationship between the construction work at the Bridge, and a decline in harbor seals, if one occurs, would not be apparent.

Comment 9: Earthwatch requests NMFS to provide to them and to the

public copies of all weekly, interim, and final reports.

Response: CALTRANS will provide copies of reports to Earthwatch or an organization chosen by Earthwatch to obtain these reports.

Comment 10: The monitoring and reporting program adopted in the prior IHA and proposed for the renewal does not provide any feedback mechanism for corrective action where the Project activities are resulting in significant increased disturbance to harbor seals using Castro Rocks. Such a corrective action mechanism is critical to prevent the permanent loss of this key haulout site. Once harbor seals abandon a site, there is a good likelihood that they will never return to it.

Accordingly, the IHA should contain a defined and enforceable procedure to be followed whenever the weekly data demonstrates a significant reduction in haulout site use at Castro Rocks. Once the corrective action provision is triggered, Earthlaw recommends that operations in the vicinity of Castro Rocks be temporarily halted for a period of at least 48 hours, during which time survey monitors, NMFS and Caltrans review the data to determine what is causing the reduced site use and develop appropriate mitigating measures. Such a situation could occur at any time of the year.

Response: NMFS will not require CALTRANS to stop work if seal disturbances are observed because, it has been informed, certain construction operations cannot be stopped in progress without jeopardizing the structural integrity of the Bridge. In addition, stopping construction will simply extend the period for harbor seal disturbance. While NMFS does not believe that harbor seals will permanently abandon Castro Rocks since disturbance at that location is already frequent, NMFS does recognize that seismic retrofit on the portion of the Bridge closest to Castro Rocks is likely to result in frequent flushing of seals off the Rocks, and possibly short-term abandonment. This period may last 7–8 months (the period estimated for retrofit construction) or longer. In part because of the limited 6-month work period, CALTRANS expects this work will take 2 years. With nighttime noise restrictions, NMFS believes that seals will be able to remain in the vicinity of Castro Rocks and haul-out during this quieter time period. If seals fail to haul out at night, and do not appear to be utilizing other nearby haulouts, NMFS will meet with CALTRANS staff and marine mammal observers to determine whether additional mitigation measures are practicable. Because any new

mitigation measures imposed through the IHA would be on an emergency basis for the protection of harbor seals, advance notice and comment will not be provided.

NMFS does not anticipate long-term abandonment of Castro Rocks as existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. However, if long-term abandonment were to occur at Castro Rocks, which is the haulout location for approximately 25 percent of the Bay harbor seals, this should not result in more than a negligible impact on either Bay harbor seals, or on the Pacific harbor seal stock itself. These animals are likely to either haul-out at other Bay haulouts or leave the Bay. As a result, NMFS does not expect the incidental harassment of harbor seals from construction activities at the Bridge to have more than a negligible impact on the Pacific Coast harbor seal stock.

Furthermore, if any unauthorized marine mammal taking (e.g., serious injury or mortality) occurs as a result of seismic retrofit construction activities, CALTRANS will be subject to the penalties of the MMPA and NMFS will reevaluate the appropriateness of the IHA before CALTRANS reapplies for a new IHA next year, based on required reports (see Reporting section).

Comment 11: In its May 19, 1999, letter CALTRANS requested that the IHA reauthorization be delayed until September, 1999.

Response: NMFS noted that in its November, 1998 IHA application that CALTRANS' work schedule did not include seismic retrofit work on the Bridge until the summer of 1999. In its

May 19, 1999, letter CALTRANS noted that work would not begin until February, 2000. That was later amended to September, 2000. Because construction work would not begin prior to this time, and work would progress from the west to east, marine mammals would not be subject to incidental harassment prior to that month and therefore, an IHA is unnecessary prior to that time. As a result, NMFS has made the IHA effective for 1 year commencing on September 1, 2000. It should be noted that this effective date in no way amends the February 15 through July 31 work restrictions on work in the water and on retrofit work on the Bridge between piers 52 through 57; instead, it authorizes the incidental harassment of harbor seals and California sea lions

while work proceeds on other portions of the Bridge.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the Bay ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS 1997) and CALTRANS (1996).

Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 and end at approximately 250 ft (76 m) from pier 53. The chain of rocks is exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Barlow *et al.* (1995). The marine mammals likely to be found in the Bridge area are limited to the California sea lion and harbor seal.

The California sea lion primarily uses the Central San Francisco Bay area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

The harbor seal is the only marine mammal species expected to be found in the Bridge area. A detailed description of harbor seals was provided in the 1997 notification of proposed authorization (62 FR 46480, September 3, 1997) and is not repeated here. Corrections and clarifications to the proposed authorization were provided in the notice of IHA issuance (62 FR 67045, December 23, 1997).

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the work period, harbor seal and, on rare occasions, California sea lion incidental harassment is expected to occur on a daily basis upon initiation of the retrofit work. If harbor seals no longer perceive construction noise and activity as being threatening, they are

likely to resume their regular hauling out behavior. The number of seals disturbed will vary daily depending upon tidal elevations. It is expected that disturbance to harbor seals during peak periods of abundance will not occur since construction activities will not take place within the restricted work area during the peak period (see Mitigation).

Whether California sea lions will react to construction noise and move away from the rocks during construction activities is unknown. Sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, likely to be less affected.

Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haul out site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haul out and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and proposed work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for general noise will be implemented by CALTRANS as part of their activity. General restrictions include: with the exception of the CTS, no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m.; an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m.; and, a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period.

To minimize potential harassment of marine mammals, NMFS proposes to require CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction

on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors, during the year within the exclusion zone located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. The boundary of the exclusion zone is rectangular in shape (1700 ft (518 m) by 800 ft (244 m)) and completely encloses Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone will be located 300 ft (91 m) from the most northern tip of Castro Rocks, and the southern boundary will be located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary will be located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary will be located 300 ft (91 m) from the most western tip of Castro Rocks. This exclusion zone will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year.

Monitoring

NMFS will require CALTRANS to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative hauling-out areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (August 1 through February 14) and the Closure Period Phase (February 15 through July 31). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration,

and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior at Castro Rocks and at the alternative site(s) once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior, and collect appropriate data, at the alternative Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS proposes to require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior, at Castro Rocks, at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week during this same period, the monitor will conduct an additional harbor seal census after midnight.

Reporting

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of redcoats, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the haulout will also be provided. A draft interim report must be submitted to NMFS by April 30, 2001.

Because seismic retrofit activities are expected to continue beyond the date of expiration of this IHA (presumably under a new IHA), a draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from

NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haul-out patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

NMFS prepared an EA in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. A copy of that EA, which includes the Finding of No Significant Impact is available upon request (see ADDRESSES).

Conclusions

NMFS has determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by harbor seals and, possibly, by some California sea lions. While behavioral modifications, including temporarily vacating the haul-out, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above.

Since NMFS is assured that the taking will not result in more than the incidental harassment (as defined by the MMPA) of small numbers of Pacific harbor seals and, possibly, of California sea lions, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

Authorization

For the above reasons, NMFS has issued an IHA for a 1-year period beginning September 1, 2000, for the incidental harassment of harbor seals and California sea lions by the seismic retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, California, provided the above mentioned mitigation, monitoring and reporting requirements mentioned earlier are incorporated.

Dated: January 8, 2000.

Donald R. Knowles,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 00-953 Filed 1-13-00; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011100A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee. Recommendations from the Committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on February 2, 2000, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Rhode Island Department of Environmental Management Foundry Offices, 235 Promenade Street, 4th Floor, Room C, Providence, Rhode Island; telephone: (401) 222-6605 ext. 2412.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, telephone: (978) 465-04922.

SUPPLEMENTARY INFORMATION: The Committee will continue its exploration of fishing capacity issues. The Committee will begin to review available information that may indicate the status of capacity in New England fisheries. Committee members will also begin to prioritize the problems caused by excess capacity in New England fisheries, and will begin to identify possible solutions to identified problems. The Committee will also review the number of permits held by vessels in order to characterize the amount of flexibility that fishermen have to move between fisheries.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, New England Fishery Management Council, 50 Water Street, Newburyport, Massachusetts 01950; telephone: (978) 465-0492 at least 5 days prior to the meeting dates.

Dated: January 11, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00-954 Filed 1-13-00; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010400B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Receipt of applications for scientific research permits (1229, 1231); issuance of modifications to existing permits (895, 900, 946, 1193, 1213).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received scientific research permit applications from Northern Wasco County People's Utility District at The Dalles, OR (NWCPUD)(1229), and Dr. Llewellyn M. Ehrhart, of the University of Central Florida (LME-UCF) (1231); and NMFS has issued modifications to scientific research and/or enhancement permits to: U.S. Army Corps of Engineers, Walla Walla District at Walla Walla, WA (COE)(895), Northwest Fisheries Science Center, National Marine Fisheries Service at Seattle, WA (NWFSC)(900, 946, 1213), and the Fish Passage Center at Portland, OR (FPC)(1193).

DATES: Comments or requests for a public hearing on either of the new applications must be received at the appropriate address or fax number no later than 5:00pm eastern standard time on February 14, 2000.

ADDRESSES: Written comments on either of the new applications should be sent

to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 895, 900, 946, 1193, 1213, and 1229: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737 (ph: 503-230-5400, fax: 503-230-5435).

For permit 1231: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401).

FOR FURTHER INFORMATION CONTACT:

For permit 1231: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

For permits 900, 946, 1193, and 1229: Leslie Schaeffer, Portland, OR (ph: 503-230-5433, fax: 503-230-5435, e-mail: Leslie.Schaeffer@noaa.gov).

For permits 895 and 1213: Robert Koch, Portland, OR (ph: 503-230-5424, fax: 503-230-5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant

and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Threatened and endangered Green turtle (*Chelonia mydas*), endangered Hawksbill turtle (*Eretmochelys imbricata*), endangered Kemp's ridley turtle (*Lepidochelys kempii*), endangered Leatherback turtle (*Dermochelys coriacea*), threatened Loggerhead turtle (*Caretta caretta*).

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Snake River (SnR) fall, threatened SnR spring/summer, endangered upper Columbia River (UCR) spring.

Sockeye salmon (*O. nerka*): Endangered SnR.

Steelhead (*O. mykiss*): Threatened SnR, endangered UCR, threatened middle Columbia River (MCR).

To date, protective regulations for threatened SnR steelhead and MCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of SnR and MCR steelhead is issued as a precaution in the event that NMFS issues SnR and/or MCR steelhead protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of SnR and/or MCR steelhead, does not presuppose the contents of the eventual protective regulations.

New Applications Received

NWCPUD (1229) requests a 5-year scientific research permit to authorize annual takes of juvenile SnR sockeye, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile naturally produced and artificially propagated UCR spring chinook salmon, juvenile SnR steelhead, juvenile MCR steelhead, and juvenile naturally produced and artificially propagated UCR steelhead associated with research designed to assess run of the river juvenile anadromous fish condition after passage through the screened turbine intake channel at The Dalles Dam on the Columbia River. Fish will be intercepted from the screened intake channel, anesthetized, measured, examined for external condition, allowed to recover from the anesthetic, and released into the bypass system for

volitional return to the river. Indirect mortalities are requested as part of this research.

LME-UCF (1231) requests a 5-year permit to authorize takes of green, hawksbill, Kemp's ridley, leatherback, and loggerhead turtles while conducting research on habitat and turtle biology. The Recovery Plan for the U.S. Population of Atlantic Green Turtle states that the foremost problem in management and conservation of sea turtles is the lack of basic biological information. This study proposes to capture turtles living in the Indian River Lagoon Estuary of central Florida in Brevard and Indian River counties. The data provided by the study will include information regarding habitat requirements, seasonal distribution and abundance, movement and growth, feeding preferences, sex distribution and the prevalence and severity of fibropapilloma.

Permit Modifications Issued

Notice was published on September 10, 1999 (64 FR 49165), that COE applied for a modification to enhancement permit 895. Permit 895 authorizes COE annual takes of ESA-listed juvenile salmonids associated with transporting juvenile anadromous fish around mainstem dams and reservoirs on the Snake and Columbia Rivers. The purpose of the Juvenile Fish Transportation Program (JFTP) is to increase juvenile fish survival over the alternative of in-river passage, given current in-river migratory conditions. Permit 895 also authorizes COE an annual take of ESA-listed adult fish associated with fallbacks at the juvenile fish transportation facilities. Modification 6 to permit 895 was issued on December 22, 1999, and authorizes an increase in the annual take of juvenile, naturally produced SnR spring/summer chinook salmon associated with the JFTP. The increase in take is needed because an unusually large number of wild juvenile spring/summer chinook salmon smolts survived the 1997/98 winter (due to very favorable rearing conditions), have been migrating out of the Snake River, and have been collected and transported at COE projects. In addition, COE has reported that an unknown proportion of hatchery-produced chinook salmon, many of them non-listed fish, are not marked and cannot be distinguished from naturally produced smolts; all unmarked fish are classified as "wild" at the dams. The increased take of threatened, naturally produced SnR spring/summer chinook salmon is valid for the duration of permit 895. In addition, as part of modification 6,

permit 895 has been extended for 1 year. Permit 895 was due to expire on December 31, 1999. The 1-year extension is necessary to allow COE to continue the JFTP, a mitigation measure recommended by the *Reinitiation of Consultation on 1994-1998 Operation of the Federal Columbia River Power System (FCRPS) and Juvenile Transportation Program in 1995 and Future Years Biological Opinion* issued on March 2, 1995 and the 1998 supplement to that Opinion, while NMFS reinitiates ESA Section 7 consultation on the long-term management strategy for the FCRPS. Once the new consultation is completed, NMFS will be able to advise COE on the need to apply for a new permit, and the need for any additional information or requirements, to conduct the JFTP beyond 2000. Permit 895 will now expire on December 31, 2000. Modification 6 to permit 895 is valid for the duration of the permit, which expires on December 31, 2000.

Notice was published on April 21, 1999 (64 FR 19515), that NWFSC applied for a modification to scientific research permit 900. Modification 7 to permit 900 was issued on December 22, 1999, and authorizes an increase in the annual take of juvenile, naturally produced and artificially propagated SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and juvenile, naturally produced and artificially propagated UCR steelhead to validate previously collected survival data at 64 percent and 30 percent spill volume scenarios at The Dalles Dam. Modification 7 also authorizes annual takes of juvenile, naturally produced and artificially propagated UCR spring chinook salmon associated with the research. An associated increase in ESA-listed juvenile fish indirect mortalities is also authorized. Modification 7 to permit 900 is valid for the duration of the permit, which expires on December 31, 2000.

Notice was published on April 21, 1999 (64 FR 19515), that NWFSC applied for a modification to scientific research permit 946. Modification 6 to permit 946 was issued on December 22, 1999, and authorizes an increase in the annual take of juvenile, naturally produced and artificially propagated SnR spring/summer chinook salmon and juvenile, naturally produced and artificially propagated UCR steelhead due to improvements in sampling equipment that are designed to speed passage of fish through a passive PIT tag detection system and reduce potential impacts from passage through the apparatus.

Increased take is also requested due to the revised estimate for the number of fish thought to be available in the estuary in 1999. Modification 6 also authorizes annual takes of juvenile, naturally produced and artificially propagated UCR spring chinook salmon associated with the research. An associated increase in ESA-listed juvenile fish indirect mortalities is also authorized. Modification 6 to permit 946 is valid for the duration of the permit, which expires on December 31, 2000.

Notice was published on April 21, 1999 (64 FR 19515), that FPC applied for a modification to scientific research permit 1193. Modification 1 to permit 1193 was issued on December 22, 1999, and authorizes an increase in annual takes of juvenile, naturally produced and artificially propagated SnR spring/summer chinook salmon associated with FPC's Smolt Monitoring Program. The increased annual take is needed because a larger than anticipated outmigration run is estimated in 1999. An associated increase in ESA-listed juvenile fish indirect mortalities is also authorized. Also for modification 1, FPC is authorized annual takes of juvenile, naturally produced and artificially propagated UCR spring chinook salmon. Modification 1 to permit 1193 is valid for the duration of the permit, which expires on December 31, 2003.

Notice was published on June 24, 1999 (64 FR 33827), that NWFSC applied for a modification to scientific research permit 1213. Modification 1 to permit 1213 was issued on December 22, 1999, and authorizes NWFSC an increased take of juvenile SnR sockeye salmon, juvenile, naturally produced and artificially propagated SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and juvenile, naturally produced and artificially propagated UCR steelhead associated with additional testing at McNary Dam under study 4. Modification 1 also authorizes NWFSC takes of juvenile, naturally produced and artificially propagated UCR spring chinook salmon associated with the research. An associated mortality of juvenile, naturally produced and artificially propagated UCR spring chinook salmon is also authorized. Modification 1 to permit 1213 is valid for the duration of the permit, which expires on December 31, 2000.

Dated: January 7, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00-952 Filed 1-13-00; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121599B]

Marine Mammals; File No. 782-1532-00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory (NMML), National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070 [PI: Dr. Thomas Loughlin] has been issued a permit to take Steller sea lions (*Eumetopias jubatus*), Northern fur seals (*Callorhinus ursinus*), and harbor seals (*Phoca vitulina richardsi*) and for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On November 2, 1999, notice was published in the **Federal Register** (64 FR 59163) that a request for a scientific research permit to take had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good

faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 10, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00-955 Filed 1-13-00; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent to Prepare an Environmental Assessment for the National Park Seminary Historic District, Forest Glen Annex, Walter Reed Army Medical Center

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: On June 3, 1997, the Army published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the reuse of the National Park Seminary Historic District (NPSHD). A public scoping meeting was held on July 14, 1997. The proposed EIS was intended to analyze a broad range of Army reuse alternatives for the site; however, the Army no longer needs to use the NPSHD site and now proposes to declare the property excess. Under the Federal Property and Administrative Services Act and its accompanying regulations, the General Services Administration (GSA) is responsible for the disposal of excess federal property. The Army's proposed excessing action will begin the disposal process by providing notice to GSA that the property is excess to the Army's needs.

Therefore, the Army proposes to report the property as excess to GSA, in accordance with Army Regulation 405-90 ("Disposal of Real Estate," dated May 10, 1985) and federal property law. Accordingly, this notice is to inform the public that the EIS for Army reuse of the NPSHD has been discontinued and that the Army is now preparing an Environmental Assessment (EA) for the proposed excessing action. Should the property be declared excess by the Army, then GSA (as the property disposal agent) will be responsible for evaluating the potential environmental impacts associated with disposal and reuse.

ADDRESSES: Address comments to Ms. Beverly Chidel, Public Affairs Office, Walter Reed Medical Center, 6825 16th

Street, NW, Washington, DC 20307–5001.

FOR FURTHER INFORMATION CONTACT:

Beverly Chidel, Public Affairs Officer, at (202) 782–7177 or beverly.chidel@na.amedd.army.mil.

SUPPLEMENTARY INFORMATION: The purpose of the EA is to identify the environmental impacts that could be associated with the proposed excessing action and to ensure that the Army makes an informed decision based on full and informed public participation. An EA, rather than an EIS, normally is prepared for proposals that may lead to excessing Army real property (Army Regulation (AR) 200–2, Section 5–3, “Environmental Effects of Army Actions,” dated December 23, 1988). In accordance with the National Environmental Policy Act, the regulations published by the Council on Environmental Quality (Title 40 CFR parts 1500–1508) and AR 200–2, the EA will identify all relevant direct, indirect, and cumulative environmental impacts associated with the proposed action and alternatives.

The NPSHD is part of the Walter Reed Army Medical Center’s Forest Glen Annex, which is located in the Silver Spring area of Montgomery County, Maryland, approximately 1.5 miles north of the District of Columbia. The NPSHD has been listed as an historic district on the National Register of Historic Places since 1972 and was the first historic district to be designated by Montgomery County in 1979. As a result of consolidation and replacement of outmoded facilities, Walter Reed Army Medical Center’s mission-related activities have been relocated and the historic buildings on this property now are mostly vacant.

The EA will address a series of alternatives for the immediate future of the NPSHD. Alternatives may include: Excessing (declaring the NPSHD to be an excess property, which would allow the disposal process to begin); the no-action alternative (retaining the property indefinitely in its current underutilized condition); or “mothballing” the historic buildings and retaining the property. As part of the excessing alternative, the EA will address measures for interim maintenance of the historic buildings, pending their ultimate disposal.

Because GSA is responsible for screening and marketing the property for disposal and reuse, consideration of specific reuse alternatives is beyond the scope of the Army’s EA. Therefore, the EA will be limited to the Army’s proposed excessing action and alternatives, as described above, and

will evaluate the potential environmental effects of disposal and reuse only as indirect and cumulative effects of the Army’s excessing action.

As noted, if the property is declared excess, GSA will market and dispose of the NPSHD and will consider any relevant disposal alternatives and their potential impacts, in compliance with the requirements of the National Environmental Policy Act, as a part of its subsequent disposal action. Public comments are welcome at any time during preparation of the EA. Public information meetings were held (May 11 and Oct. 28, 1999), while the EA was being prepared and were announced in the “Washington Post,” the “Washington Times,” and the “Montgomery Journal” newspapers. Copies of the EA will be made available for public review and a public notice will be published in these same newspapers to advise the public of the availability of the EA.

Dated: January 10, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (I&E).

[FR Doc. 00–913 Filed 1–13–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–10; Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). Applications should focus on issues of (1) genetics and the workplace, (2) storage of genetic information and tissue samples, (3) education, or (4) complex or multigenic traits. The HGP is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research grants that address ethical, legal, and social implications from the use of information and knowledge resulting from the HGP.

DATES: Potential applicants are strongly encouraged to submit a brief

preapplication. All preapplications, referencing Program Notice 00–10, should be received by 4:30 p.m., E.S.T., February 17, 2000. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., April 6, 2000, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000.

ADDRESSES: Preapplications, referencing Program Notice 00–10, should be sent to: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 00–10, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–10. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–6488 or E-mail: daniel.drell@science.doe.gov. The full text of Program Notice 00–10 is available via the Internet using the following web site address: <http://www.sc.doe.gov/production/grants/grants.html>.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research in four broad areas:

I. Genetics and the Workplace

Research is encouraged on the uses, impacts, implications of, and privacy of genetic information in the workplace. A particular emphasis of this solicitation is screening and monitoring programs that involve the collection and evaluation of genetic information. Research is also encouraged on the use of the workplace as a research venue. Research could explore historical experiences, current practices,

international practices, the economics of, and lessons learned as they pertain to the collection and use of worker genetic information. Research can include issues arising from the creation, use, maintenance, privacy and disclosure of genetic information obtained in workplace settings that can include, but is not limited to, workplaces at which DOE activities are taking place or have in the past.

II. Storage of Information and Samples

Research is encouraged on access to, and protection of genetic information stored in databases (especially computerized databases), or obtained from stored human tissue or sample archives. Research can explore threats to, issues surrounding, and protection of the confidentiality of genetic data in databanks and databases, ways to anonymize existing or new genetic records and samples, to assess the economics of genetic data collection, and to explore the intellectual property protection of genetic information and genome research tools, technologies, and resources.

III. Education

Research is encouraged to disseminate relevant educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups. A particular interest of this solicitation is the provision of innovative and novel materials to Institutional Review Boards (IRB) and Ethics Boards that review protocols involving the gathering of genetic information or from genome investigators who work with human subjects or materials from which human genetic information can be obtained. Educational efforts should not target specific groups that have already been the subject of past ELSI awards (for further information about past awards under previous ELSI solicitations, see <http://www.ornl.gov/hgmis/resource/elsi.html#doe>.)

IV. Complex or Multigenic Traits

Research is encouraged that addresses the ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions, gene-environment interactions that result in diseases or disease susceptibilities, and human polymorphisms. In particular, the DOE is interested in studies that explore the novel issues raised by research on complex conditions. Such conditions may include, but are not limited to, behavioral conditions, diseases of aging,

vulnerability to substance abuse, susceptibility to workplace exposure hazards, or other common conditions with a partial genetic basis. In addition, research is encouraged on the responses of institutions (e.g., courts, employers, companies or company health officers, schools, etc., including Federal Agencies) that must deal with "genetic uncertainty," e.g., uncertainty about the significance of results of screening for susceptibility genes, uncertainty about the role of yet-undefined environmental influences, and uncertainty about the implications of different alleles at highly polymorphic genes when those alleles are not fully characterized.

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to facilitate evaluation of progress. All applications should include letters of agreement to collaborate with potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

If an educational effort for a specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice, e.g., privacy and access to research materials, workplace uses of genetic information, education of targeted groups such as IRBs and investigators, and susceptibility/sensitivity genes, and polymorphisms. Educational and conference applications should demonstrate awareness of the relevant literature, include detailed plans for the accomplishment of project goals, and clearly describe the outcome or "deliverables" from the activity. For conference applications, a detailed and largely complete roster of speakers is

necessary. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group. For all conferences supported under this notice, a summary report is required following the conference. In applications that propose the production of educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requires inclusion of a plan for assessment of the effectiveness of the proposed activities.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. DOE generally discourages applications for local efforts (e.g., college or school curricula that will not be widely disseminated) and requests detailed justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress toward the goals of the DOE Human Genome Program. The OBER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OBER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

Additional Request for Small Grants

The DOE also encourages small grant applications, to a maximum of \$33,000 total costs, for innovative and exploratory activities within the previously described areas. Such exploratory grants could be used to carry out pilot or investigative research on an issue consistent with any of the above areas of ELSI research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. This program could be appropriate for a research scientist interested in exploring a related area of ELSI research, or a scholar conducting ELSI research of one type to explore an ELSI research topic of a different type. Such applications must use the standard DOE application forms which can be found on the Internet at: <http://www.sc.doe.gov/production/grants/grants.html>, but the description of research activities should not be more than five pages and curriculum vitae should not exceed two pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date. It is expected that up to nine of these awards might be made in FY 2000. As with larger applications to this notice, applications should be sent to the address given above.

Program Funding

It is anticipated that approximately \$1,200,000 will be available for multiple grant awards including any small grants to be made during Fiscal Year 2000, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from \$50,000 per year up to \$500,000 per year with terms from one to three years; most awards average about \$200,000 per year for two or three years not applicable for any small grants as stated above. Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed \$25,000 and indirect costs are not allowed as part of conference grant awards.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and federally funded research and development centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost

sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: <http://www.sc.doe.gov/production/grants/Colab.html>.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: <http://www.sc.doe.gov/production/>

[grants/grants.html](http://www.sc.doe.gov/production/grants/grants.html). DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. DOE policy requires that potential applicants adhere to 10 CFR part 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the World Wide Web at: <http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf>, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 7, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00-957 Filed 1-13-00; 8:45 am]

BILLING CODE 6450-01-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP99-579-000 and CP99-580-000]

Southern LNG Inc.; Notice of Availability of the Environmental Assessment for the Proposed Elba Island Terminal Recommissioning Project

January 10, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Southern LNG Inc. (Southern LNG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of facilities by Southern LNG. The project involves returning to active service Southern LNG's existing, certificated liquefied natural gas (LNG) marine import terminal near Savannah, Georgia (Elba Island Terminal). The existing authorized facilities at the Elba Island Terminal include the following:

- LNG unloading facilities, including marine berth, pier, and arms for unloading LNG from vessels;
- LNG storage facilities, including three double-wall storage tanks, each with the capacity of 400,000 barrels (4 billion cubic feet vaporized equivalent);
- LNG sendout facilities, including pumps and vaporizers with a maximum capacity of 540 million cubic feet per day;
- Boil-off compressors;
- Pressure relief, vent, and disposal systems;
- Spill containment facilities, including a 400,000-barrel capacity main spill containment for each LNG storage tank; and
- Fire water system sourced from a fresh-water pond and river water.

The storage and vaporization facilities would not be significantly altered, replaced or relocated. The storage and throughput capacity of the facilities would remain the same as originally placed in service in 1978. The recommissioning work will include the following:

- Install suction drum level control and minimum flow piping;
- Replace two LNG pumps;
- Install LNG recirculation piping;
- Install an additional boil-off compressor (1,000-horsepower);
- Install LNG tank level, density and temperature gauges;
- Upgrade fire protection system;
- Upgrade hazard detection system;
- Install intrusion detection system;
- Renew dredging of berthing area and turning basin;
- Increase dredged material basin capacity;
- Modify power distribution switchgear to allow parallel operation with utility (under consideration); and
- Install distributed control and data acquisition system.

The proposed improvements would bring the facilities into compliance with applicable current code requirements and would update the safety, security, operability and reliability of the terminal.

The purpose of the proposed facilities would be to provide open-access service to shippers desiring to contract for

receipt, storage, and vaporization of LNG and delivery of vaporized LNG at the existing point of interconnect with the interstate pipeline of Southern Natural Gas Company. The Elba Island Terminal has an average design natural gas sendout rate of 322 million standard cubic feet per day (MMSCFD), with a maximum capacity of 540 MMSCFD.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208-1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR-11.1;
- Reference Docket Nos. CP99-579-000 and CP99-588-000; and
- Mail your comments so that they will be received in Washington, DC on or before February 11, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file later interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for later intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208-1088 or on the FERC Internet website

(www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

David P. Boergers,

Secretary.

[FR Doc. 00-931 Filed 1-13-00; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a New License

January 7, 2000.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2177.

c. *Date Filed:* December 21, 1999.

d. *Submitted By:* Georgia Power Company—current licensee.

e. *Name of Project:* Middle Chattahoochee Hydroelectric Project.

f. *Location:* On the Chattahoochee River, near the cities of Columbus, Phenix City and Smith's, in Harris and Muscogee Counties, Georgia, and Chambers, Lee, and Russell Counties, Alabama.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* George Martin, Georgia Power Company, 241 Ralph McGill Boulevard NE, Atlanta, GA 30308 (404) 506-1357.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219-2778, or Ron McKittrick, ronald.mckittrick@ferc.fed.us, (770) 452-3778 regarding the alternative licensing procedures.

j. *Effective date of current license:* January 1, 1955.

k. *Expiration date of current license:* December 31, 2004.

l. *Description of the Project:* The project consists of the following three developments:

The Goat Rock Development consists of the following existing facilities: (1) A

75-foot-high concrete dam comprised of an overflow spillway section surmounted with 4-foot-high flashboards; (2) the 6-mile-long, 1,050-acre Goat Rock reservoir at a normal pool elevation of 404 feet msl; (3) a powerhouse, integral with the dam, containing six generating units with a total installed capacity of 26,000 kW, and (4) other appurtenances.

The Oliver Development consists of the following existing facilities: (1) A 70-foot-high concrete dam comprised of a gated spillway section; (2) the 8.5-mile-long, 2,150-acre Lake Oliver reservoir at a normal pool elevation of 337 feet msl; (3) a powerhouse, integral with the dam, containing four generating units with a total installed capacity of 60,000 kW, and (4) other appurtenances.

The North Highlands Development consists of the following existing facilities: (1) a 40-foot-high concrete masonry dam comprised of an overflow spillway section surmounted with 3.5-foot-high flashboards; (2) the 131-acre North Highlands reservoir at a normal pool elevation of 269 feet msl; (3) a powerhouse, integral with the dam, containing four generating units with a total installed capacity of 29,600 kW, and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00-927 Filed 1-13-00; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6523-2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Part B Permit Application, Permit Modifications, and Special Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Part B Permit Application,

Permit Modifications, and Special Permits, OMB No. 2050-0009, expires on March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1573.06. For technical questions about the ICR contact David Eberly at (703) 308-8645.

SUPPLEMENTARY INFORMATION:

Title: Part B Permit Application, Permit Modifications, and Special Permits, OMB Control No. 2050-0009, EPA ICR No. 1573.06, expiring on March 31, 2000. This is a request for extension of a currently approved collection.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal (TSD) facilities to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—part A and part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under sections 3004 and 3005.

This ICR provides a comprehensive discussion of the requirements for owner/operators of TSDFs submitting applications for a part B permit or permit modification. The information collections contained in this ICR are divided into three sections: demonstrations and exemptions from requirements (40 CFR part 264), contents of the part B application (40 CFR part 270), and permit modifications and special permits (40 CFR part 270).

EPA needs the information for demonstrations and exemptions from requirements to evaluate the accuracy and completeness of petitions for exemptions submitted by owner/operators. These requirements insure that only facilities fully protective of human health and the environment are granted exemptions, and contribute to

EPA's goal of preventing contamination of the environment from hazardous waste treatment, storage, and disposal practices.

EPA needs the information for contents of the part B Application to evaluate the accuracy and completeness of the claims made in the petitions for exemptions submitted by owner/operators. These requirements contribute to EPA's goal of ensuring that hazardous waste management facilities are closed in a manner fully protective of human health and the environment.

EPA needs the information for Permit Application to comprehensively evaluate the potential risk posed by facilities seeking permits. This information aids EPA in meeting its goal of ascertaining and minimizing risks to human health and the environment from hazardous waste management facilities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 23, 1999 (64 FR 39986); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 307 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of facilities that treat, store or dispose of regulated wastes.

Estimated Number of Respondents: 579.

Frequency of Response: occasional.

Estimated Total Annual Hour Burden: 177,543 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden:
\$48,341,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA 1CR No. 1573.06 and OMB Control No. 2050-0009 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460;
and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 5, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00-961 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6249-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared 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 www.epa.gov/oeca/ofa. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D-NPS-J61102-00, EIS No. 990340, Winter Use Plan, Yellowstone and Grand Teton National Parks and John D. Rockefeller Jr. Memorial Parkway, Implementation, Fremont County, ID; Gallatin and Park Counties, MT; and Park and Teton Counties, WY.

Summary: EPA expressed environmental objections with the preferred alternative because of adverse impacts from off-highway vehicle emissions likely to result in noncompliance with air quality

standards. EPA recommends that the selected alternative assure compliance with air quality standards. Rating EO2.

ERP No. D-COE-K36129-CA, EIS No. 990367, San Timoteo Creek Reach 3B Flood Control Project, Flood Protection, Construction, Operation and Maintenance, San Bernardino County, CA.

Summary: EPA expressed objections to the preferred project alternative based on significant impacts to waters of the US, including wetlands, and deficient analyses of impacts and mitigation measures related to waters and biological resources. EPA also determined that the DEIS's Preferred Alternative is not consistent with the Section 404 (B)(1) guidelines of the CWA. EPA recommended modification of the alternatives in the FEIS. Rating EO2.

ERP No. D-IBR-H39007-00, EIS No. 990375, Republican River Basin Long-Term Water Supply Contract Renewals for Five Irrigation Districts, Frenchman-Cambridge, Frenchman Valley and Bostwick Irrigation District in Nebraska and Bostwick No. 2 and Almena Irrigation Districts in Kansas, NB and KS.

Summary: EPA raised significant issues regarding depletions of water resources, species extirpation, pending water quality standards, and competing water interests. Rating EC2.

ERP No. D-UAF-E11046-FL, EIS No. 990390, Tyndall Air Force Base, Implementation, Proposed Conversion of Two F-15 Fight Squadrons to F-22 Fighter Squadron, FL.

Summary: The conversion of two fighter squadrons of F-15 to F-22 aircraft at Tyndall AFB does not appear to pose significant and/or long-term adverse environmental consequences. Rating LO.

ERP No. D-AFS-G65074-TX, EIS No. 990395, Texas Blowdown Reforestation Project, Implementation, National Forests and Grasslands in Texas, Angeline and Sabine National Forests, San Augustine and Shelby Counties, TX.

Summary: EPA has no objection to the preferred action as described in the Draft EIS. Rating LO.

ERP No. D-HUD-K80040-CA, EIS No. 990403, City of Monterey Park Project, Construction and Operation of the Monterey Park Towne Plaza, North of the Pomona Freeway and west Paramount Boulevard, Los Angeles County, CA.

Summary: EPA expressed support for the proposed project to the extent that it is consistent with and does not in any way hinder EPA's ongoing and long term Superfund response actions at the

Operating Industries Inc. (Oil) Superfund Site. Rating LO.

ERP No. D-DOE-K22004-CA, EIS No. 990410, National Ignition Facility Project Specific Analysis, Construction and Operation at the Lawrence Livermore National Laboratory, Livermore, CA

Summary: EPA expressed concern regarding clean-up levels for PCBs and the relationships among various clean-up plans and requirements under CERCLA. EPA requested clarification of these issues and that additional information on the economic impacts be included in the final EIS. Rating EC2.

ERP No. D-FHW-K40240-CA, EIS No. 990411, CA-70 Upgrade in Sutter and Yuba Counties, To a Four-Lane Expressway/Freeway, From South of Striplin Road to South of McGowan Road Overcrossing, Funding and COE Section 404 Permit, Sutter and Yuba Counties, CA

Summary: EPA objections to Alternative 1 since it does not appear to be the least environmentally damaging practicable alternative pursuant to Clean Water Act section 404(b)(1) guidelines. EPA also expressed concerns regarding Alternatives 2 and 3 due to impacts to water and air quality, wetlands mitigation, and project air conformity. Rating EO2.

ERP No. D-TVA-E70001-TN, EIS No. 990420, Tim Ford Reservoir Land Management and Disposition Plan, Implementation, Tim Ford Reservoir, Franklin and Moore Counties, TN.

Summary: EPA raised environmental concerns with the proposal based on its features that allow for more development of undeveloped lands than currently exists. Rating EC1.

ERP No. D-FTA-K54023-CA, EIS No. 990433, Vasona Corridor Light Rail Transit Project, Extension of Existing Light Rail Transit (LRT) in portion of the Cities of San Jose, Campbell and Los Gatos, Santa Clara County, CA.

Summary: EPA expressed a lack of objections to the project proposal but did suggest that the cumulative impacts section be expanded; that the project proponent work with EPA in developing the final wetlands mitigation plan; and that the project use recycled products in keeping with RCRA requirements. Rating LO.

ERP No. DS-UAF-A11074-00, EIS No. 990422, Evolved Expendable Launch Vehicle Program, Updated Information, To Allow the Addition of Up to Five Strap-On Solid Rocket Motors (SRM) to the Atlas V and Delta IV Lift Vehicle, Launch Locations are Cape Canaveral Air Station, Brevard County, FL and Vandenberg Air Force Base (AFB), Santa Barbara County, CA

Summary: While EPA has no objection to the proposed action, some technical/clarification items were provided. Rating LO.

Final EISs

ERP No. F-FAA-K51038-CA, EIS No. 990385, San Jose International Airport Master Plan Update, Improvements include extension of Runway 12R/30L from 10,200 ft. to 11,000 ft; Airport Layout Plan, City of San Jose, Santa Clara County, CA.

Summary: EPA continues to have objections to the proposed action since noise and pollution prevention issues were not fully disclosed and mitigated.

ERP No. F-AFS-J65217-UT, EIS No. 990412, Brighton Ski Resort Master Development Plan Updated, Implementation, Wasatch-Cache National Forest, Salt Lake City, UT.

Summary: EPA expressed continued concerns with current snow storage practices at the Brighton Ski Area base area and suggests exploration less damaging alternatives. Also, because the bulldozing of snow and associated contaminants from parking lots can be considered a point source discharge of pollutants into waters of the U.S., mitigation solutions are needed.

ERP No. F-FTA-L40210-WA, EIS No. 990416, Central Link Light Rail Transit Project, (Sound Transit) Electric Rail System Construction and Operation, Funding, COE Section 10 and 404 Permits, Seattle, Sea Tac and Tuckwila Cities, King County, WA.

Summary: EPA continues to express concern regarding the commitment to ensure that all mitigation measures are implemented. EPA recommended that the commitment to mitigate be included in the Record of Decision.

ERP No. F-USA-G11036-AR, EIS No. 990419, Fort Chaffee Disposal and Reuse, Implementation, Ozark Mountains, Sebastian, Crawford, Franklin, Smith, Barling, and Greenwood Counties, AR.

Summary: The Final EIS fully responded to EPA's comments offered on the Draft Statement. EPA has no further comments to offer.

ERP No. F-FRC-F03006-00, EIS No. 990428, Independence Pipeline and Market Link Expansion Projects, Construction and Operation, Interstate National Gas Pipeline, (Docket Nos. CP97-315-001, CP97-319-000, CP98-200-000 and CP-540-000, NPDES and COE Section 404 Permits, IL, IN, MI, OH, PA, and NJ).

Summary: EPA continues to have concerns that the EIS: (1) does not substantiate the Purpose and Need for the proposal, and (2) does not recommend that the projects'

proponents develop and implement upland forest mitigation plans to mitigate for the entire 1,310.7 acres of upland forest that would be permanently lost if this project is constructed.

ERP No. F-DOE-A09828-00, EIS No. 990434, Surplus Plutonium Disposition (DOE/EIS-0283) for Siting, Construction and Operation of Three Facilities for Plutonium Disposition, Possible Sites: Hanford, Idaho National Engineering and Environmental Laboratory, Pantex Plant and Savannah River, CA, ID, NM, SC, TX, and WA.

Summary: EPA has no objection to the action as proposed.

ERP No. F-NPS-L61222-WA, EIS No. 990435, Lake Roosevelt National Recreation Area, General Management Plan, Implementation, Ferry, Grant, Lincoln, Okanogan, and Steven Counties, WA.

Summary: No formal comment letter was sent to the preparing agency. ERP No. F-COE-E39047-AL, EIS No. 990439, Jackson Port Project, Proposal for the Public Port Facilities on the Tombigbee River, City of Jackson, Clark County, AL.

Summary: EPA continues to have significant objections to the planned phased development which will convert important bottomland hardwood wetlands habitat into commercial property.

ERP No. F-FAA-E51046-NC, EIS No. 990448, Charlotte/Douglas International Airport Construction and Operation, New Runway 17/35, Future 18L/36R Associated Taxiway Improvements, Master Plan Development, Airport Layout Plan (ALP) Approval, and COE Section 404 Permit Issuance, Mecklenburg County, NC.

Summary: EPA continues to be concerned with noise increases relative to residences in the airport area due to the proposed expansion and requested consideration of further mitigation.

ERP No. F-NPS-L65328-WA, EIS No. 990456, Vancouver National Historic Reserve Cooperative Management Plan, Preservation, Education and Public Use, Implementation, Clark County, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: January 10, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00-966 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6250-1]

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 January 03, 2000 Through January 07, 2000 Pursuant to 40 CFR 1506.9.

Note: New Mailing Address Effective January 1, 2000. US Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, Room 7241, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Special Delivery (E.G., Federal Express, United Parcel Service, Hand-Delivered).

Deliver Documents to the guard station at the South Oval Lobby. The guard on duty will ask the delivery person to call our office to verify access to the building, if the delivery person does not have a Government ID. The telephone number for verification to gain access to the building is 564-2400.

EIS No. 000000, DRAFT EIS, COE, ID, OH, KY, John T. Myers and Greenup Locks Improvements, To Alleviate Commercial Navigation Traffic Congestion, Ohio River Mainstem Systems Study, (ORMSS), Interim Feasibility Report, Indiana, Kentucky and Ohio, Due: February 29, 2000, Contact: Veronica Rife (502) 625-7034.

EIS No. 000001, DRAFT EIS, SFW, WA, Tacoma Water Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan, Implementation, Issuance of a Multiple Species Permit for Incidental Take, King County, WA, Due: March 14, 2000, Contact: Tim Romanski (360) 753-5823.

EIS No. 000002, DRAFT EIS, AFS, OR, WA, Pacific Northwest Region Douglas-fir Tussock Moth (orgvia pseudotsugata) Project, To Partially Control an Anticipated Outbreak of Douglas-fir tussock moth, To Be Implemented in Nine National Forests in WA and OH, Due: February 28, 2000, Contact: Bill Funk (503) 808-2984.

EIS No. 000003, DRAFT EIS, COE, WA, Lower Snake River Juvenile Salmon Migration Feasibility Study, Implementation, To Increase the Survival of Juvenile Anadromous Fish, Snake River, Walla Walla, WA, Due: March 31, 2000, Contact: Lonnie Mettler (509) 527-7268.

Amended Notices

EIS No. 990229, DRAFT EIS, AFS, MT, NB, WY, ND, SD, Dakota Prairie Grasslands, Nebraska National Forest Units and Thunder Basin National Grassland, Land and Resource Management Plans 1999 Revisions, Implementation, MT, NB, WY, ND and SD, Due: February 03, 2000, Contact: Pam Gardner (308) 432-0300. Published FR 10-01-99—Review Period Extended from 01-13-00 to 02-03-2000.

EIS No. 990277, DRAFT EIS, AFS, CO, White River National Forest, Revised Land and Resource Management Plan, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat and Pitkin Counties, CO, Due: May 09, 2000, Contact: Martha Ketelle (970) 945-2521. Published FR on 08/13/99: CEQ Comment Date has been extended from 2/2/2000 to 5/9/2000.

EIS No. 990430, DRAFT EIS, COE, AZ, Rio de Flag Flood Control Study, Improvement Flood Protection, City of Flagstaff, Coconino County, AZ, Due: January 18, 2000, Contact: David Compas (213) 452-3850. FR notice published on 11/19/1999: CEQ Comment Date extended from 1/04/2000 to 01/18/2000.

EIS No. 990492, DRAFT EIS, AFS, AK, Finger Mountain Timber Sales, Timber Harvesting, Implementation, U.S. Coast Guard, NPDES and COE Section 10 and 404 Permits, Tongass National Forest, Sitka Ranger District, AK, Due: February 28, 2000, Contact: Lisa Winn (907) 747-6671. Published—FR-12-30-99 Correction to CEQ Comment date from 02-28-1999 to 02-28-2000.

Dated: January 11, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00-967 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6523-4]

Request for Great Lakes Preproposals Through "FY2000-2001 Great Lakes Priorities and Funding Guidance"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of preproposals for GLNPO funding. This request is part of the *FY2000-2001*

Great Lakes Priorities and Funding Guidance (Funding Guidance). The Great Lakes Funding Guidance identifies Great Lakes priorities and solicits preproposals for assistance projects in the areas of contaminated sediments, pollution prevention and reduction, habitat protection and restoration, invasive species, and emerging issues.

DATES: The deadline for submission of Preproposals is February 18, 2000.

ADDRESSES: The Funding Guidance is available on the Internet at <http://www.epa.gov/glnpo/fund/2000guid/>. Preproposals can also be sent to Lawrence Brail, Environmental Protection Agency, Great Lakes National Program Office (G-17J), 77 W. Jackson Blvd., Chicago, IL 60604; telephone (312) 886-7474; email address: brail.lawrence@epa.gov.

FOR FURTHER INFORMATION CONTACT:

Mike Russ, EPA-GLNPO, G-17J, 77 West Jackson Blvd., Chicago, IL 60604 (312-886-4013/russ.michael@epa.gov).

SUPPLEMENTARY INFORMATION: USEPA's Great Lakes National Program Office is requesting Preproposals for Great Lakes projects addressing: Contaminated Sediments (\$1.45 million), Pollution Prevention and Reduction—Binational Toxics Strategy (\$700 thousand); Habitat (Ecological) Protection and Restoration (\$700 thousand); Invasive Species (\$300 thousand); and Emerging Issues (\$220 thousand). A total of \$3.04 million is targeted for awards in the Summer and Fall of 2000. Potential applicants can find a description of GLNPO's funding process, the Request for Preproposals, evaluation criteria, and the Preproposal development and submittal program on the Internet at <http://www.epa.gov/glnpo/fund/2000guid/>.

Dated: January 6, 2000.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 00-958 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6518-3]

Slotted Guidepoles at Certain Petroleum and Organic Liquid Storage Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Storage Tank Emission Reduction Partnership Program and Request for Comments.

SUMMARY: In today's **Federal Register** the Environmental Protection Agency ("EPA") reaffirmed the applicability of certain NSPS Subpart Ka/Kb requirements to slotted guidepoles. EPA believes there are a substantial number of affected facilities with slotted guidepoles and, therefore, intends to establish a program for reducing their emissions in an expeditious, highly cost-effective manner. EPA solicits comments on the Storage Tank Emission Reduction Partnership Program described below.

DATES: Comments should be submitted by February 28, 2000.

ADDRESSES: Comments must be submitted to: Air Enforcement Division (Mail Code 2242A), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. James K. Jackson, Air Enforcement Division (2242A), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564-2002.

SUPPLEMENTARY INFORMATION: Slotted guidepoles are hollow poles with holes or "slots" that perforate the length of the pole and that are typically a foot-long and 1-2 inches wide. Where the pole passes through a floating roof, there is an opening in the roof and a gap between the pole and the roof. These holes, slots and gaps contribute to evaporative product losses and volatile organic compound (VOC) emissions. VOCs include a wide variety of hydrocarbons, some of which are hazardous air pollutants (e.g., benzene, toluene, xylene and ethyl benzene). Depending on the size, location and contents of a tank, uncontrolled emissions from slotted guidepoles can exceed 25,000 pounds per year. Relatively simple and inexpensive solutions exist to minimize these emissions and reduce evaporative losses.

A substantial but undetermined number of NSPS Subpart Ka/Kb tanks have slotted guidepoles. EPA is aware of at least 70 such tanks at 10 refineries in 4 EPA Regions, but the universe of all such tanks is much broader than refineries. They may be found at any facility that stores substantial quantities of volatile organic liquids, including petroleum products (e.g., refineries, gasoline distribution terminals, chemical plants and other facilities). Several EPA Regions have settled enforcement actions by requiring companies to install controls on their slotted guidepoles. EPA understands

that certain other companies have also installed slotted guidepole controls. In the interests of promoting fast, efficient and widespread emission reductions, EPA intends to offer and enter into agreements with companies that installed or will install controls to reduce slotted guidepole emissions at their NSPS Subpart Ka/Kb tanks. As under EPA's policy concerning voluntary disclosure, this opportunity will be available only to owners/operators of affected NSPS Subpart Ka/Kb facilities that are not currently the subject of an enforcement action based upon their use of slotted guidepoles. *See Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 60 FR 66706 (December 22, 1995).

The American Petroleum Institute ("API") has actively participated on this and related tank issues, suggesting that this matter could be resolved by establishing a cooperative emissions reduction program for tanks with slotted guidepoles. EPA engaged in discussions with API on the scope, appropriateness and terms of such a program, the result being the below-described program, appendices and related attachments.

During our discussions with API an issue arose over the use of slotted guidepoles at internal floating roof tanks. API agreed that they should be included in the program but urged that no add-on controls be required (as under the existing source Refinery MACT¹). EPA's Office of Air Quality Planning and Standards (OAQPS) has been requested to: (1) identify and quantify the emissions from slotted guidepoles at internal floating roof tanks without add-on controls; (2) assess whether slotted guidepoles at internal floating roof tanks should be exempt from add-on control requirements; and, if so, (3) decide whether a rulemaking is necessary and will be pursued to resolve the issue. If OAQPS commits to a rulemaking for these internal floating roof tanks, EPA may exclude them from this program. Comments are solicited on whether and what add-on controls could be installed at internal floating roof tanks with slotted guidepoles to reduce their evaporative product emissions.

EPA believes the Storage Tank Emission Reduction Partnership Program will result in substantial emission reductions through installing

low cost controls while avoiding the time and expense of litigation. Since these emission controls also reduce potentially significant evaporative product losses, EPA believes that the total annualized cost of controls (with product recovery credits) could be less than \$0.

EPA's proposal offers clear and consistent terms to reduce uncertainty, inform company decisions and eliminate the need for extended, individualized negotiations:

- The agreement would identify acceptable slotted guidepole controls. *See APPENDIX I (Acceptable Controls for Slotted Guidepoles under the Storage Tank Emissions Reduction Partnership Program)*. EPA previously determined that floats and wipers (i.e., gasketed covers) complied with applicable control requirements under NSPS Subparts Ka and Kb. Based on information provided by API, EPA believes that several other approaches are as or more effective in reducing emissions and evaporative product losses and are, therefore, identified as being acceptable in APPENDIX I. Suggestions for and comments on other controls/approaches are solicited.

- The agreement would not require that penalties be paid as a condition of program participation. EPA believes that immediate emission reductions under this program would be preferable to initiating enforcement actions seeking penalties under the Clean Air Act. Nonetheless and if a participating company fails to implement its agreed-to controls in a timely manner, stipulated penalties under its agreement with EPA would be imposed. This program addresses federal requirements and federal enforcement only; states may have more stringent requirements.

- EPA would specify the terms and conditions for program participation through a standard participation agreement that each participant must execute. *See APPENDIX II. Comments on the specific terms and conditions of that agreement are solicited, including the possible use of binding arbitration to resolve certain disputes if and to the extent such may then be permitted under the Alternative Dispute Resolution Act.*

To aid informed company decision making on whether to participate, EPA intends to establish a realistic implementation schedule based on a progression of activities:

1. Each program participant will notify EPA of its intent to participate within 60 days of a final program notice. Such early registration will enable better resource planning and coordination by

the Agency and participating companies.

2. Participants must then assess *all* of their NSPS Subpart Ka/Kb tanks with slotted guidepoles. A company could withdraw from the program even after completing this assessment, but EPA anticipates that few will do so.

3. Each company will be required to submit an executed participation agreement to EPA, including a complete Annex A, within 240 days of the final program notice. Annex A would identify all that company's NSPS Subpart Ka/Kb tanks with slotted guidepoles, specify when acceptable controls were or will be installed on such tanks and predict emission reductions that will result from the installation of these controls. The accuracy of all information submitted to EPA will be certified by a responsible corporate official. Companies that already installed acceptable controls on some, many or all of their NSPS Subpart Ka/Kb affected facilities can participate in this program and benefit from its certainty and protections, provided such facilities are identified and included in Annex A.

4. EPA will execute the participation agreement and issue an enforceable order incorporating the company-supplied Annex A if no deficiencies are identified (e.g., Annex A's schedule for installing controls is or will be consistent with applicable requirements under Section 113(a)(4) of the Clean Air Act at the time the order is issued).

5. As required by the agreement and order, participating companies would then install controls as expeditiously as possible.

EPA believes that the above-described program is the best, most cost-effective way to achieve immediate environmental improvement and significant progress in resolving this issue. Its terms, conditions and protections will be available only to those companies that elect to participate. If and as appropriate, nonparticipants may be subject to enforcement actions in which significant penalties would be sought for violations of NSPS Subparts Ka and Kb.

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 and regulatory policies that have "substantial direct effects on the

¹ New refinery tanks are subject to the same or similar slotted guidepole requirements as under NSPS Subpart Ka/Kb. *Compare* 40 CFR 63.646(a), 63.119(b) and 63.119(c) *with* 40 CFR 60.112a(a) and 60.112b(a). Since existing sources are not subject to these requirements, 40 CFR 63.646(c), the Refinery MACT is less stringent than NSPS Subparts Ka/Kb at such sources.

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.”

This notice 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. It reaffirms and publicizes prior EPA determinations concerning the applicability of certain federal requirements to the regulated community. Thus, the requirements of section 6 of the Executive Order do not apply to this notice.

Comments on the approach outlined above, as well as on the specific items and terms reflected in the following Appendices, are solicited. To be considered fully, comments must be received by February 28, 2000.

Dated: December 23, 1999.

Eric V. Schaeffer,

*Director, Office of Regulatory Enforcement,
Office of Enforcement and Compliance
Assurance.*

Appendix I—Acceptable Controls for Slotted Guidepoles Under the Storage Tank Emissions Reduction Partnership Program

1. *Pole Float System*—Each opening through the deck of the floating roof for a slotted guidepole shall be equipped with a deck cover, a pole wiper and a pole float. The deck cover shall also be equipped with a gasket between the cover and deck. The wiper or seal of the pole float shall be at or above the height of the pole wiper.

2. *Alternate Control Technologies and Combinations*—The following will inform EPA's determination of whether an alternate control technology is acceptable for use under the Storage Tank Emissions Reduction Partnership Program. An alternate control technology must be shown to have an emission factor less than or equal to the emission factor for the above-identified control system. Tests to determine emission factors for an alternate control technology shall accurately simulate conditions representative of the conditions under which the technology will/would operate (e.g., wind, temperature and barometric pressure). Such tests may utilize the methods listed in American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part A (Wind Tunnel test Method for the Measurement of Deck-Fitting Loss Factors for External Floating-Roof Tanks) or Part E (Weight Loss Test Method for the Measurement of Deck-Fitting Loss Factors for Internal Floating-Roof Tanks).

A combination of technologies and devices to control emissions from slotted guidepoles and deck fittings may be acceptable under

the Storage Tank Emissions Reduction Partnership Program if such alternate emits no more than the above-identified control system plus the same combination of deck fittings (equipped as required under NSPS Subpart Kb), as determined using AP-42. The emissions from an alternate combination of control technologies and devices shall be determined using AP-42 and/or as specified above.

3. *Pole Sleeve System*—Each opening through the deck of the floating roof for a slotted guidepole shall be equipped with a deck cover, a pole wiper and a pole sleeve. The deck cover shall be equipped with a gasket between the cover and the deck. The sleeve extends into the stored liquid.

4. *Internal Sleeve Emission Control System*—An internal guidepole sleeve that eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (e.g., pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

5. *Covers on External Floating Roof Tanks*—The external floating roof tank shall be (or have been) modified by installing a fixed roof mounted on the tank above its external floating roof. Each opening through the deck for a slotted guidepole shall have its lower edge below the surface of the stored liquid.

6. *Removal of Tank from Service and Surrender of Permits*—Remove the tank from service storing liquids subject to NSPS Ka or Kb controls, surrender any and all operating permits for that tank to the appropriate state/local regulatory authority and represent to such authority that it will not be used to store petroleum liquids, as defined in 40 CFR 60.111a(b) that have a maximum true vapor pressure in the range defined in 40 CFR 60.112a(a), or volatile organic liquids, as defined in 40 CFR 60.111b(k), that have a maximum true vapor pressure in the range defined in 40 CFR 60.112b(a).

Definitions: Deck cover means a device which covers an opening in a floating roof deck. Some deck covers move horizontally relative to the deck (i.e., a sliding cover).

Pole float means a float located inside a guidepole that floats on the surface of the stored liquid. The rim of the float has a wiper or seal that extends to the inner surface of the pole.

Pole sleeve means a device which extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening. The sleeve extends into the stored liquid.

Pole wiper means a seal that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening.

Slotted guidepole means a guidepole or gaugepole that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

Appendix II—Storage Tank Emission Reduction Partnership Agreement

The United States Environmental Protection Agency (“EPA”) and (“Participating Company”), the parties herein, desire to enter into and be bound by the terms of this Storage Tank Emission Reduction Partnership Agreement (“Partnership Agreement” or “Agreement”).

Whereas Participating Company recognizes that reducing emissions from tanks and other storage vessels with slotted guidepoles¹ can improve air quality while reducing evaporative product losses.

Whereas Participating Company is committed to environmental improvement and the cost-effective reduction of emissions.

Whereas EPA recognizes the value of cooperative emission reduction programs with industry.

Whereas Participating Company desires to participate in the Storage Tank Emission Reduction Partnership Program announced by EPA at Fed. Reg. (2000) (hereinafter referred to as “Program notice”).

Now, therefore, in consideration of the above and the mutual undertakings of each to the other, EPA and Participating Company agree as follows:

Applicability

1. The provisions of this Partnership Agreement shall apply to and be binding upon EPA and upon Participating Company, its officers, directors, agents, servants, employees, successors and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any tank identified in Annex A.

Representations

2(a). Participating Company represents that:

a. It notified EPA of its intent to participate in the Storage Tank Emission Reduction Partnership Program within 60 days of the Program notice.

b. It assessed and evaluated each of its NSPS Subpart Ka and Kb affected facilities² with slotted guidepoles (hereinafter referred to as “Tanks”) and is submitting this executed Partnership Agreement to EPA within 240 days of the Program notice.

c. Annex A (attached hereto and incorporated by reference herein) is a true, accurate and complete identification of:

¹ A guidepole (also referred to as a gaugepole, gauge pipe or stilling well) is a vertically oriented pipe or tube that is affixed to a tank and that passes through its floating roof. Slotted guidepoles are guidepoles with slots or holes that allow stored liquids to flow into the pole, thereby enabling representative samples to be collected from within the slotted guidepole.

² NSPS Subpart Ka applies to petroleum liquid storage vessels with a capacity of greater than 40,000 gallons that were constructed, reconstructed or modified after May 18, 1978; NSPS Subpart Kb applies to volatile organic liquid storage vessels with a capacity of greater than 40 cubic meters that were constructed, reconstructed or modified after July 23, 1984. The equipment design requirements for floating roof tanks subject to NSPS Subparts Ka and Kb are found at 40 CFR 60.112a and 60.112b.

i. Each Tank;
 ii. The date(s) by which controls were or will be installed at each Tank, provided that if controls were installed before [the date of the Program notice] that date may be used; and

iii. Predicted emission reductions such controls will achieve at each Tank.

d. The controls identified in Annex A were either specified in Appendix I to the Program notice (Acceptable Controls for Tanks with Slotted Guidepoles Under the Storage Tank Emission Reduction Partnership Program), attached hereto and incorporated by reference herein, or expressly determined by EPA to be acceptable for purposes of the Storage Tank Emission Reduction Partnership Program under Paragraph 2 of Appendix I.

e. The predicted emission reductions reflected in Annex A were calculated and derived through the proper use of either EPA's TANKS software (version 3.1 or later) or an alternative methodology expressly determined to be acceptable for this purpose by EPA.

f. The undersigned is a duly authorized representative of Participating Company, with full powers to make these representations, enter into this Agreement and bind Participating Company to the terms hereof.

(b). The undersigned EPA representative is authorized to enter into this Agreement and bind EPA to the terms hereof.

Participating Company Undertakings

3. Participating Company shall install slotted guidepole controls on Tanks identified in Annex A as expeditiously as possible (e.g., when the Tank is next taken out of service) but not later than:

a. Twenty-six (26) months after issuance of the Program notice; or

b. One hundred and twenty months (120) of the Program notice if a Tank must be taken out of service in order to instal such controls, provided Annex A describes why such Tank(s) must be taken out of service and either identifies the date(s) by which appropriate interim controls will be installed (i.e., a self-aligning float equipped with at least one wiper seal gasket that is maintained at or above the height of the pole wiper) or describes why such Tank(s) must be taken out of service in order to instal interim controls.

4. Participating Company shall properly operate and maintain all slotted guidepole controls required under Paragraph 3 in the manner specified in Attachment 1 and shall include such controls and this requirement in federally enforceable permits issued by appropriate permitting authorities.

5. Participating Company shall not seek or obtain emission reduction credits for emission reductions that result from installing slotted guidepole controls under Paragraph 3 or from the work required under Paragraph 4 of this section, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

6. Participating Company agrees and by entering into this Agreement consents to

EPA's issuance of an order under and as specified in Paragraph 9.

EPA Undertakings

7. Compliance with the requirements set forth herein, including Paragraphs 3–6, shall be deemed and will, therefore, constitute full settlement and satisfaction by EPA of those violations of the Standards of Performance for New Sources, Subparts Ka and Kb, that could be or could have been alleged in civil actions or proceedings brought by EPA or the United States concerning Participating Company's use of slotted guidepoles at Tanks identified in Annex A.

8. Within sixty (60) days of its receipt of this Partnership Agreement, EPA will promptly review and either sign and return a fully executed copy of that Agreement to Participating Company or identify deficiencies in Annex A. If deficiencies identified by EPA are not corrected and a revised Annex A submitted within thirty (30) days of Participating Company's receipt of such identification by EPA, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

9. If and after EPA executes this Agreement as specified in Paragraph 8, it will issue an order to Participating Company in the form provided at Attachment 2.

Publicity

10. Participating Company may publicize that it is partnering with EPA under the Storage Tank Emission Reduction Partnership Program.

11. Upon request, EPA will recognize and acknowledge Participating Company's participation under this Partnership Program and/or industry's leadership and assistance in identifying controls for slotted guidepoles.

Access and Inspection

12. Without prior notice, any authorized representative of EPA (including a designated contractor), upon presentation of credentials where Tanks are located, may enter such location(s) at reasonable times to determine compliance with the requirements, terms and conditions of this Agreement. To make such a determination, EPA's authorized representative(s) shall have full and complete access to inspect, photograph, or videotape any Tank and to copy such records related to Participating Company's undertakings under this Agreement that EPA's representative(s) may deem necessary, provided such is consistent with EPA's authority under applicable laws, permits and regulations. Access under this Paragraph is subject to the normal health and safety requirements in effect at such locations. This Paragraph is in addition to, and not in limitation of, EPA's authority to investigate, inspect or enter premises pursuant to applicable laws, permits and regulations.

Force Majeure

13. If any event occurs that causes or may cause a delay in Participating Company's compliance with Paragraphs 3 or 4 of this

Agreement, Participating Company shall notify EPA within thirty (30) days after Participating Company becomes aware of such event. This notice shall reasonably describe the anticipated length of the delay, the reason(s) for the delay, measures Participating Company has taken and will take to prevent or minimize the delay, and the timetable by which these measures have been or will be implemented. Increased costs or expenses associated with the implementation of this Agreement shall not be the sole or primary basis for a change in its terms or an extension of time. Participating Company shall adopt reasonable measures to avoid or minimize any such delay.

14. If the parties agree that the delay or anticipated delay in compliance with Paragraph 3 of this Agreement has been or will be caused by circumstances beyond the reasonable control of Participating Company and its contractors as under Paragraph 20, the time for performance hereunder shall be extended for a period no longer than the length of the delay caused by such circumstances. The parties shall also then seek to agree on the period of such extension as under Paragraph 20, but if they cannot so agree, the determination by EPA shall control unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

15. If EPA determines that such delay, anticipated delay or any identified portion thereof was caused by circumstances within the reasonable control of Participating Company and its contractors, Participating Company shall be in breach of this Agreement and subject to stipulated noncompliance penalties as set forth in Paragraph 16 unless Participating Company invokes the Dispute Resolution provisions of this Agreement (Paragraphs 20–21).

Stipulated Noncompliance Penalties

16. If Participating Company fails to comply with the requirements of Paragraphs 3 (including Annex A), 4 or 5, it shall pay up to \$1,000 per day for the first thirty (30) days of noncompliance and up to \$2,500 per day for each day of noncompliance thereafter until compliance is demonstrated. Stipulated penalties are to be determined for each Tank, provided that stipulated penalties for all noncompliance occurring on the same day shall not exceed \$10,000 per facility at which such noncompliance exists or occurs and \$25,000 per participating company. Payment of stipulated penalties shall be by cashier's check, certified check or wire transfer, payable to "Treasurer, United States of America" and delivered to EPA.

17(a). If any noncompliance with Paragraphs 3, 4 or 5 is discovered by Participating Company, it shall so notify EPA and provide a written statement describing such noncompliance by the last day of the month following the month in which such noncompliance was identified by Participating Company.

If any noncompliance with Paragraphs 3, 4 or 5 is discovered by EPA, it shall so notify Participating Company and there describe such noncompliance.

18. After an opportunity to informally resolve issues under Paragraph 20, EPA will

demand payment of such stipulated penalties as it determines are appropriate under the circumstance and permitted under Paragraph 16. Stipulated penalties shall be paid by the last day of the month following the month in which such demand is made unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

19. For any noncompliance that is or could be subject to stipulated noncompliance penalties hereunder, EPA expressly reserves the right to seek any other relief to which it may be entitled under law, including but not limited to specific performance of this Agreement, injunctive relief under the Act and such other relief as may be available under any federal statute or the common law.

Dispute Resolution

20. *Informal.* If Participating Company disputes any determination made by EPA pursuant to Paragraphs 14–15 (Force Majeure), Paragraph 18 (Stipulated Noncompliance Penalties), Paragraphs 32–33 (Termination) or Appendix I (Alternate Control Technologies) but only if such alternate was requested by Participating Company, it shall send a written notice to EPA outlining the nature of the dispute/disagreement and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the notice was sent unless the parties expressly agree otherwise in writing.

21. *Formal.* If informal negotiations are unsuccessful, either party may request and both parties shall then attempt to reach agreement on a process and procedure for resolving the dispute by formal means using a neutral third party. Such process and procedures may include, but need not be limited to, mediation, nonbinding arbitration and binding arbitration (but only if and to the extent binding arbitration is then permitted under the Administrative Dispute Resolution Act of 1996 and EPA policy). If an agreement on process and procedure is not reached within sixty (60) days from the date notice was sent under Paragraph 20 or as otherwise provided in this Agreement, either party may then assert whatever rights they may have hereunder in an appropriate federal court.

Notification

22. All notices, records and submissions required under this Agreement shall be maintained where each Tank is located or where such Tank's records are normally maintained, provided they can be made available by facsimile (or otherwise) upon request during an inspection under Paragraph 12.

23. All notices, submissions and certifications required of Participating Company under this Agreement shall be in writing and postmarked or hand delivered to:

All notices required of EPA and all EPA determinations under this Agreement shall be in writing and postmarked or hand delivered to:

24. Upon completion of its obligations and undertakings under this Agreement, Participating Company shall provide a written certification of its compliance with this Agreement to EPA, including a description of the work performed under Paragraph 3, the date such work was completed and an identification of such permit(s) that were or will be issued under Paragraph 4. Such certification shall be signed by a responsible official and contain the following language: I certify under penalty of law that the information contained in and accompanying this document (if applicable) is true, accurate, and complete to the best of my knowledge, information and belief after reasonable inquiry.

For purposes of this Paragraph, a "responsible official" means the president, secretary, treasurer, or a vice-president of Participating Company, its senior management representative(s) where such Tanks are located, or any person who performs similar policy or decision-making functions for Participating Company.

Miscellaneous Provisions

25. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

EPA agrees to accept service from Participating Company by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

26. Annex A of this Participation Agreement may be modified only if EPA and Participating Company agree and consent to such modification in writing.

27. This Agreement does not modify or affect in any way Participating Company's responsibility to achieve and maintain compliance with all other applicable federal, state and local laws, regulations and permits.

28. Each party shall bear its own costs, attorney's fees and disbursements in this matter.

29. This document, including its attached Annex A, Appendix I and Attachments 1 and 2, encompasses the entire agreement of the parties with respect to the subject matter hereof and totally supersedes all prior agreements and understandings, whether oral or in writing.

Termination

30. When Participating Company has complied with Paragraph 3, is in compliance with Paragraph 4 and has certified compliance under Paragraph 24, Participating Company may notify EPA of its intent to terminate this Agreement. EPA may object to such termination only on the grounds that Participating Company has not complied with this Agreement.

31. If EPA does not object to Participating Company's notice of intent to terminate, this Agreement will terminate ninety (90) days after the date of dispatch of such notice of intent to terminate. Notwithstanding such termination of this Participation Agreement, the obligations of Paragraphs 3, 4, 5 and 7 shall continue indefinitely.

32. If EPA objects to Participating Company's notice of intent to terminate, it must do so in writing within sixty (60) days of its receipt of such notice. If EPA objects to Participating Company's notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20–21). In resolving any dispute regarding termination of this Agreement, Participating Company shall have the burden of proving that it is, was and has been in compliance with this Agreement.

33. If EPA determines that Participating Company is in material breach of this Agreement (e.g., evinces a pattern and practice of noncompliance with its terms and conditions), it shall give notice of such breach and may give notice of its intent to terminate this Agreement. If Participating Company objects to EPA's determination and/or notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20–21). If then terminated, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

Reservation of Rights

34. By entering into the Agreement, EPA understands that Participating Company neither agrees nor concedes that its use of slotted guidepoles without the controls specified in Appendix I violate or violated any Clean Air Act requirement. Similarly, Participating Company understands that EPA neither agrees nor concedes that Participating Company's prior use of slotted guidepoles without such controls was acceptable or excused in any way or on any basis whatsoever. With respect to any tank(s) other than a Tank identified in Annex A, each party reserves all rights they may have to contest or otherwise litigate any issue arising out of any use of slotted guidepoles.

Effective Date

35. This Participation Agreement shall be effective when signed by both Participating Company and EPA.

By:
[Participating Company]
Date:

with copy to: U.S. Environmental Protection Agency, Air Enforcement Division—Station Source Enforcement Branch, Mail Code 2242A, Washington, DC 20460.

By:
U.S. Environmental Protection Agency
Date:

Attachment 1: Operating and Maintenance Requirements for Slotted Guidepole Controls Under the Storage Tank Emissions Reduction Partnership Program

The sliding cover shall be in place over the slotted-guidepole opening through the floating roof at all times except when the sliding cover must be removed for access. If the control technology used includes a guidepole float, the float shall be floating within the guidepole at all times except when it must be removed for access to the stored liquid or when the tank is empty.

Visually inspect the deck fitting for the slotted guidepole at least once every 10 years and each time the vessel is emptied and degassed. If the slotted guidepole deck fitting or control devices have defects, or if a gap of more than 0.32 centimeters (1/8 inch) exists between any gasket required for control of the slotted guidepole deck fitting and any surface that it is intended to seal, such items shall be repaired before filling or refilling the storage vessel with regulated material.

Tanks taken out of hydrocarbon service, for any reason, do not have to have any controls in place during the time they are out of service.

Attachment 2: Form Compliance Order

United States Environmental Protection Agency

In The Matter of:
[Participating Company]
Respondent.

Storage Tank Emission Reduction
Partnership Program
Agreement No.

Findings and Order

Pursuant to Section 113(a)(3) of the Clean Air Act ("CAA"), consistent with the Storage Tank Emission Reduction Partnership Agreement identified above and entered into between the United States Environmental Protection Agency ("EPA") and Respondent, and based upon available information, EPA hereby makes and issues the following Findings and Order:

Findings

1. Respondent is a Participating Company under above-identified Storage Tank Emission Reduction Partnership Agreement.

2. EPA promulgated New Source Performance Standards ("NSPS") for Petroleum Liquid Storage Vessels and for Volatile Organic Liquid Storage Vessels, appearing in 40 CFR Part 60, Subparts Ka and Kb.

3. Respondent owns or operates certain "affected facilities" under NSPS Subpart Ka and/or Kb that have or had floating roofs with slotted guidepoles, as identified in Annex A.

Order

4. Respondent shall install, maintain and operate properly those controls specified in Annex A by the date(s) there indicated and shall include or seek to include such controls

and this requirement in federally enforceable permits issued by appropriate permitting authorities.

5. Respondent shall not seek or obtain emission reduction credits for emission reductions that result from its compliance with this order, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

6. Pursuant to Section 113(a) of the CAA, failure to comply with this Order may lead to a civil action to obtain compliance or an action for civil or criminal penalties.

Issued this _____ day of _____, 2000.
U.S. Environmental Protection Agency.

[FR Doc. 00-620 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-KS; FRL-6397-6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Kansas Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On November 8, 1999, the State of Kansas submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of the State of Kansas application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. Kansas has provided self-certification of a lead program meeting the requirements for approval under section 404 of TSCA. Therefore, pursuant to section 404 of TSCA, the State program is deemed authorized as of the date of submission. If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

DATES: Comments, identified by docket control number PB-402404-KS, must be

received on or before February 28, 2000. In addition, public hearing requests may be submitted on or before February 28, 2000.

ADDRESSES: Comments and public hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PB-402404-KS in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, Region VII, 901 North 5th St., Kansas City, KS 66101; telephone number: (913) 551-7518; e-mail address: talley.mazzie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the State of Kansas. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number PB-402404-KS. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business

information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The docket is located at the regional office 901 North 5th St., Kansas City, KS.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB-402404-KS in the subject line on the first page of your response.

1. *By mail.* Submit comments and hearing requests to: Mазzie Talley, Lead Coordinator, Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, Region VII, 901 North 5th St., Kansas City, KS 66101.

2. *In person or by courier.* Deliver comments and hearing requests to: Radiation, Asbestos, Lead and Indoor Programs Branch, Air, RCRA and Toxics Division, Environmental Protection Agency, Region VII, 901 North 5th St., Kansas City, KS 66101. The regional office is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The telephone number for the regional office is (913) 551-7020.

3. *Electronically.* You may submit comments and hearing requests electronically by e-mail to: "talley.mazzie@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PB-402404-KS. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be

CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. Background

A. What Action is the Agency Taking?

The State of Kansas has provided a self-certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the Kansas lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., November 8, 1999). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether the State of Kansas application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Pubic Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

In the **Federal Register** of August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed

authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the State of Kansas proposed program has been provided by the applicant.

The Kansas Department of Health and Environment, Lead Poisoning Prevention Program certifies lead professionals, accredits the required training programs, licenses lead activity firms, and enforces the work practice standards for conducting lead-based paint activities and abatement projects. The department operates under the authority of Senate Bill 107 and Kansas Administrative Regulations (1999) 28-72-1 to 28-72-22. Together, these functions fulfill the requirements for an EPA approved State program and ensure the quality of lead abatement and lead-based paint activities conducted in Kansas.

The Lead Poisoning Prevention Program certifies individuals and accredits training programs for the following lead occupations: Lead inspectors, risk assessors, lead abatement workers, lead abatement supervisors, project designers, and lead abatement contractors. For each occupation, an applicant for certification must meet or exceed education and experience requirements, successfully complete an appropriate training program, and score at least 70% on the national 3rd party examination for lead inspectors, risk assessors, and lead abatement supervisors all pursuant to regulation. An applicant for a lead abatement contractor has no experience and education requirements. The licensed lead abatement contractor's application includes a statement that it will only hire certified individuals to conduct lead-based paint activities and that it will follow approved work practice standards.

Certified lead professionals must comply with Kansas Work Practice Standards when conducting lead-based paint activities on target housing or child-occupied facilities. These work practice standards ensure that lead-based paint activities are conducted reliably, effectively, and safely. The department has the authority to take administrative or civil actions or seek criminal actions against an entity that violates the work practice standards or fails to comply with any part of the licensure, certification, or accreditation regulations.

The Lead Poisoning Prevention Program staffing consists of the

following: Barry Brooks, Director, Public Service Executive; Sue Bowden, Nurse Consultant, Public Health Nurse; Trent Roehler, Office/Accounting Specialist; Wendy Butler, Intern; and Tom Morey, Health and Environment Consultant.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the General Accounting Office

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

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 21, 1999.

Dennis D. Grams,

Administrator, Region VII.

[FR Doc. 00-965 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6523-1]

CWA 303(d): Final Notice of EPA's Decision To Withdraw the Total Maximum Daily Loads (TMDLs) for Copper in the Arthur Kill and Kill Van Kull and Establish a TMDL for Nickel in the Hackensack River

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision.

SUMMARY: EPA has reached the following conclusions regarding certain segments of the New York-New Jersey Harbor: the applicable water quality standard for copper in the Arthur Kill and the Kill van Kull is not likely to be exceeded (i.e., the waters are not water quality-limited for copper) and therefore, no TMDL is necessary for copper; and the Hackensack River below the Oradell Dam is water quality-limited for nickel. Therefore, as part of this action, EPA is establishing a TMDL for nickel in the Hackensack River.

EPA is hereby issuing public notice of: its final decision to withdraw the Phase I copper TMDL in the Arthur Kill and Kill Van Kull established by EPA on January 24, 1996; and its final decision to establish a TMDL for nickel in the Hackensack River.

EFFECTIVE DATE: December 27, 1999.

ADDRESSES: Copies of the responsiveness summary and relevant supporting documents may be obtained by writing to Ms. Rosella O'Connor, Fate & Effects Team, U.S. Environmental Protection Agency Region 2, 290 Broadway, 24th Floor, New York, New York 10007-1866, oconnor.rosella@epamail.epa.gov, or by calling (212) 637-3823.

The administrative record containing background technical information is on file and may be inspected at the U.S. EPA, Region 2 office between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, except holidays. Arrangements to examine the administrative record may be made by contacting Ms. Rosella O'Connor.

FOR FURTHER INFORMATION CONTACT: Ms. Rosella O'Connor, telephone number (212) 637-3823.

SUPPLEMENTARY INFORMATION:
I. Background
II. Public Notice of Draft Decision
III. Final Determination

I. Background

A TMDL, or total maximum daily load, is the maximum amount of a pollutant that a waterbody can assimilate and still meet ambient water quality standards. TMDLs are established for water quality-limited segments, which are defined as "any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of technology-based effluent limitations * * *" (40 CFR 130.2(j)).

On January 24, 1996 (61 FR 1930), EPA established certain phased TMDLs, including waste load allocations (WLAs) and load allocations (LAs) for copper

and mercury for specific waters of the New York-New Jersey Harbor. The Phase I TMDLs established in January 1996 required additional data collection in the New Jersey Harbor waters before the establishment, as necessary, of revised Phase II TMDLs. Phase II TMDLs were to be established only if the additional data and/or modeling indicated that it was necessary to reduce point and/or nonpoint sources of certain metals below Phase I levels.

The New Jersey Harbor Dischargers Group (NJHDG), in cooperation with the New Jersey Department of Environmental Protection (NJDEP) and EPA, agreed to undertake the necessary additional ambient and load monitoring and modeling effort necessary to determining if copper, nickel and lead exceeded or potentially exceeded applicable water quality standards in the following New Jersey Harbor waters: Newark Bay, Hackensack River below the Oradell Dam, Passaic River below the Dundee Dam, Raritan River below the Fieldville Dam and Raritan Bay. Based on the results of the monitoring effort, it was determined that copper does not exceed the applicable water quality criteria in any of the above-mentioned waters. Therefore, the Phase I copper TMDLs, for the waters mentioned above, were withdrawn on September 19, 1997 (62 FR 49226). It was also determined that, of all of the above-mentioned waters, only the Hackensack and Passaic Rivers are potentially water quality-limited for nickel and required further assessment and, as necessary, the establishment of TMDLs for nickel. None of the above waters were water quality-limited for lead. The Arthur Kill and the Kill Van Kull were not directly included in this investigation, therefore the TMDLs for copper had remained in effect for those waters. The mercury TMDLs established in 1996 still remain in effect for those waters.

In 1997 and 1998, the NJHDG, NJDEP and EPA completed a monitoring program and water quality modeling to: (1) determine if copper is actually water quality-limiting in the Arthur Kill and the Kill Van Kull; and (2) establish, as necessary, nickel TMDLs for the Hackensack and Passaic Rivers and Newark Bay. The ambient water quality data and modeling evaluation contained in the study entitled, "Monitoring and Modeling of Nickel in The Hackensack and Passaic Rivers and Newark Bay and Monitoring and Data Analysis for Copper in The Arthur Kill and Kill Van Kull", indicate that: (1) copper is not water quality-limiting in the Arthur Kill and the Kill Van Kull, and therefore, the Phase I copper TMDLs (established

January 24, 1996) are no longer necessary; (2) the Hackensack River is water quality-limited for nickel and requires the establishment of a TMDL for nickel; and (3) the Passaic River and Newark Bay are not water quality-limited for nickel and, at this time, do not require TMDLs for nickel.

II. Public Notice of Draft Decision

EPA's proposed withdrawal for the copper TMDL in the Arthur Kill and Kill Van Kull and its proposed establishment of a nickel TMDL for the Hackensack River was public noticed in the **Federal Register** dated October 28, 1999 (64 FR 58058). A 30-day comment period followed, during which EPA received comments from ten commenters. All comments have been addressed in a responsiveness summary which may be obtained by writing or calling Ms. Rosella O'Connor as referenced above. None of comments received during the public comment period resulted in changes to EPA's proposed actions to withdraw the copper TMDLs in the Arthur Kill and Kill Van Kull and to establish a TMDL for nickel in the Hackensack River.

III. Final Determination

EPA is noticing its final decision to: (1) Withdraw the Phase I copper TMDLs from the Arthur Kill and the Kill Van Kull because those waters are not impaired for copper and effluent limitations required of point sources under section 301(b) of the Clean Water Act are stringent enough to implement water quality standards for copper applicable to such waters (i.e., these waters are not water quality-limited for copper) and (2) the proposed establishment of a TMDL for nickel in the Hackensack River. EPA is establishing the nickel TMDL in the Hackensack River at the request of the New Jersey Department of Environmental Protection. These actions are appropriate given the specific circumstances, original and additional monitoring data, and management approach agreed upon by the States of New Jersey and New York and EPA for the waters of the New York-New Jersey Harbor.

The supporting technical documentation for these actions is contained in Withdrawal of Total Maximum Daily Loads (TMDLs) for Copper in the Arthur Kill and Kill Van Kull and Establishment of a TMDL for Nickel in the Hackensack River (EPA, December 1999) and "Monitoring and Modeling of Nickel in The Hackensack and Passaic Rivers and Newark Bay and Monitoring and Data Analysis for Copper in The Arthur Kill and Kill Van

Kull" (Great Lakes Environmental Center, 1998).

The determination that TMDLs for copper are no longer necessary in the Arthur Kill and Kill Van Kull is based on additional monitoring data and modeling conducted by the NJHDG's consultant, with assistance from EPA. Monitoring and modeling projections included more recent municipal plant effluent data and New Jersey storm water and combined sewer overflow data. Previous modeling projections and TMDLs were based on New York storm water and combined sewer overflow data. These data were used due to a lack of data for New Jersey storm water and combined sewer overflows. The more recent storm water and combined sewer overflow data are much lower than the original estimates. The data and modeling projections now indicate that the applicable copper criterion is not likely to be exceeded in these waters. Therefore, the Arthur Kill and Kill Van Kull are not water quality-limited for copper and do not require TMDLs. EPA has made a final decision to withdraw the TMDLs for copper in the Arthur Kill and Kill Van Kull.

Analysis of ambient data and modeling projections in the Hackensack River indicate that the applicable nickel criterion of 8.2 µg/L (expressed in the dissolved form) is likely to be exceeded, and therefore, a TMDL is required. NJHDG's consultant developed a water quality model to facilitate the development of a TMDL. Modeling projections indicate that the Hackensack River is an effluent-dominated river. The ambient nickel concentration is driven by the concentration of nickel in the Bergen County Utilities Authority (BCUA) discharge. BCUA represents the largest source of nickel to the River. Other smaller sources include: North Bergen Sewage Treatment Plant, Secaucus Sewage Treatment Plant, combined sewer overflows (CSOs), storm water, atmospheric deposition and background (upstream sources). Using the calibrated water quality model, EPA calculated a TMDL of 4.98 lbs/day of nickel which will meet the applicable nickel criterion, taking into account seasonal variations and critical conditions, and including a margin of safety. The TMDL was allocated to point sources (waste load allocations) and nonpoint sources (load allocations). The existing loads of nickel, waste load allocations (WLA), and load allocations (LA) needed to achieve the TMDL are shown below. The WLA for BCUA represents a major reduction in nickel load to the Hackensack River. This reduction will result in meeting the applicable water quality criterion for

nickel. Because the other loads represent relatively small contributions, and reducing their load has little or no impact on receiving water quality, no other reductions are required at this time.

TABLE 1.—TMDL/WLAS/LAS FOR NICKEL IN THE HACKENSACK RIVER.

Source	Existing load (lbs/day)	WLA/LA (lbs/day)
BCUA [NJ0020028]	11.3	¹ 2.2
North Bergen STP [NJ0034339]	0.28	² 0.38
Secaucus STP [NJ0025038]	0.04	³ 0.06
CSOs	0.10	0.10
Storm Water	0.81	0.81
ΣWLAs		3.55
Atmospheric	1.06	1.06
Boundary (Background) ⁴	0.37	0.37
TMDL		4.98

¹The WLA of 2.2 lbs/day is established at an effluent concentration of 3.6 µg/L (total recoverable) and flow of 75 mgd; if the effluent flow is 109 mgd, the WLA is 3.3 lbs/day with an effluent concentration of 3.6 µg/L.

²Based on design flow of 10 mgd and mean effluent concentration of 4.6 µg/L (total recoverable).

³Based on design flow of 5.12 mgd and mean effluent concentration of 1.5 µg/L (total recoverable).

⁴Calculated at the boundary condition of the Hackensack River upstream at the Oradell Dam.

This action has no effect on the TMDLs for other pollutants established for these waters.

Dated: December 27, 1999.

Jeanne M. Fox,

Regional Administrator, Region 2.

[FR Doc. 00-962 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6523-5]

Proposed Reissuance of General NPDES Permits (GP) for Alaskan Mechanical Placer Mining (Permit Number AKG-37-0000) and Alaskan Medium-Size Suction Dredging (Permit Number AKG-37-1000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of two general permits.

SUMMARY: On June 30, 1999, two general permits regulating the activities of mechanical placer mining and suction dredge mining for gold placer mining operations in the State of Alaska

expired. EPA proposes to reissue these two general permits with minor changes based on updated information relating to the impact of such mining activity on the environment. EPA is proposing to make these permits effective some time after the 2000 mining season and at the same time revoking coverage under the 1994 modified general permits. This is also notice of EPA's issuance of a Finding of No Significant Impact (FNSI) for NPDES permit AKG-37-0000.

DATES: Interested persons may submit comments on the proposed reissuance of the GPs to EPA, Region 10 at the address below. Comments must be received by March 14, 2000. Public Hearings are scheduled in Anchorage and Fairbanks. The Anchorage hearing will be held on February 29, 2000, from 6:00 pm until 9:00 pm. The Fairbanks hearing will be held on March 7, 2000, from 6:00 pm until 9:00 pm.

ADDRESSES: Comments on the proposed General Permits and the Finding of No Significant Impact should be sent to Director, Office of Water; USEPA Region 10; 1200 Sixth Avenue, OW-135; Seattle, Washington 98101. The Anchorage public hearing will be held at the Days Inn Conference Center, 330 E. 4th Avenue. The Fairbanks public hearing will be held at the Carlson Center, 2010 Second Avenue, Pioneer Room.

FOR FURTHER INFORMATION CONTACT: Copies of the Proposed General Permits and Fact Sheets are available upon request. The General Permits and Fact Sheets may be found on the Region 10 website at www.epa.gov/r10earth/offices/water/npdes.html. Requests may be made to Audrey Washington at (206) 553-0523 or to Cindi Godsey at (907) 271-6561 or electronically mailed to: washington.audrey@epa.gov or godsey.cindi@epa.gov

SUPPLEMENTARY INFORMATION

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this reissuance of these GPs will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: January 7, 2000.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 00-960 Filed 1-13-00; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, January 25, 2000 at 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW, Washington, D.C. 20507.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

Review of Pending Litigation.

Note: Any matter not discussed or concluded may be carried over to a later meeting: (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663-7100 (voice) and (202) 663-4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

This Notice Issued January 12, 2000.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 00-1106 Filed 1-12-00; 2:49 pm]

BILLING CODE 6750-06-M

FEDERAL HOUSING FINANCE BOARD

[No. 2000-N-1]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 1998-99 eighth quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must

submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 1998–99 eighth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before February 28, 2000.

ADDRESSES: Bank members selected for the 1998–99 eighth quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, or by electronic mail at FITZGERALDE@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 936. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 936.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 936.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 936.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 936.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the February 28, 2000 deadline prescribed in this notice. 12 CFR 936.2(b)(1)(ii) and (c). On or before January 29, 2000, each Bank will notify the members in its district that have been selected for the 1998–99 eighth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 936.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 1998–99 eighth quarter community support review cycle:

Member	City	State
Federal Home Loan Bank of Boston—District 1		
Savings Bank of Danbury	Danbury	CT
American Eagle FCU	East Hartford	CT
Mechanics Savings Bank	Hartford	CT
Savings Bank Life Insurance	Hartford	CT
Stafford Savings Bank	Stafford Springs	CT
Sikorsky FCU	Stratford	CT
Torrington Savings Bank	Torrington	CT
Constitution State Corporate Credit Union	Wallingford	CT
Webster Bank	Waterbury	CT
New England Bank and Trust Company	Windsor	CT
The Provident Bank	Amesbury	MA
Athol-Clinton Co-operative Bank	Athol	MA
Boston Edison Employees CU	Boston	MA
Boston Post Office Employees CU	Boston	MA
Citizens Bank	Boston	MA
Mount Washington Co-op Bank	Boston	MA
Telephone Workers' Co-operative Bank	Boston	MA
Bridgewater Savings Bank	Bridgewater	MA
Metropolitan Credit Union	Chelsea	MA
Pilgrim Co-operative Bank	Cohasset	MA
Everett Co-operative Bank	Everett	MA
St. Anne's Credit Union of Fall River	Fall River	MA
I–C Federal Credit Union	Fitchburg	MA
Community National Bank	Hudson	MA
Jeanne D-Arc Credit Union	Lowell	MA
St. Mary's Credit Union	Marlborough	MA
Medway Cooperative Bank	Medway	MA
Auburndale Co-op Bank	Newton	MA

Member	City	State
City Savings Bank of Pittsfield	Pittsfield	MA
Greylock Federal Credit Union	Pittsfield	MA
Winter Hill Federal Savings Bank	Somerville	MA
Fleet National Bank	Springfield	MA
Webster Five Cents Savings Bank	Webster	MA
Mutual FSBank—Plymouth County	Whitman	MA
Winchester Savings Bank	Winchester	MA
Maine State Employee Credit Union	Augusta	ME
Biddeford Savings Bank	Biddeford	ME
St. John's (Brunswick) FCU	Brunswick	ME
Ocean National Bank of Kennebunk	Kennebunk	ME
Community Credit Union	Lewiston	ME
Rainbow Federal Credit Union	Lewiston	ME
Ste. Croix Regional Federal Credit Union	Lewiston	ME
Portland Regional Federal Credit Union	Portland	ME
Evergreen Credit Union	Westbrook	ME
Ledyard National Bank	Hanover	NH
Telephone Credit Union	Manchester	NH
Awane Bank, FSB	Peterborough	NH
Pemigewasset National Bank	Plymouth	NH
Northeast Federal Credit Union	Portsmouth	NH
Woodsville Guaranty Savings Bank	Woodsville	NH
The People's Credit Union	Middleton	RI
Pawtucket Credit Union	Pawtucket	RI
Coastway Credit Union	Providence	RI
Vermont Development Credit Union	Burlington	VT
Community National Bank	Derby	VT
First National Bank of Orwell	Orwell	VT
Wells River Savings Bank	Wells River	VT

Federal Home Loan Bank of New York—District 2

Sun National Bank	Medford	NJ
Sterling Bank	Mount Laurel	NJ
Valley National Bank	Passaic	NJ
Roselle Savings Bank	Roselle	NJ
Summit Federal Savings and Loan Assn	Summit	NJ
Great Falls Bank	Totowa	NJ
Marathon National Bank of New York	Astoria	NY
Seneca Federal Savings and Loan Assn	Baldwinsville	NY
Ballston Spa National Bank	Ballston Spa	NY
New York National Bank	Bronx	NY
Dime Savings Bank of Williamsburgh	Brooklyn	NY
Central National Bank	Canajoharie	NY
Community Bank, N.A.	Canton	NY
Carthage Federal Savings & Loan Assn	Carthage	NY
Lake Shore Savings and Loan Association	Dunkirk	NY
Ellenville National Bank	Ellenville	NY
Savings Bank of the Finger Lakes	Geneva	NY
Evergreen Bank, N.A.	Glens Falls	NY
City National Bank and Trust	Gloversville	NY
First National Bank of Jeffersonville	Jeffersonville	NY
Sound Federal Savings and Loan Assn	Mamaroneck	NY
North Fork Bank	Mattituck	NY
Bank Audi (USA)	New York	NY
Ridgewood Savings Bank	New York	NY
First National Bank	Norfolk	NY
North Country Savings Bank	Ogdensburg	NY
Oneida Valley National Bank	Oneida	NY
Premier National Bank	Poughkeepsie	NY
ESL Federal Credit Union	Rochester	NY
Geddes Federal Savings and Loan Assn	Syracuse	NY
National Bank of Delaware County	Walton	NY
RG Premier Bank of Puerto Rico	Guaynabo	PR
Eurobank	San Juan	PR
First Virgin Islands Federal Savings Bank	St. Thomas	VI

Federal Home Loan Bank of Pittsburgh—District 3

First National Bank of Berwick	Berwick	PA
American Eagle Savings Bank, PaSA	Boothwyn	PA
Commerce Bank/Harrisburg, N.A.	Camp Hill	PA
Pioneer American Bank, N.A.	Carbondale	PA
Croydon Building and Loan Association	Croydon	PA

Member	City	State
FNB Bank, N.A	Danville	PA
Marquette Savings Bank	Erie	PA
First United National Bank	Fryburg	PA
Adams County National Bank	Gettysburg	PA
First National Bank of Greencastle	Greencastle	PA
Huntingdon Savings Bank, PASA	Huntingdon	PA
Huntingdon Valley FS&LA	Huntingdon Valley	PA
First Commonwealth Bank	Indiana	PA
Abington Bank	Jenkintown	PA
Merchants National Bank of Kittanning	Kittanning	PA
Fulton Bank	Lancaster	PA
Citizens National Bank of Lansford	Lansford	PA
First National Bank of Lilly	Lilly	PA
Savings and Loan Association of Milton	Milton	PA
First National Bank of Newport	Newport	PA
Peoples Thrift Savings Bank	Norristown	PA
Northumberland National Bank	Northumberland	PA
Berean Federal Savings Bank	Philadelphia	PA
First Republic Bank	Philadelphia	PA
Jozef Poniatowski Building & Loan Assn	Philadelphia	PA
Tioga Franklin Savings Association	Philadelphia	PA
United Savings Bank	Philadelphia	PA
Fidelity Savings Bank	Pittsburgh	PA
Prestige Bank	Pittsburgh	PA
Spring Hill Savings Bank, FSB	Pittsburgh	PA
Bank of Lancaster County	Strasburg	PA
West Milton State Bank West	Milton	PA
Bank of Charles Town	Charles Town	WV
Commercial Banking and Trust Co	Parkersburg	WV
Potomac Valley Bank	Petersburg	WV
Capon Valley Bank	Wardensville	WV
Citizens Bank of Weston, Inc	Weston	WV

Federal Home Loan Bank of Atlanta—District 4

First National Bank of Central Alabama	Aliceville	AL
Regions Bank	Birmingham	AL
Farmers and Merchants Bank	Centre	AL
Cullman Savings Bank	Cullman	AL
First Metro Bank	Muscle Shoals	AL
West Alabama Bank and Trust	Reform	AL
Bank Independent	Sheffield	AL
First Southern National Bank	Stevenson	AL
The Bank of Warrior	Warrior	AL
Treasury Bank	Washington	DC
Cape Coral National Bank	Cape Coral	FL
First National Bank of Southwest Florida	Cape Coral	FL
BAC Florida Bank	Coral Gables	FL
Destin Bank	Destin	FL
Englewood Bank	Englewood	FL
First Community Bank of Southwest FL	Fort Myers	FL
Jacksonville Fireman's Credit Union	Jacksonville	FL
Sun Bank/North Florida, N.A	Jacksonville	FL
CNB National Bank	Lake City	FL
Peoples Community Bank	Malone	FL
Executive National Bank	Miami	FL
Gulf Bank	Miami	FL
The Skylake State Bank	Miami Lakes	FL
Fifth Third Bank of Florida	Naples	FL
Turnberry Bank	North Miami Beach	FL
American National Bank	Oakland Park	FL
Florida Citizens Bank	Ocala	FL
Bank of Central Florida	Orlando	FL
Madison Bank, a Savings Bank	Palm Harbor	FL
First American Bank of Pensacola, N.A	Pensacola	FL
Sunshine State FS&LA	Plant City	FL
SunTrust Bank, Gulf Coast	Sarasota	FL
West Coast Bank	Sarasota	FL
National Bank of Commerce	Winter Park	FL
Ashburn Bank	Ashburn	GA
Community National Bank	Ashburn	GA
First Capital Bank	Atlanta	GA
Atlantic National Bank	Brunswick	GA
First National Bank of Northwest Georgia	Calhoun	GA

Member	City	State
Bartow County Bank	Cartersville	GA
Columbus Bank and Trust Company	Columbus	GA
Lumpkin County Bank	Dahlonega	GA
Farmers State Bank	Dublin	GA
Citizens Union Bank	Greensboro	GA
Towns County Bank	Hiawasee	GA
Heritage Bank	Jonesboro	GA
Charter Bank and Trust Company	Marietta	GA
The First State Bank of Ocilla	Ocilla	GA
First Bulloch Bank	Statesboro	GA
United Bank	Zebulon	GA
The Harbor Bank of Maryland	Baltimore	MD
Colombo Bank	Bethesda	MD
Sequoia National Bank—Maryland	Bethesda	MD
The Peoples Bank of Maryland	Denton	MD
Home Federal Savings Bank	Hagerstown	MD
Wilmington Trust FSB	Salisbury	MD
Bank of Maryland	Towson	MD
Farmers and Merchants Bank	Upperco	MD
High Country Bank	Boone	NC
Four Oaks Bank & Trust Company	Four Oaks	NC
Kenly Savings Bank, Inc., SSB	Kenly	NC
Bank of Davie	Mocksville	NC
Bank of Currituck	Moyock	NC
Triangle Bank	Raleigh	NC
Roanoke Rapids Savings Bank, SSB	Roanoke Rapids	NC
Jackson Savings Bank, SSB	Sylva	NC
Tarboro Savings Bank, SSB	Tarboro	NC
Security Federal Savings Bank	Aiken	SC
Bank of Anderson	Anderson	SC
Clemson Bank and Trust	Clemson	SC
BB&T of South Carolina	Greenville	SC
Summit National Bank	Greenville	SC
Greenwood Bank and Trust	Greenwood	SC
Palmetto State Bank	Hampton	SC
Beach First National Bank	Myrtle Beach	SC
Newberry Federal Savings Bank	Newberry	SC
Highlands Union Bank	Abingdon	VA
First National Bank of Altavista	Altavista	VA
Bank of Clarke County	Berryville	VA
Guaranty Bank	Charlottesville	VA
Capital One, FSB	Falls Church	VA
Bank of Floyd	Floyd	VA
Miners and Merchants Bank and Trust Co	Grundy	VA
Rockingham Heritage Bank	Harrisonburg	VA
First Bank and Trust Company	Lebanon	VA
Bank of Marion	Marion	VA
Heritage Bank and Trust	Norfolk	VA
Central Virginia Bank	Powhatan	VA
Bank of Essex	Tappahannock	VA
Resource Bank	Virginia Beach	VA
Fauquier Bank	Warrenton	VA
F & M Bank—Winchester	Winchester	VA

Federal Home Loan Bank of Cincinnati—District 5

Auburn Banking Company	Auburn	KY
The Peoples Exchange Bank of Beattyville	Beattyville	KY
Central Appalachian Peoples Fed. CU	Berea	KY
Farmers State Bank	Booneville	KY
Bowling Green Bank & Trust Co, N.A.	Bowling Green	KY
First National Bank	Brooksville	KY
Brownsville Deposit Bank	Brownsville	KY
Heritage Bank, Inc	Burlington	KY
Community Trust Bank, FSB	Campbellsville	KY
First National Bank of Clinton	Clinton	KY
Bank of Ohio County	Dundee	KY
Elkton Bank and Trust Company	Elkton	KY
Farmers Deposit Bank	Eminence	KY
Pendleton Federal Savings Bank	Falmouth	KY
Bank of Kentucky, Inc	Florence	KY
First Federal Savings Bank of Frankfort	Frankfort	KY
City National Bank	Fulton	KY
Commercial Bank of Grayson	Grayson	KY

Member	City	State
First National Bank of Grayson	Grayson	KY
Hebron Deposit Bank	Hebron	KY
Ohio Valley National Bank	Henderson	KY
First City Bank and Trust Company	Hopkinsville	KY
Hyden Citizens Bank, Inc	Hyden	KY
Citizens Guaranty Bank	Irvine	KY
Citizens Bank & Trust Co. of Jackson	Jackson	KY
Peoples Bank	Lebanon	KY
Lewisburg Banking Company	Lewisburg	KY
Vine Street Trust Company	Lexington	KY
First National Bank and Trust	London	KY
Bank of Louisville	Louisville	KY
Stock Yards Bank & Trust Company	Louisville	KY
Security Bank and Trust Company	Maysville	KY
Citizens Bank	Morehead	KY
Peoples Bank of Murray	Murray	KY
Citizens Bank of Campbell County	Newport	KY
First Farmers Bank and Trust Company	Owenton	KY
Mercantile Bank of Kentucky	Paducah	KY
Paducah Bank and Trust Company	Paducah	KY
Kentucky Bank	Paris	KY
Farmers Bank and Trust Company	Princeton	KY
Kentucky Bank and Trust	Russell	KY
Southern Deposit Bank	Russellville	KY
Salersville National Bank	Salersville	KY
Citizens Union Bank of Shelbyville	Shelbyville	KY
Alliance Bank	Somerset	KY
First & Peoples Bank	Springfield	KY
Peoples Bank of Kentucky	Stanford	KY
Bank of the Mountains	West Liberty	KY
Winchester Federal Savings Bank	Winchester	KY
North Akron Savings Association	Akron	OH
Andover Bank	Andover	OH
Sutton State Bank	Attica	OH
Blue Ash Building and Loan Company	Blue Ash	OH
Farmers National Bank	Canfield	OH
Cincinnati Savings and Loan Company	Cheviot	OH
Foundation Savings Bank	Cincinnati	OH
The Provident Bank	Cincinnati	OH
Park View Federal Savings Bank	Cleveland	OH
Fifth Third Bank of Columbus	Columbus	OH
Union Bank Company	Columbus Grove	OH
Heartland Federal Credit Union	Dayton	OH
State Bank and Trust Company	Defiance	OH
Potters Savings and Loan Company	East Liverpool	OH
Ohio Bank	Findlay	OH
Fremont Federal Credit Union	Fremont	OH
Ohio Valley Bank Company	Gallipolis	OH
Sycamore National Bank	Groesbeck	OH
Harrison Building and Loan	Harrison	OH
Jackson Savings Bank	Jackson	OH
Oak Hill Banks	Jackson	OH
Bank of Leipsic Company	Leipsic	OH
Lorain National Bank	Lorain	OH
Peoples Banking and Trust Company	Marietta	OH
Marion Bank	Marion	OH
Minster Bank	Minster	OH
First National Bank of New Bremen	New Bremen	OH
Farmers State Bank and Trust Company	New Madison	OH
Citizens Banking Company	Salineville	OH
Sherwood State Bank	Sherwood	OH
First Bank of Ohio-Tiffin	Tiffin	OH
Mid Am Bank	Toledo	OH
Citizens National Bank of Urbana	Urbana	OH
Waverly Building and Loan Company	Waverly	OH
National Bank and Trust Company	Wilmington	OH
Woodsfield Savings Bank	Woodsfield	OH
Wayne County National Bank	Wooster	OH
Mahoning National Bank	Youngstown	OH
First South Bank	Bolivar	TN
First State Bank of Covington, Tennessee	Covington	TN
Meigs County Bank	Decatur	TN
Weakley County Bank	Dresden	TN
Franklin National Bank	Franklin	TN

Member	City	State
Bank of Friendship	Friendship	TN
Nashoba Bank	Germantown	TN
First State Bank	Jacksboro	TN
BankFirst	Knoxville	TN
First National Bank	LaFollette	TN
McKenzie Banking Company	McKenzie	TN
Security Federal Savings Bank	McMinnville	TN
Financial Federal Savings Bank	Memphis	TN
First Tennessee Bank, N.A. Memphis	Memphis	TN
Union Planters Bank	Memphis	TN
Munford Union Bank	Munford	TN
Nashville Bank of Commerce	Nashville	TN
Bank of Ripley	Ripley	TN
First Community Bank of East Tennessee	Rogersville	TN
The Hardin County Bank	Savannah	TN
Bank of Commerce	Trenton	TN
Wayne County Bank	Waynesboro	TN

Federal Home Loan Bank of Indianapolis—District 6

Central National Bank & Trust Company	Attica	IN
Hoosier Hills Credit Union	Bedford	IN
Bloomfield State Bank	Bloomfield	IN
IU Employees Federal Credit Union	Bloomington	IN
Wayne Bank and Trust Company	Cambridge City	IN
Chiphone Federal Credit Union	Elkhart	IN
Old National Bank in Evansville	Evansville	IN
Fire Fighter's Federal Credit Union	Fort Wayne	IN
Midwest American Federal Credit Union	Fort Wayne	IN
Fowler State Bank	Fowler	IN
Peoples State Bank of Francesville	Francesville	IN
Friendship State Bank	Friendship	IN
Sand Ridge Bank	Highland	IN
First Bank of Huntingburg	Huntingburg	IN
German American Bank	Jasper	IN
Lafayette Bank and Trust Company	Lafayette	IN
Union County National Bank	Liberty	IN
Lynnville National Bank	Lynnville	IN
Citizens State Bank	New Castle	IN
Union Bank & Trust Company	North Vernon	IN
Notre Dame Federal Credit Union	Notre Dame	IN
State Bank of Oxford	Oxford	IN
Orange County Bank	Paoli	IN
First Federal Savings Bank	Rochester	IN
First Source Bank	South Bend	IN
Peoples Bank and Trust Company	Sunman	IN
First National Bank, Valparaiso	Valparaiso	IN
CentreBank	Veederburg	IN
Merchants Bank & Trust Company	West Harrison	IN
Centier Bank	Whiting	IN
Shoreline Bank	Benton Harbor	MI
State Bank of Caledonia	Caledonia	MI
Century Bank and Trust	Coldwater	MI
Southern Michigan Bank and Trust	Coldwater	MI
First State Bank	Decatur	MI
BayBank	Gladstone	MI
Founders Trust Personal Bank	Grand Rapids	MI
West Michigan Community Bank	Hudsonville	MI
Independent Bank	Ionia	MI
Miners State Bank of Iron River	Iron River	MI
Peninsula Bank	Ishpeming	MI
Dart National Bank	Mason	MI
MFC First National Bank	Menominee	MI
Oxford Bank	Oxford	MI
Independent Bank—West Michigan	Rockford	MI
West Shore Bank	Scottville	MI

Federal Home Loan Bank of Chicago—District 7

Old Second National Bank of Aurora	Aurora	IL
State Bank of Aviston	Aviston	IL
First of America Bank—Illinois	Bannockburn	IL
Beardstown Savings s.b.	Beardstown	IL
First Federal Savings and Loan Assn	Bloomington	IL

Member	City	State
First National Bank of Blue Island	Blue Island	IL
First Bank, bc	Capron	IL
Marine Trust Company of Carthage	Carthage	IL
Buena Vista National Bank	Chester	IL
Chester National Bank	Chester	IL
LaSalle Northwest National Bank	Chicago	IL
Northern Trust Company	Chicago	IL
St. Anthony Bank, a FSB	Cicero	IL
American Savings Bank of Danville	Danville	IL
Republic Bank of Chicago	Darien	IL
First National Bank of Decatur	Decatur	IL
First National Bank of Dietrich	Dietrich	IL
East Dubuque Savings Bank East	Dubuque	IL
Bank of Edwardsville	Edwardsville	IL
C.P. Burnett and Sons, Bankers	Eldorado	IL
First State Bank	Eldorado	IL
First Bank and Trust of Evanston	Evanston	IL
Fairfield National Bank	Fairfield	IL
Flora Savings Bank	Flora	IL
Marquette Bank Illinois	Galesburg	IL
Glasford State Bank	Glasford	IL
Heritage Community Bank	Glenwood	IL
Golden State Bank	Golden	IL
Greenup National Bank	Greenup	IL
Clay County State Bank	Louisville	IL
HomeStar Bank	Manteno	IL
First Federal Savings Bank of Mascoutah	Mascoutah	IL
First FS&LA of Mattoon	Mattoon	IL
Amcore Bank, N.A., Mendota	Mendota	IL
Midwest Bank of Western Illinois	Monmouth	IL
Morton Community Bank	Morton	IL
Mt. Morris Savings and Loan	Mt. Morris	IL
First National Bank of Mt. Pulaski	Mt. Pulaski	IL
First State Bank of Newman	Newman	IL
Oak Brook Bank	Oak Brook	IL
First National Bank of Oblong	Oblong	IL
Olney Trust Bank	Olney	IL
First Federal Savings Bank	Ottawa	IL
First Bank and Trust, s.b	Paris	IL
Corn Belt Bank and Trust Company	Pittsfield	IL
Bank of Rantoul	Rantoul	IL
State Financial Bank	Richmond	IL
First National Bank & Trust Company	Rochelle	IL
Northwest Bank of Rockford	Rockford	IL
Castle Bank, NA	Sandwich	IL
Illinois One Bank, N.A	Shawneetown	IL
First Community Bank	Sherrard	IL
South Holland Trust and Savings Bank	South Holland	IL
Independent Bankers' Bank	Springfield	IL
Sterling Federal Bank, FSB	Sterling	IL
Streator Home Building and Loan Assn	Streator	IL
UnionBank	Streator	IL
First National Bank of Sullivan	Sullivan	IL
Thomson State Bank	Thomson	IL
Tempo Bank, FSB	Trenton	IL
Heritage Bank, Central Illinois	Trivoli	IL
Midwest Bank of McHenry County	Union	IL
Capstone Bank, NA	Watseka	IL
Iroquois Federal Savings and Loan Assn	Watseka	IL
Bank of Waukegan	Waukegan	IL
National Bank of Northern Illinois, NA	Waukegan	IL
Wemple State Bank	Waverly	IL
Weldon State Bank and Trust	Weldon	IL
State Bank of Illinois	West Chicago	IL
Abbotsford State Bank	Abbotsford	WI
F & M Bank Appleton	Appleton	WI
First National Bank and Trust Company	Beloit	WI
First Banking Center-Burlington	Burlington	WI
Cambridge State Bank	Cambridge	WI
Community Bank of Central Wisconsin	Colby	WI
DMB Community Bank	DeForest	WI
Charter Bank Eau Claire	Eau Claire	WI
Royal Credit Union	Eau Claire	WI

Member	City	State
Grafton State Bank	Grafton	WI
Hartford Savings Bank	Hartford	WI
Johnson Bank Hayward	Hayward	WI
Bank of Kaukauna	Kaukauna	WI
First National Bank in Manitowoc	Manitowoc	WI
Stephenson National Bank and Trust	Marinette	WI
Marshfield Savings Bank	Marshfield	WI
Mayville Savings Bank	Mayville	WI
McFarland State Bank	McFarland	WI
Associated Bank Milwaukee	Milwaukee	WI
North Milwaukee State Bank	Milwaukee	WI
Norwest Bank Wisconsin, N.A.	Milwaukee	WI
Monona State Bank	Monona	WI
Oostburg State Bank	Oostburg	WI
United Bank	Osseo	WI
Port Washington State Bank	Port Washington	WI
Peoples State Bank	Prairie du Chien	WI
Prairie City Bank	Prairie du Chien	WI
F & M Bank—Northeast	Pulaski	WI
Community First Bank	Rosholt	WI
Community First State Bank	Spooner	WI
State Bank of St. Cloud	St. Cloud	WI
F&M Bank, Portage County	Stevens Point	WI
First National Bank of Stoughton	Stoughton	WI
Stratford State Bank	Stratford	WI
Bank of Turtle Lake	Turtle Lake	WI
First National Bank	Waupaca	WI
People's State Bank	Wausau	WI
State Bank of Withee	Withee	WI
F&M Bank, Lakeland	Woodruff	WI
Citizens State Bank	Woodville	WI

Federal Home Loan Bank of Des Moines—District 8

The First National Bank of Akron	Akron	IA
Farmers State Bank	Algona	IA
Iowa State Bank	Algona	IA
Rolling Hills Bank and Trust	Atlantic	IA
Benton County State Bank	Blairtown	IA
First State Bank	Britt	IA
Poweshiek County Savings Bank	Brooklyn	IA
Tri-County Bank and Trust	Cascade	IA
Center Point Bank and Trust Company	Center Point	IA
The Clinton National Bank	Clinton	IA
First Community National Bank	Corning	IA
Northwest Bank and Trust Company	Davenport	IA
Community First National Bank	Decorah	IA
American Vanguard Life Insurance Co	Des Moines	IA
Bankers Trust Company	Des Moines	IA
Brenton Bank	Des Moines	IA
State Employees Community Credit Union	Des Moines	IA
First Central State Bank	DeWitt	IA
American Trust and Savings Bank	Dubuque	IA
Bank Iowa, N.A.	Essex	IA
First Security State Bank	Evansdale	IA
Manufacturers Bank and Trust Company	Forest City	IA
Garnavillo Savings Bank	Garnavillo	IA
Hancock County Bank and Trust	Garner	IA
Heritage Bank, N.A.	Holstein	IA
United Bank of Iowa	Ida Grove	IA
Iowa State Bank and Trust Company	Iowa City	IA
University of Iowa Community CU	Iowa City	IA
Le Mars Bank and Trust Company	Le Mars	IA
Luana Savings Bank	Luana	IA
Central State Bank	Muscatine	IA
Mahaska State Bank	Oskaloosa	IA
Central Valley Bank	Ottumwa	IA
Farmers State Bank	Schleswig	IA
Pioneer Bank	Sergeant Bluff	IA
Iowa State Bank	Sheldon	IA
Commercial Trust & Savings Bank	Storm Lake	IA
First State Bank	Stuart	IA
American Savings Bank	Tripoli	IA
West Des Moines State Bank	West Des Moines	IA

Member	City	State
Farmers Trust and Savings Bank	Williamsburg	IA
Security State Bank of Aitkin	Aitkin	MN
Americana National Bank	Albert Lea	MN
West Central Bank	Barrett	MN
First Federal Bank	Bemidji	MN
Security Bank USA	Bemidji	MN
Bremer Bank, N.A.	Breckenridge	MN
First Security Bank	Byron	MN
EXCEL Bank	Edina	MN
First National Bank of Elk River	Elk River	MN
First State Bank of Emmons	Emmons	MN
Security State Bank of Fergus Falls	Fergus Falls	MN
First State Bank of Finlayson	Finlayson	MN
First National Bank	Hawley	MN
Stearns Bank/Holdingford	Holdingford	MN
American Bank, Lake City	Lake City	MN
Farmers State Bank of Madelia, Inc	Madelia	MN
Security State Bank of Mankato	Mankato	MN
Pioneer Bank	Mapleton	MN
State Bank of McGregor	McGregor	MN
Marquette Capital Bank, N.A.	Minneapolis	MN
Kanabec State Bank	Mora	MN
Alliance Bank	New Ulm	MN
Farmers and Merchants State Bank	New York Mills	MN
Valley Bank	North Mankat	MN
Hometown Bank	Redwood Falls	MN
Eastwood Bank	Rochester	MN
First National Bank of the North	Sandstone	MN
First National Bank of Sauk Centre	Sauk Centre	MN
Stearns Bank, N.A.	St. Cloud	MN
Citizens State Bank of St. James	St. James	MN
Midway National Bank of St. Paul	St. Paul	MN
Commercial State Bank of Two Harbors	Two Harbors	MN
Stearns Bank of Upsala	Upsala	MN
Mid-Central Federal Savings Bank	Wadena	MN
The First National Bank of Waseca	Waseca	MN
Signal Bank, Inc	West St. Paul	MN
Bank 10	Belton	MO
Cameron Savings and Loan Assn., F.A.	Cameron	MO
Farmers State Bank	Cameron	MO
First State Bank and Trust Company, Inc	Caruthersville	MO
Citizens Bank and Trust Company	Chillicothe	MO
First National Bank of Clinton	Clinton	MO
Community Bank of Excelsior Springs	Excelsior Springs	MO
Hume Bank	Hume	MO
Home Savings Bank	Jefferson City	MO
First State Bank of Joplin	Joplin	MO
Bank of Lee's Summit	Lee's Summit	MO
Farmers Bank of Lincoln	Lincoln	MO
First National Bank of Mount Vernon	Mount Vernon	MO
Community Bank and Trust	Neosho	MO
Citizens Bank	New Haven	MO
Security Pacific Bank	Pacific	MO
The Paris National Bank	Paris	MO
Bank of the LeadBelt	Park Hills	MO
Irondale Bank	Potosi	MO
Phelps County Bank	Rolla	MO
Systematic Savings and Loan Association	Springfield	MO
Farmers and Merchants Bank of St. Clair	St. Clair	MO
Allegiant Bank	St. Louis	MO
Heartland Bank	St. Louis	MO
Osage Valley Bank	Warsaw	MO
Bank of Beulah	Beulah	ND
Dakota Western Bank	Bowman	ND
Western State Bank	Devils Lake	ND
First State Bank of LaMoure	LaMoure	ND
Community First State Bank	Vermillion	SD

Federal Home Loan Bank of Dallas—District 9

The First National Bank	Ashdown	AR
Bank of Bentonville	Bentonville	AR
Citizens Bank	Booneville	AR
Danville State Bank	Danville	AR

Member	City	State
First State Bank of DeQueen	DeQueen	AR
First Service Bank	Dermott	AR
Superior Federal Bank, FSB	Fort Smith	AR
Farmers Bank	Hamburg	AR
Citizens National Bank of Hope	Hope	AR
First Bank of South Arkansas	Junction City	AR
Heritage Bank	Jonesboro	AR
Eagle Bank and Trust	Little Rock	AR
First Commercial Bank, N.A.	Little Rock	AR
Citizens Bank	Marion	AR
First National Bank	Mena	AR
Peoples Bank and Trust Company ..	Mountain Home	AR
TrustBanc	Mountain Home	AR
First National Bank of Nashville ..	Nashville	AR
First State Bank	Plainview	AR
Portland Bank	Portland	AR
State First National Bank	Texarkana	AR
Scott County Bank	Waldron	AR
First National Bank	Wynne	AR
Caldwell Bank and Trust Company ..	Columbia	LA
Tri-Parish Bank	Eunice	LA
MidSouth National Bank	Lafayette	LA
Louisiana Delta Bank Lake	Providence	LA
Omni Bank	Metairie	LA
Gulf Coast Bank & Trust Company ..	New Orleans	LA
United Bank and Trust Company ..	New Orleans	LA
First FS&LA of Allen Parish	Oakdale	LA
St. Landry Homestead FSB	Opelousas	LA
Community Bank of LaFourche	Raceland	LA
First Republic Bank	Rayville	LA
Springhill Bank & Trust Company ..	Springhill	LA
ArgentBank	Thibodaux	LA
First American Bank and Trust	Vacherie	LA
Louisiana Central Bank	Ferriday	LA
American Security Bank Ville	Platte	LA
First FS & LA	Aberdeen	MS
Farmers and Merchants Bank	Baldwyn	MS
Copiah Bank, N.A.	Hazlehurst	MS
Planters Bank & Trust Company	Indianola	MS
First American National Bank	Iuka	MS
Pike County National Bank	McComb	MS
United Mississippi Bank	Natchez	MS
National Bank of Commerce of MS ..	Starkville	MS
Western Bank	Alamogordo	NM
Western Bank	Artesia	NM
Western Commerce Bank	Carlsbad	NM
Citizens Bank	Farmington	NM
First National Bank of Dona Ana County	Las Cruces	NM
Los Alamos National Bank	Los Alamos	NM
Portales National Bank	Portales	NM
First National Bank in Alpine	Alpine	TX
Boatmen's FNB of Amarillo	Amarillo	TX
Northwest Bank of Arlington	Arlington	TX
First Bank	Azle	TX
First National Bank of Baird	Baird	TX
Citizens Bank and Trust Company ..	Baytown	TX
Western American National Bank	Bedford	TX
Citizens National Bank of Texas	Bellaire	TX
Blanco National Bank	Blanco	TX
First National Bank in Bronte	Bronte	TX
First Federal Savings Bank	Bryan	TX
First National Bank of Bullard	Bullard	TX
First National Bank in Burkburnett ..	Burkburnett	TX
Corsicana National Bank and Trust ..	Corsicana	TX
U.S. Trust Company of Texas, N.A.	Dallas	TX
First National Bank of Eagle Lake ..	Eagle Lake	TX
Montwood National Bank	El Paso	TX
First National Bank of Emory	Emory	TX
Greater South Texas Bank, FSB	Falfurrias	TX
Worth National Bank	Fort Worth	TX
Security State Bank and Trust	Fredericksburg	TX
Heritage National Bank	Granbury	TX
American Bank	Houston	TX
First Bank Texas, N.A.	Houston	TX

Member	City	State
Banco Popular, N.A., Texas	Houston	TX
Preferred Bank, FSB	Houston	TX
Sterling Bank	Houston	TX
Stewart Title Guaranty Co	Houston	TX
West University Bank, N.A	Houston	TX
Huntington State Bank	Huntington	TX
Texas Independent Bank	Irving	TX
Jacksboro National Bank	Jacksboro	TX
Community Bank	Katy	TX
Keller State Bank	Keller	TX
Citizens Bank	Knox City	TX
NBC Bank, Laredo, NA	Laredo	TX
South Texas National Bank of Laredo	Laredo	TX
Bank of Commerce	McLean	TX
Edgewood Federal Credit Union	San Antonio	TX
USAA Federal Savings Bank	San Antonio	TX
Sanderson State Bank	Sanderson	TX
Texas Savings Bank, SSB	Sulphur Springs	TX
First National Bank of Trenton	Trenton	TX
First National Bank	Uvalde	TX
Van Horn State Bank	Van Horn	TX
Central National Bank	Waco	TX
Wallis State Bank	Wallis	TX

Federal Home Loan Bank of Topeka—District 10

FirstBank North, Arvada	Arvada	CO
Colonial Bank	Aurora	CO
FirstBank of Boulder, N.A	Boulder	CO
FirstBank of Breckenridge, N.A	Breckenridge	CO
Colorado Business Bank	Denver	CO
First Community Industrial Bank	Denver	CO
Eaton Bank	Eaton	CO
Farmers Bank	Eaton	CO
FirstBank of Tech Center	Englewood	CO
First National Bank	Estes Park	CO
First Bank of Northern Colorado	Fort Collins	CO
Community First National Bank	Fort Morgan	CO
First National Bank	Fowler	CO
Union Colony Bank	Greeley	CO
Gunnison Bank and Trust Company	Gunnison	CO
Red Rocks Federal Credit Union	Highlands Ranch	CO
First State Bank	Idaho Springs	CO
Heritage Bank	Louisville	CO
Valley State Bank	Lamar	CO
Firstbank of Longmont	Longmont	CO
Equitable Savings and Loan Association	Sterling	CO
First National Bank	Walsenburg	CO
State Bank of Wiley	Wiley	CO
First National Bank in Alma	Alma	KS
American Bank	Baxter Springs	KS
Commercial State Bank of Bonner Springs	Bonner Springs	KS
First Kansas Bank and Trust	Gardner	KS
First National Bank	Goodland	KS
The Citizens National Bank	Greenleaf	KS
Morrill and Janes Bank and Trust Company	Hiawatha	KS
Hoisington National Bank	Hoisington	KS
First National Bank of Holcomb	Holcomb	KS
Denison State Bank	Holton	KS
First State Bank and Trust Co. of Larned	Larned	KS
Lyons Federal Savings Association	Lyons	KS
Morrill State Bank and Trust Company	Sabetha	KS
Sunflower Bank, N.A	Salina	KS
First National Bank of Clifton	St. Marys	KS
St. Marys State Bank	St. Marys	KS
Emprise Bank	Wichita	KS
The First National Bank of Albion	Albion	NE
First National Bank & Trust Co. in Aurora	Aurora	NE
Hastings State Bank	Hastings	NE
American National Bank	Omaha	NE
Douglas County Bank and Trust Co	Omaha	NE
Valley Bank and Trust Company	Scottsbluff	NE
Security First	Sidney	NE
Nebraska State Bank	South Sioux City	NE

Member	City	State
Farmers State Bank & Trust Company	Superior	NE
Wahoo State Bank	Wahoo	NE
Citizens Bank of Ardmore	Ardmore	OK
Peoples State Bank	Blair	OK
Union National Bank of Chandler	Chandler	OK
First National Bank of Coweta	Coweta	OK
First National Bank of Davis	Davis	OK
Great Plains National Bank	Elk City	OK
Idabel National Bank	Idabel	OK
First National Bank of Midwest City	Midwest City	OK
All America Bank	Mustang	OK
Frontier State Bank	Oklahoma City	OK
Guaranty Bank & Trust Company	Oklahoma City	OK
MetroBank, N.A.	Oklahoma City	OK
Quail Creek Bank, N.A.	Oklahoma City	OK
Rockwell Bank, N.A.	Oklahoma City	OK
Poteau State Bank	Poteau	OK
Prague National Bank	Prague	OK
The Exchange Bank	Skiatook	OK
The First National Bank of Stigler	Stigler	OK
Stroud National Bank	Stroud	OK
Bank of Oklahoma, N.A.	Tulsa	OK
Tulsa National Bank	Tulsa	OK
Waurika National Bank	Waurika	OK

Federal Home Loan Bank of San Francisco—District 11

National Bank of Arizona	Tucson	AZ
Tri Counties Bank	Chico	CA
North Island Federal Credit Union	Chula Vista	CA
Cupertino National Bank and Trust	Cupertino	CA
First Northern Bank of Dixon	Dixon	CA
Bank of Lake County	Lakeport	CA
American International Bank	Los Angeles	CA
Cedars Bank	Los Angeles	CA
Manufacturers Bank	Los Angeles	CA
Kaiser Federal Credit Union	Oakland	CA
Citizens Business Bank	Ontario	CA
Courts and Records Federal Credit Union	Pasadena	CA
Bank of the Sierra	Porterville	CA
American River Bank	Sacramento	CA
Jackson Federal Bank	San Bernardino	CA
Mission Federal Credit Union	San Diego	CA
University and State ECU	San Diego	CA
America California Bank	San Francisco	CA
National American Bank	San Francisco	CA
Sanwa Bank California	San Francisco	CA
Metro Commerce Bank	San Rafael	CA
First Western Bank	Simi Valley	CA
Union Safe Deposit Bank	Stockton	CA
Kaweah National Bank	Visalia	CA
World Savings Bank, FSB	Warren	CA
North Coast Bank	Windsor	CA
First Republic Savings Bank	Las Vegas	NV
First National Bank of Nevada	Laughlin	NV

Federal Home Loan Bank of Seattle—District 12

Alaska USA Federal Credit Union	Anchorage	AK
Alaska Pacific Bank	Juneau	AK
First Hawaiian Bank	Honolulu	HI
Hawaii National Bank	Honolulu	HI
International S&LA, Ltd	Honolulu	HI
West Oahu Community Federal CU	Kapolei	HI
Idaho Independent Bank	Coeur D'Alene	ID
Bank of Idaho	Idaho Falls	ID
Flathead Bank of Bigfork	Bigfork	MT
First Interstate Bank	Billings	MT
Norwest Bank Montana, N.A.	Billings	MT
Yellowstone Bank	Laurel	MT
The United States NB of Red Lodge	Red Lodge	MT
Valley Bank of Ronan	Ronan	MT
Pacific State Bank	Coos Bay	OR
Citizens Bank	Corvallis	OR

Member	City	State
U-Lane-O Credit Union	Eugene	OR
Oregon Pacific Banking Company	Florence	OR
Southern Oregon Federal Credit Union	Grants Pass	OR
St. Helens Community Federal CU	St. Helens	OR
State Bank of Southern Utah	Cedar City	UT
Central Bank	Provo	UT
Far West Bank	Provo	UT
Liberty Bank	Salt Lake City	UT
First Mutual Savings Bank	Bellevue	WA
Frontier Bank	Everett	WA
City Bank	Lynnwood	WA
Redmond National Bank	Redmond	WA
Washington School Employees CU	Seattle	WA
Spokane Railway Credit Union	Spokane	WA
United Security Bank	Spokane	WA
Washington Trust Bank	Spokane	WA
Columbia State Bank	Tacoma	WA
Harborstone Credit Union	Tacoma	WA
Westside Community Bank	University Place	WA
Baker Boyer National Bank	Walla Walla	WA
Mid State Bank	Waterville	WA
First National Bank of Buffalo	Buffalo	WY
Wyoming Bank and Trust	Cheyenne	WY
The Jackson State Bank	Jackson	WY
First Interstate Bank	Sheridan	WY

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before January 29, 1999, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 1998–99 eighth quarter review cycle. 12 CFR 936.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 936.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 1998–99 eighth quarter review cycle must be delivered to the Finance Board on or before the February 28, 2000 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.
William W. Ginsberg,
Managing Director.

[FR Doc. 00–457 Filed 1–13–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 2, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Glasnapp Family Limited Partnership I; Raymond E. Glasnapp; Erma Lee Glasnapp, all of Mission Hills, Kansas; Randy E. Glasnapp, Overland Park, Kansas; Cheryl G. Wright, Kansas City, Missouri; and Peggy G. Herrington, Purcellville, Virginia; to acquire voting shares of First Olathe Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire voting shares of The First National Bank of Olathe, Olathe, Kansas.

Board of Governors of the Federal Reserve System, January 11, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–977 Filed 1–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than February 11, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Snyder Holding Corporation, and F&A Financial Company*, both of Kittanning, Pennsylvania; to acquire 100 percent of the voting shares of F&A Financial Corporation, Kittanning, Pennsylvania, and thereby indirectly acquire voting shares of The Farmers National Bank of Kittanning, Kittanning, Pennsylvania.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Columbia Bancorp*, Columbia, Maryland; to merge with Suburban Bancshares, Inc., Greenbelt, Maryland, and thereby indirectly acquire Suburban Bank of Maryland, Greenbelt, Maryland.

Board of Governors of the Federal Reserve System, January 11, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00-975 Filed 1-13-00; 8:45 am]

BILLING CODE 6210-01-P

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 February 2, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Deutsche Bank Aktiengesellschaft*, Frankfurt, Germany; to acquire InterSec Research Corporation, Stamford, Connecticut, and thereby engage in data processing to provide international and domestic performance measurement for pension funds through databases, pursuant to § 225.28(b)(14) of Regulation Y; *see, Citicorp*, 68 Fed. Res. Bull. 505 (1982); *Citicorp*, 72 Fed. Res. Bull. 497 (1986); *BNC Corp, Inc.*, 81 Fed. Res. Bull. 295 (1995); and in the development and provision of such measurement through the Internet system, U-MeasurePERF.com, *see Cardinal Bancshares, Inc.*, 82 Fed. Res. Bull. 674 (1996), and *The Toronto-Dominion Bank*, 83 Fed. Res. Bull. 335 (1997); in the sale of proprietary portfolio accounting software that permits customers to conduct financial management using their personal computers to perform banking activities, pursuant to § 225.28(b)(14) of Regulation Y; *see, The Royal Bank of Canada*, 82 Fed. Res. Bull. 363 (1996); and *Citicorp*, 72 Fed. Res. Bull. 497 (1986); in research and consulting services, including targeted market research and industry studies, to investment management organizations, banks, exchanges, and other firms, pursuant to § 225.28(b)(6) of Regulation Y, *see Security Pacific Corporation*, 71 Fed. Res. Bull. 118 (1985); *Signet Banking Corporation*, 73 Fed. Res. Bull. 59 (1987); *National Westminster Bank PLC*, 74 Fed. Res. Bull. 254 (1988); and *The Royal Bank of Scotland Group PLC*, 76 Fed. Res. Bull. 886 (1990); and in pension fund consulting to provide sponsors with analyses of international and global investment strategies, pursuant to § 225.28(b)(6) of Regulation Y; *see Dresdner Bank AG*, 82 Fed. Res. Bull. 676 (1996).

Board of Governors of the Federal Reserve System, January 11, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00-976 Filed 1-13-00; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 19, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 12, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00-1021 Filed 1-12-00; 11:27 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Objective Progress Report (OPR).

OMB No.: 0980-0155.

Description: OPR information is collected to provide the Administration for Native Americans with programmatic progress reports on discretionary grant projects to meet ANA's legislatively required evaluation of grantee locally-determined grant objectives. This collection also complies with Department of Health and Human Services regulations and policies requiring grantees to submit progress reports and agencies to perform grant oversight.

The information is collected in a narrative format without the use of a government form. Grantees compose a narrative explaining the status of the funded, grantee-identified project objective(s). Project objectives are listed on an Objective Work Plan (OWP) which is approved and funded for each

grant. An enclosure with every grant award provides instructions on completing and submitting the OPR.

Native American Program Specialists use the OPR information to perform legislatively required Federal program oversight such as evaluate project and grantee performance, identify project outcomes suitable for use in program evaluation and Government Performance and Results Act (GPRA) analysis, and to identify grantees and

projects that require more detailed Federal training and/or technical assistance. OPRs are used in ANA competitive grant programs such as Social and Economic Development Strategies (SEDS), Native American Languages Preservation, Environmental Regulatory Enhancement, etc.

The Administration for Native Americans simplified the way OPR information is collected. Until June 1999, OPRs were transcribed onto a

government designed form where every project objective was listed; grantees often worked to fill in space under each objective to accommodate the volume of information they believed was required. Grantees now use their letterhead and present the level of detail they deem appropriate.

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
Objective Progress Report (OPR)	300	2	1.5	900

Estimated Total Annual Burden Hours: 900.

Additional Information: Copies of the proposes collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to made a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: ACF Desk Officer.

Dated: January 10, 2000.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 00-879 Filed 1-13-00; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of the Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 24, 2000, from 9 a.m. to 6 p.m., and January 25, 2000, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Elisa D. Harvey, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180, or FDA Advisory Committee Information Line, 1-800-741-8138 (or 301-443-0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 24, 2000, the committee will discuss, make recommendations, and vote on a premarket approval application for a fetal pulse oximeter. On January 25, 2000, the committee will discuss a draft guidance document on adhesion barrier products intended for use in pelvic and/or abdominal surgery. The draft guidance document is available to the public on the Internet at <http://www.fda.gov/cdrh/ode/resorbable.pdf> and <http://www.fda.gov/cdrh/ode/1356.html>, or by contacting CDRH Facts-on-Demand at 1-800-899-0381 or 301-827-0111, specify number 1356

when prompted for the document shelf number.

Procedure: On January 24, 2000, from 9 a.m. to 6 p.m., and January 25, 2000, from 9 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 20, 2000. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. and 5 p.m. and 5:30 p.m. on January 24, 2000, and between approximately 9:30 a.m. and 10 a.m. on January 25, 2000. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before January 20, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and address of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 25, 2000, from 8 a.m. to 9 a.m., the meeting will be closed to the public. The committee will hear and review trade secret and/or confidential commercial information on pending and future applications under review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the January 25, 2000, Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Obstetrics and

Gynecology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 10, 2000

Linda A. Suydam,

Senior Associate Commissioner

[FR Doc. 00-981 Filed 1-13-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Peripheral and Central Nervous System Drugs Advisory Committee. This meeting was announced in the **Federal Register** of December 27, 1999 (64 FR 72355). The amendment is being made to cancel the entire session on January 27, 2000. This meeting will be open to the public. There are no other changes.

FOR FURTHER INFORMATION CONTACT:

Sandra L. Titus, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301-827-7001, or e-mail tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area) code 12543. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 1999 (64 FR 72355), FDA announced that a meeting of the Peripheral and Central Nervous System Drugs Advisory

Committee would be held on January 27 and 28, 2000. On page 72355, beginning in the first column, the *Date and Time*, *Agenda*, and *Procedure* portions of this meeting are amended to read as follows:

Date and Time: The meeting will be held January 28 from 8 a.m. to 5 p.m.

Location: Hilton, 620 Perry Ave., Gaithersburg, MD.

Agenda: On January 28, the committee will consider the safety and efficacy of new drug NDA 21-120, Novantrone®, (mitoxantrone, Immunex Corporation) proposed to treat secondary progressive multiple sclerosis, including progressive relapsing disease.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 20, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 20, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 7, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00-889 Filed 1-13-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Notice; Proposed Collection: Evaluation of Indian Health Service/Bureau of Indian Affairs Training Practitioners Project

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

PROPOSED COLLECTION: Title:

“Evaluation of Indian Health Service /Bureau of Indian Affairs Training Practitioners Project.” *Type of Information Collection Request:* New collection. *Form Number:* None. *Need and Use of Information Collection:* The purpose of the proposed data collection is to evaluate and assess the overall effectiveness of the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) inter-agency sponsored national training project titled, “IHS/ BIA Training Practitioners in the Assessment and Treatment of Adolescent Sexual Perpetrators,” conducted from 1993–1996 in 18 American Indian/Alaska Native (AI/AN) communities. The training project was established to provide mental health practitioners in AI/AN communities specialized training for the provision of mental health assessment and treatment services to juvenile sex offenders. The data collected is needed to assess respondent satisfaction/dissatisfaction with the training project, the clinical success/failure of the training on the juvenile sex offenders, the impact of using traditional healing treatment services with juvenile sex offenders, and to obtain recommendations for future clinical program planning. *Affected Public:* Individuals and households, State, Local or Tribal Government. *Type of Respondents:* Health care providers, juveniles, parent/caretakers, and various community members. Please see Table 1 for a listing of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

TABLE 1

Date collection instruments	Estimated No. of respondents	Responses per respondent	Annual Number of respondents*	Average burden hour per response*	Total annual burden hours
Practitioner Trainee Questionnaire	159	1	159	0.50 (30 mins).	79.5

TABLE 1—Continued

Date collection instruments	Estimated No. of respondents	Responses per respondent	Annual Number of respondents*	Average burden hour per response*	Total annual burden hours
Practitioner Trainee Assessment	16	4	64	0.17 (10 mins).	10.9
Practitioner Trainee Interview	8	1	8	1.00 (60 mins).	8.0
Juvenile/Adult	61	1	61	0.50 (30 mins).	30.5
J/A Re-Offense	61	1	61	0.17 (10 mins).	10.4
Parent/Caretaker	122	1	122	0.50 (30 mins).	61.0
Community Key Information Questionnaire	24	1	24	1.50 (90 mins).	36.0
Community Key Informational Interview	24	1	24	1.0 (60 mins)	24.0
Medical (Treatment and Health Review)	61	1	61	0.75 (45 mins).	45.7
Agency Record Review	61	1	61	1.00 (60 mins).	61.0
Total	597				367.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments or requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwon, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601: call non-toll free (301) 433-5938, send via facsimile to (301) 443-2316, or send your e-mail requests, comments, and

return address to: lhodahkw@hqe.ihs.gov.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received on or before March 14, 2000.

Dated: January 7, 2000.

Michael H. Trujillo,

Assistant Surgeon General Director, Indian Health Service.

[FR Doc. 00-887 Filed 1-13-00; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Notice; Proposed Collection: Evaluation of Indian Health Service/ Bureau of Indian Affairs Training Practitioners Project

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

PROPOSED COLLECTION: *Title:* "Evaluation of Indian Health Service/ Bureau of Indian Affairs Training Practitioners Project." *Type of*

Information Collection Request: New collection. *Form Number:* None. *Need and Use of Information Collection:* The purpose of the proposed data collection is to evaluate and assess the overall effectiveness of the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) inter-agency sponsored national training project titled, "IHS/ BIA Training Practitioners in the Assessment and Treatment of Adolescent Sexual Perpetrators," conducted from 1993-1996 in 18 American Indian/Alaska Native (AI/AN) communities. The training project was established to provide mental health practitioners in AI/AN communities specialized training for the provision of mental health assessment and treatment services to juvenile sex offenders. The data collected is needed to assess respondent satisfaction/dissatisfaction with the training project, the clinical success/failure of the training on the juvenile sex offenders, the impact of using traditional healing treatment services with juvenile sex offenders, and to obtain recommendations for future clinical program planning. *Affected Public:* Individuals and households, State, Local or Tribal Government. *Type of Respondents:* Health care providers, juveniles, parent/caretakers, and various community members. Please see Table 1 for a listing of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

TABLE 1

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Community Key Informant Questionnaire	24	1	24	1.50 (90 mins).	36.0
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Medical (Treatment and Health Review)	61	1	61	0.75 (45 mins).	45.7
Agency Record Review	61	1	61	1.00 (60 mins).	61.0
Total	597				367.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments or requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwon, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852-1601: call non-toll free (301) 443-5938, send via facsimile to (301) 443-2316, or send your e-mail requests, comments, and

return address to:
lhodahkw@hqe.ihs.gov.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received on or before March 14, 2000.

Dated: January 7, 2000.

Michael H. Trujillo,
Assistant Surgeon General Director, Indian Health Service.

[FR Doc. 00-888 Filed 1-13-00; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Effects of the Vermont Parity Act— New— In support of its mission to support activities related to improving mental health and substance abuse treatment and prevention through demonstration projects, evaluations and service system assessments, SAMHSA is taking advantage of the implementation of the Vermont Parity Act on January 1, 1998. The Vermont Parity Act provides SAMHSA with an important opportunity to study the health insurance coverage impacts of the nation's most comprehensive parity law and to provide useful data to state and federal policy makers, employers, health care providers, advocates, and consumers.

SAMHSA will conduct a telephone survey of private employers in Vermont to assess their responses to the state law. The employer survey will gather information on the effects of the Vermont parity law on employer-sponsored health insurance coverage. As a study of the most comprehensive

state parity law in the nation, this survey will provide SAMHSA its first opportunity to understand: (1) Employer knowledge of and satisfaction with parity; (2) estimated effects of parity on employer health care costs; (3) effects of parity on employer health insurance purchasing decisions, such as decisions to self-insure, drop coverage, change insurance carriers, shift a higher share of costs to employees, or carve-out benefits and/or shift to managed care; (4) other changes brought about by parity, such as establishment of

employee assistance plans or wellness programs; and (5) suggestions for improving the parity law in the future.

Data will be collected between May and September 2000, a period when employers typically re-evaluate their health insurance coverage decisions for the upcoming fiscal year. Upon completion of the data collection, descriptive and multivariate analyses of employer responses to and satisfaction with parity will be conducted. Responses will be analyzed by employer characteristics such as firm size,

location, and type of industry. SAMHSA will use the survey results and survey data to advise governmental bodies such as the National Advisory Mental Health Council (NAMHC), which was charged by the Senate Appropriations Committee in 1996 to provide periodic reports on parity coverage in mental health services "as more data throughout the country become available".

The table below shows the total burden for this one-year study.

Type of interview	Number of respondents	Responses/Respondent	Burden/response (hrs.)	Total burden hours
Eligible businesses (screened and interviewed) ¹	600	1	.33	200
Ineligible businesses (screened only) ²	188	1	.17	32
Total	788			232

¹ Eligible businesses consist of businesses offering insurance to their employees at the time of the survey and newly uninsured businesses that stopped offering insurance to their employees after January 1, 1998 when the parity law went into effect.

² Ineligible businesses consist of businesses that have not offered insurance at any time since January 1, 1998.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 6, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00-909 Filed 1-13-00; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4557-N-02]

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, 1998 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: January 7, 2000.

Joseph A. D'Agosta,

*General Deputy Assistant Secretary for
Community Planning and Development.*

**Title V, Federal Surplus Property
Program; Federal Register Report for 1/
14/00**

Suitable/Available Properties

Buildings (by State)

Kansas

Former Army Reserve Center
800 South 29th Street
Parsons Co: Labette KS 75702-
Landholding Agency: GSA
Property Number: 54200010001
Status: Surplus
Comment: 3157 sq. ft., presence of asbestos/
lead paint, most recent use—reserve
center/office, subject to existing easements
GSA Number: 7-D-KS-519A

New Jersey

Bldg. C-16
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010014
Status: Unutilized
Comment: 34,811 sq. ft., presence of
asbestos/lead paint, off-site use only
Bldg. C-25
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010015
Status: Unutilized
Comment: 4,448 sq. ft., presence of asbestos/
lead paint, off-site use only

Bldg. C-40
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-

Landholding Agency: Navy
Property Number: 77200010016
Status: Unutilized
Comment: 6,924 sq. ft., presence of asbestos/
lead paint, off-site use only

Bldg. 511
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010017
Status: Unutilized
Comment: 1,871 sq. ft., presence of asbestos/
lead paint, off-site use only

Bldgs. 553, 554, 555
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010018
Status: Unutilized
Comment: Guard towers, off-site use only

Bldg. 557
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010019
Status: Unutilized
Comment: 9,670 sq. ft., presence of asbestos/
lead paint, off-site use only

Pennsylvania

Bldg. 38
Naval Support Activity
Philadelphia Co: PA 19111-5098
Landholding Agency: Navy
Property Number: 77200010020
Status: Unutilized
Comment: 6525 sq. ft., metal butler bldg.,
needs rehab, presence of asbestos/lead
paint, off-site use only

Rhode Island

Bldg. 1
Old Naval Hospital
One Riggs Road
Newport Co: RI 02841-
Landholding Agency: Navy
Property Number: 77200010022
Status: Unutilized
Comment: 49,189 sq. ft., presence of
asbestos/lead paint, needs major repair,
NEPA requirements, boiler plant which
provides heat and hot water to bldg. will
be shut down

Unsuitable Properties

Buildings (by State)

Florida

Bldg. 1558
NAS Jacksonville
Jacksonville Co: Duval FL 32212-
Landholding Agency: Navy
Property Number: 77200010001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or
explosive material; Secured Area

Bldg. 592
NAS Jacksonville
Jacksonville Co: Duval FL 32212-
Landholding Agency: Navy
Property Number: 77200010002
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration

Bldg. 610
NAS Jacksonville

Jacksonville Co: Duval FL 32212-
Landholding Agency: Navy
Property Number: 77200010003
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration

Bldg. 7L
NAS Jacksonville
Jacksonville Co: Duval FL 32212-
Landholding Agency: Navy
Property Number: 77200010004
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration

Bldg. 7M
NAS Jacksonville
Jacksonville Co: Duval FL 32212-
Landholding Agency: Navy
Property Number: 77200010005
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration

Bldg. 7N
NAS Jacksonville
Jacksonville Co: Duval FL 32212-
Landholding Agency: Navy
Property Number: 77200010006
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration

Bldg. 70
NAS Jacksonville
Jacksonville Co: Duval FL 32212-
Landholding Agency: Navy
Property Number: 77200010007
Status: Unutilized
Reasons: Secured Area; Extensive
deterioration

New Jersey

Bldg. FA-1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010008
Status: Unutilized
Reasons: Extensive deterioration

Bldg. GB-1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010009
Status: Unutilized
Reasons: Extensive deterioration

Bldg. R-18
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010010
Status: Unutilized
Reason: Extensive deterioration

Bldg. S-62
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010011
Status: Unutilized
Reason: Extensive deterioration

Bldg. S-412
Naval Weapons Station
Colts Neck Co: Earle NJ 07722-
Landholding Agency: Navy
Property Number: 77200010012
Status: Unutilized
Reason: Extensive deterioration

Bldg. S-457
 Naval Support Activity
 Philadelphia Co: PA 19111-5098
 Landholding Agency: Navy
 Property Number: 77200010013
 Status: Unutilized
 Reason: Extensive deterioration

Pennsylvania

Bldg. 85
 Naval Support Activity
 Philadelphia Co: PA 19111-5098
 Landholding Agency: Navy
 Property Number: 77200010021
 Status: Unutilized
 Reason: Extensive deterioration

Unsuitable Properties

Land (by State)

Massachusetts

Comm. Annex #1
 (Former)
 Granby Co: Hampshire MA 01033-
 Landholding Agency: GSA
 Property Number: 54200010002
 Status: Excess
 Reason: Within airport runway clear zone
 GSA Number: 1-D-MA-0856

[FR Doc. 00-712 Filed 1-13-00; 8:45am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance

On January 6, 2000, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT-021542) to the Service, Division of Law Enforcement, Arlington, Virginia to re-export a 6 month old chimpanzee (*Pan troglodytes*). The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the chimpanzee existed and that no reasonable alternative was available to the applicant, for the following reasons: (1) the animal had been recently removed from the wild; (2) the possible rehabilitation of the animal would be facilitated by a speedy return to Africa; (3) the River Gambia National Park Chimpanzee Rehabilitation Project in The Gambia would be able to take this animal and has a nursing female which recently lost an offspring; (4) an individual willing to transport the young chimpanzee was available on short notice.

Dated: January 10, 2000.

Kristen Nelson,

Chief, Branch of Permits (Domestic), Office of Management Authority.

[FR Doc. 00-896 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-55-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have 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.*):

PRT-021331

Applicant: Samuel Bane Shearer,
 Monroeville, PA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-021435

Applicant: Juan I Pasquel Ruiz, Laredo, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-020857

Applicant: Omaha's Henry Doorly Zoo,
 Omaha, NE

The applicant requests a permit to import one female captive-born Black-footed cat (*Felis nigripes*) from the Johannesburg Zoo, Parkview, South Africa for the purpose of enhancement of the survival of the species through captive propagation.

PRT-824210

Applicant: Center For Environmental
 Research and Conservation, Columbia
 University, New York, NY

The applicant requests a permit to import blood, tissue or hair samples obtained from captive or wild specimens of capped langur (*Trachypitecus pileatus*), golden langur (*T. geei*), douc langur (*Pygathrix nemaeus*), guizhou snub-nosed langur (*P. brelichi*), sichuan snub-nosed langur (*P. roxellana*), tonkin snub-nosed langur (*P. avunculus*), yunnan snub-nosed langur (*P. bieti*), pagi island langur (*Nasalis concolor*), purple-faced langur (*Presbytis senex*), Francois langur (*P. francoisi*), long-tailed langur (*Presbytis potenziani*), gray langur (*Semnopithecus entellus*), gibbons (*Hylobates sp.*), stump-tailed macaque (*Macaque arctoides*), Formosan rock macaque (*M.*

cyclopis), Japanese macaque (*M. fuscata*), toque macaque (*M. sinica*), lion-tailed macaque (*M. silenus*), orangutan (*Pongo pygmaeus*), proboscis monkey (*Nasalis larvatus*), for the purpose of scientific research.

PRT-016016

Applicant: George Carden Circus
 International, Springfield, MO.

The applicant requests a permit to re-export and re-import one captive born Asian elephant (*Elephas maximus*) and progeny of the animal currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT-021433

Applicant: Richard Olsen, Santa Cruz, CA.

The applicant requests a permit to import four captive hatched Cabot's tragopan (*Tragopan caboti*) from the Wildlife Conservation Center, Forestry Department of Hunan Province, China, for the purpose of enhancement of the survival of the species through propagation.

PRT-020586

Applicant: Fort Worth Zoo, Fort Worth, TX.

The applicant requests a permit to import one male Asian Elephant (*Elephas maximus hirsutus*) for the purpose of species enhancement through a conservation breeding program and genetic diversity within the North American captive population.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT-021449

Applicant: Jerry M. Jones, Coachella, CA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use taken prior to April 30, 1994.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Dated: January 10, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00-897 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-55-U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of incidental take permits issued in 1999.

Notice is hereby given that the U.S. Fish and Wildlife Service, Region 3, has taken the following action with regard to permit applications duly received in accordance with section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*). Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species, and that it was consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

TE-006295 Town of Rome, Wisconsin

On January 12, 1999, a notice was published in the **Federal Register**, Volume 64, No. 7, that an application was filed with the Fish and Wildlife Service by the Town of Rome, Wisconsin, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, endangered Karner blue butterflies (*Lycaeides*

melissa samuelis) pursuant to a Habitat Conservation Plan for road reconstruction activities.

Notice is hereby given that on April 14, 1999, the Service issued a permit (TE-006295), as authorized by the provisions of the Act, to the Town of Rome subject to certain conditions set forth therein.

TE-010064 State of Wisconsin

On April 14, 1999, a notice was published in the **Federal Register**, Volume 64, No. 71, pp. 18440-18442, that an application was filed with the Fish and Wildlife Service by the State of Wisconsin, Department of Natural Resources, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, endangered Karner blue butterflies (*Lycaeides melissa samuelis*) in the State of Wisconsin in accordance with a multi-party Statewide Habitat Conservation Plan. The Department of Natural Resources was one of 26 partners to the HCP. This single-species HCP was developed for multiple land uses and required development of an Environmental Impact Statement in accordance with the National Environmental Policy Act of 1969. Following public input on the draft Environmental Impact Statement and permit application, the Service made a decision to issue an incidental take permit. The Record of Decision describing the Service's rationale was published in the **Federal Register**, Volume 64, No. 191, pp. 53683-53686. The Record of Decision fully describes the Service's decision making process and determination to issue an incidental take permit to the Department of Natural Resources.

Notice is hereby given that on September 27, 1999, as authorized by the provisions of the Act, the Service issued a permit (TE-010064) to the State of Wisconsin, Department of Natural Resources, and 25 Parties, subject to certain conditions set forth in the permit and Implementing Agreement for the HCP.

TE-016724 Cinergy Corporation, Gibson County, Indiana

On September 2, 1999, a notice was published in the **Federal Register**, Volume 64, No. 170, p. 48189-48190, that an application was filed with the Fish and Wildlife Service by Cinergy Corporation, Gibson County, Indiana, for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, endangered Interior least terns (*Sterna antillarum*)

pursuant to a Habitat Conservation Plan for operation of Cinergy's Gibson Generating Facility.

Notice is hereby given that on December 21, 1999, the Service issued a permit (TE-016724), as authorized by the provisions of the Act, to Cinergy Corporation subject to certain conditions set forth therein.

Each of the above referenced permits was granted only after the Service determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the endangered species, and that the permit was consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

Additional information on any of these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, Ecological Services Operations, 612/713-5350, between the hours of 7:30 am and 4:00 pm, weekdays, or by writing the U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056.

Dated: January 6, 2000.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00-948 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-78762]

Utah-Notice of Invitation to Participate in Coal Exploration Program; Energy West Mining Co. Rilda Canyon, Right Fork

Energy West Mining Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Emery County, Utah:

T. 16 S., R. 6E., SLM, UT
Sec. 24, SE.

T. 16 S., R. 7E., SLM, UT
Sec. 19, lots 3. 4.

Containing 205.61 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, PO Box 45155, Salt Lake City, Utah 84145-0155, and to Charles Semborski, Energy West Mining Company, 15 North Main Street, Huntington, Utah 84528. Such written notice must be received within thirty

days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Energy West Mining Company, detailing the scope and timing of this exploration program, is available for public review during normal business hours in the public room of the BLM State Office, 324 South State Street, Salt Lake City, Utah, under serial number UTU-78762.

Douglas M. Koza,

Deputy State Director, Natural Resources.

[FR Doc. 00-911 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-DQ-P-M

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; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability; correction.

SUMMARY: The Bureau of Land Management (BLM), St. George Field Office, Utah published in the December 23, 1999 issue of the **Federal Register**, a Notice of Availability for a Draft Environmental Impact Statement and General Management Plan for Zion National Park incorporating a Land Use Plan Amendment for the BLM St. George Field Office Resource Management Plan. As published, the notice contains the following errors: (1) The notice inadvertently omitted the inclusion of the river segment Shunes Creek; (2) An incorrect starting time for the public meetings; and (3) An incorrect street address for the January 12, 2000 public meeting.

FOR FURTHER INFORMATION CONTACT: Jim Crisp, BLM St. George Field Office Manager, 345 East Riverside Drive, St. George, Utah 84790; Phone: (435) 688-3201.

Corrections

In the **Federal Register** issue of December 23, 1999 (Volume 64, Number 246), FR Doc. 99-33287, on page 72098:

(1) Under the "Supplementary Information" caption, correct the third sentence to include the river segment Shunes Creek (T. 42 S., R. 10 W., SLM, Utah);

(2) Under the "Dates" caption, correct the public meeting time to read: "All meetings will run from 6:30-10 p.m."; and

(3) Under the "Dates" caption, correct the street address for the January 12, 2000 public meeting to read "345 E. Riverside Drive".

Sally Wisely,

State Director, Utah.

[FR Doc. 00-910 Filed 1-13-00; 8:45 am]

BILLING CODE 1610-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-930-1430-ET; NMNM 102308]

Public Land Order No. 7427; Withdrawal of Public Lands and Federal Minerals for the Carlsbad Cave and Karst Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 8,470.59 acres of public lands from surface entry, mining, and mineral leasing and 480 acres of federally reserved mineral interests underlying non-Federal surface estate from mining and mineral leasing, for a period of 20 years, for the Bureau of Land Management to protect the Carlsbad Cave and Karst Area. An additional 8,198.72 acres of State lands would become subject to the withdrawal if acquired by the United States.

EFFECTIVE DATE: January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505-438-7593.

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. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), and from leasing under the mineral leasing laws (30 U.S.C. 181 *et seq.* and 30 U.S.C. 351 *et seq.* (1994)), to protect the Carlsbad Cave and Karst Area:

New Mexico Principal Meridian

T. 24 S., R. 23 E.,

Sec. 24;
Sec. 34, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 35, N $\frac{1}{2}$.
T. 24 S., R. 24 E.,
Sec. 14, N $\frac{1}{2}$;
Sec. 15, N $\frac{1}{2}$;
Sec. 17, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 18, lots 3, and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$.
T. 24 S., R. 25 E.,
Sec. 11, S $\frac{1}{2}$;
Sec. 12, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 13, S $\frac{1}{2}$;
Sec. 14, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and SE $\frac{1}{4}$;
Sec. 22;
Sec. 23, N $\frac{1}{2}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 24, N $\frac{1}{2}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
Sec. 25, N $\frac{1}{2}$;
Sec. 26, N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$.
T. 24 S., R. 26 E.,
Sec. 17, lot 1, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$ (lying West of Highway No. 180);
Sec. 18, lots 1, 2, and 4, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 19, lots 1 to 4, inclusive, NE $\frac{1}{4}$, and E $\frac{1}{2}$ W $\frac{1}{2}$ (lying West of Highway No. 180).

The areas described aggregate 8,970.59 acres in Eddy County.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described lands are hereby withdrawn from mining under the United States mining laws, (30 U.S.C. Ch.2 (1994)), and from leasing under the mineral leasing laws, (30 U.S.C. 181 *et seq.* (1994)), for the Bureau of Land Management to protect the Carlsbad Cave and Karst Area:

New Mexico Principal Meridian

T. 24 S., R. 23 E.,
Sec. 33, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 34, NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described aggregate 480 acres in Eddy County.

3. The following described State lands are located within the Carlsbad Cave and Karst Area. In the event the lands return to Federal ownership, they would become subject to the terms and conditions of this withdrawal as specified in Paragraph 1:

New Mexico Principal Meridian

T. 24 S., R. 23 E.,
Sec. 22, S $\frac{1}{2}$;
Sec. 23, S $\frac{1}{2}$;
Secs. 26 and 27;
Sec. 28, E $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
Sec. 33, W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 24 S., R. 24 E.,
Sec. 12, S $\frac{1}{2}$;
Secs. 13 and 16.
T. 24 S., R. 25 E.
Sec. 7, S $\frac{1}{2}$;
Sec. 8, S $\frac{1}{2}$;
Sec. 9, S $\frac{1}{2}$;
Sec. 10, S $\frac{1}{2}$;
Sec. 15, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Secs. 16 and 17;
Sec. 18, lots 1 to 4, inclusive, E½, and
E½W½.

The areas described aggregate 8,198.72 acres in Eddy County.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, including but not limited to livestock grazing, lawful ingress and egress to any valid mining claims and patented claims and mineral leases that may exist on the withdrawn lands or nearby public lands inside the existing cave protection area, use of all rights-of-way, lawful access to non-Federal lands and interests in lands, all current recreational uses including hunting, camping and day use, and all commercial uses being conducted under special use permits. The Bureau of Land Management is authorized to grant rights-of-way, easements (including drilling easements), permits and other approvals for the exercise of valid existing rights on the withdrawn lands or nearby public lands inside the existing cave protection area.

5. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: January 10, 2000.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 00-937 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

National Park Service

Second Public Scoping Meeting for Environmental Planning for Use of Kenilworth Park, Washington, D.C.

AGENCY: National Park Service, Interior.

ACTION: Second Public Scoping Meeting by the National Park Service (NPS) pursuant to the National Environmental Policy Act (NEPA) and NPS Policy related to planning for the use of Kenilworth Park.

SUMMARY: On January 22, 2000, NPS is holding a second public scoping meeting in furtherance of its NEPA responsibilities and NPS policy, in order to elicit additional public input concerning the future uses of Kenilworth Park in light of the NPS-directed clean-up and stabilization activities in the park.

Following a November 30, 1999 public scoping meeting, NPS has been preparing a Development Plan/Environmental Assessment (EA) for future uses of this park. At the January 22, 2000 meeting, NPS will discuss

alternative conceptual schemes for development and receive public comments on these schemes, along with any additional ideas for the future uses of the park. NPS will also inform the public of the current NPS activities at the park. When this EA is completed, it will be available for public review prior to the NPS decision on this EA pursuant to NEPA.

DATES: The meeting will take place on Saturday, January 22, 2000 from 10:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at Kenilworth Elementary School located at 1300 44th Street, NE. (at Nash Street), Washington, DC.

For more information, contact the National Capital Parks-East public information officer at (202) 690-5185.

Dated: January 7, 2000.

Karen Taylor Goodrich,

Acting Superintendent, National Capital Parks-East.

[FR Doc. 00-908 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the 611th Air Support Group, United States Air Force, Elmendorf Air Force Base, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of 611th Air Support Group, United States Air Force, Elmendorf Air Force Base, AK.

A detailed assessment of the human remains was made by the W.H. Over Museum, South Dakota State Archeological Research Center, and 611th Air Support Group, USAF professional staff in consultation with representatives of the Aleut Corporation, and the Pribilof Islands Aleut Communities of St. Paul and St. George Islands.

In 1943, human remains representing one individual were uncovered during a legally authorized runway construction project on Shemya Island, AK conducted by Mr. C.B. Kimbrough, a contracted civil engineer with the Baker Engineering Company, Rochester, PA. In 1944, these human remains were

donated by Mr. Kimbrough to the Dakota Museum, University of South Dakota, Vermillion, SD (now known as the W.H. Over Museum). No known individual was identified. The 32 associated funerary objects include stone projectile points and animal bone tools related to sea and land hunting and fishing.

Based on the geographic location and material culture, this individual has been identified as Native American, most likely affiliated with the Aleut culture. The determination of cultural affiliation has been based upon the relative geographic isolation of Shemya Island, archeological evidence from the Shemya Island region, past and present Aleut oral tradition, historical evidence, and expert anthropological opinion. These forms of evidence all indicate that Aleut people were the sole pre-contact (pre-1741 A.D.) occupants of Shemya Island.

Based on the above mentioned information, officials of the 611th Air Force Group, USAF have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the 611th Air Force Group, USAF have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 32 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the 611th Air Force Group, USAF have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Aleut Corporation, and the Pribilof Islands Aleut Communities of St. Paul and St. George Islands.

This notice has been sent to officials of the Aleut Corporation, and the Pribilof Islands Aleut Communities of St. Paul and St. George Islands. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Captain Christopher A. Pleiman, Cultural Resources Manager, 611th Air Support Group, U.S. Air Force, 6900 9th Street, Ste. 360, Elmendorf AFB, AK 99506-2270; telephone: (907) 552-7442, before February 14, 2000. Repatriation of the human remains and associated funerary objects to the Aleut Corporation, and the Pribilof Islands Aleut Communities of St. Paul and St. George Islands may begin after that date

if no additional claimants come forward.

Dated: December 20, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 00-907 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Dry Lagoon State Park, CA in the Possession of the Anthropological Studies Center, Archeological Collections Facility, Sonoma State University, Rohnert Park, CA; and in the Control of the California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and an associated funerary object in the possession of the Anthropological Studies Center (ASC), Archeological Collections Facility (ACF), Sonoma State University, Rohnert Park, CA; and in the control of the California Department of Parks and Recreation, Sacramento, CA.

A detailed assessment of the human remains was made by ASC and California Department of Parks and Recreation professional staff in consultation with representatives of the Yurok Tribe of California. These human remains represent additional individuals found in ASC collections following publication of a previous Notice of Inventory Completion for the California Department of Parks and Recreation dated September 24, 1999 and October 18, 1999.

In 1976, human remains representing one individual were collected from site CA-HUM-129 in Stone Lagoon, Dry Lagoon State Park, CA during a salvage excavation conducted for bluff stabilization by Dr. David A. Fredrickson, Sonoma State University. These human remains were accessioned into the collections of the Archaeological Collections Facility at Sonoma State University. No known individual was identified. No associated funerary objects are present.

Based on material culture and C14 dates, these human remains have been identified as Native American dating to between 1490 and 215 B.P.

Geographical, ethnographical, linguistic, and historical evidence indicates that this archeological site is located within the traditional Coast Yurok territory. Based on archeological evidence, continuity of occupation, ethnographic accounts, and consultation with representatives of the Yurok Tribe of California, site CA-HUM-129 has been affiliated with the present-day Yurok Tribe of California.

Based on the above mentioned information, officials of Sonoma State University and the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of Sonoma State University and the California Department of Parks and Recreation have determined also that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Yurok Tribe of California.

This notice has been sent to officials of the Yurok Tribe of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416-9th Street, Room 1431, Sacramento, CA 95814; telephone: (916) 653-7976, before February 14, 2000. Repatriation of the human remains to the Yurok Tribe of California may begin after that date if no additional claimants come forward.

Dated: December 17, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 00-906 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Maxwell Museum of Anthropology, University of New Mexico which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural item is a leather medicine man's cap with turkey feathers.

In 1964, this cultural item was purchased in Forestdale, AZ by University of New Mexico anthropology professor Florence Hawley Ellis.

Following a consultation visit, representatives of the White Mountain Apache Tribe of the Fort Apache Reservation and the San Carlos Apache Tribe of the San Carlos Reservation identified this cap as being from the White Mountain Apache reservation. Consultation evidence presented by representatives of the White Mountain Apache Tribe of the Fort Apache Reservation indicates this cultural item has on-going historical and cultural importance central to the tribe itself could not have been sold or alienated by any individual.

Based on the above mentioned information, officials of the Maxwell Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), this one cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Maxwell Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the White Mountain Apache Tribe of the Fort Apache Reservation.

This notice has been sent to officials of the White Mountain Apache Tribe of the Fort Apache Reservation and the San Carlos Apache Tribe of the San Carlos Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Marian Rodee, Curator of Southwest Ethnology, Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM 87131; telephone: (505) 277-4405 before February 14, 2000. Repatriation of this object to the White Mountain Apache Tribe of the Fort Apache Reservation may begin after

that date if no additional claimants come forward.

Dated: December 17, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 00-901 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Oregon in the Possession of the Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Oregon in the possession of the Milwaukee Public Museum, Milwaukee, WI.

A detailed assessment of the human remains was made by Milwaukee Public Museum professional staff in consultation with representatives of the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

At an unknown date, human remains representing one individual were collected from an unknown location in Oregon by an unknown person who transferred these human remains to Thomas M.N. Lewis. In 1946, Mr. Lewis donated these human remains to the Milwaukee Public Museum. No known individuals were identified. No associated funerary objects are present.

Based on cranial morphology and dentition, this individual has been identified as Native American. The reported geographic location of this individual is consistent with the pre-contact and historic Northern Paiute people. Evidence of metal knife marks on the cranium indicate an historic date which is consistent with a Northern Paiute affiliation. Consultation evidence provided by representatives of the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs Reservation indicate that the Oregon Plains are part of the Paiute's traditional and historic occupation area and that descendants of the Paiute from this part of Paiute territory now are included in the Burns Paiute Tribe of the Burns Paiute Indian

Colony of Oregon; the Confederated Tribes of the Warm Springs Reservation of Oregon, the Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Reservation, Nevada and Oregon; and the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada.

Based on the above mentioned information, officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Milwaukee Public Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; the Confederated Tribes of the Warm Springs Reservation of Oregon, the Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Reservation, Nevada and Oregon; and the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada.

This notice has been sent to officials of the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; the Confederated Tribes of the Warm Springs Reservation of Oregon, the Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Reservation, Nevada and Oregon; and the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Ann McMullen, Ph.D., Curator of North American Ethnology, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233; telephone: (414) 278-2786; fax: (414) 278-6100, before February 14, 2000. Repatriation of the human remains to the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon may begin after that date if no additional claimants come forward.

Dated: January 3, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 00-903 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Nebraska in the Possession of the Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Nebraska State Historical Society which meet the definition of "unassociated funerary object" under Section 2 of the Act.

The 71 cultural items consist of tanned hide fragments, metal fragments, sole of shoe, glass bottle, mussel shell, fragmented metal can or kettle, two paint pans with animal bone "brushes," leather fragments, and decorated leather.

In 1960 and 1970, these cultural items were removed from burials at the Genoa site (25NC20) during archaeological excavation by the Nebraska State Historical Society. Based on oral tradition, archeological evidence, and ethnohistorical documents, the Genoa site has been identified as a Pawnee village dating to post-1800.

The two cultural items consist of a rusted mass of gun parts and a clay pipestem.

In 1940, these cultural items were removed from burials at the Clarks site (25PK1) during archaeological excavation by the Nebraska State Historical Society. Based on oral tradition, archeological evidence, and ethnohistorical documents, the Clarks site has been identified as a Pawnee village dating to post-1800.

Since 1995, all cultural items listed above have been located within the collections of the Nebraska State Historical Society.

Based on the above mentioned information, officials of the Nebraska State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 73 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Nebraska State Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be

reasonably traced between these cultural items and the Pawnee Indian Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rob Bozell, Associate Director, Nebraska State Historical Society, 1500 R Street, P.O. Box 82554, Lincoln, NE 68501-2554; telephone: (402) 471-4789, before February 14, 2000. Repatriation of these objects to the Pawnee Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: December 15, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 00-904 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Valley, Lancaster, and Nance Counties, NE in the Possession of the Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Valley, Lancaster, and Nance Counties, NE in the possession of the Nebraska State Historical Society, Lincoln, NE.

A detailed assessment of the human remains was made by Nebraska State Historical Society professional staff in consultation with representatives of the Pawnee Indian Tribe of Oklahoma; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakonie), Oklahoma.

In 1993, human remains representing a minimum of two individuals were recovered from private lands in Howard County, NE during construction associated with a U.S. Bureau of Reclamation Canal project. In 1995, these human remains were transferred to the Nebraska State Historical Society. No known individuals were identified.

No associated funerary objects were present.

Based on material culture, and site features, as well as proximity to other known Pawnee village and burial areas, these human remains have been identified as Native American, specifically of Pawnee affiliation.

In 1997, human remains representing two individuals were recovered from site 25VY42, Valley County, NE during a legally authorized archeological investigation conducted by the Nebraska State Historical Society Staff as a result of highway construction. No known individuals were identified. The two associated funerary objects include a stone pipe and a stone knife.

Based on associated funerary objects, these individuals have been identified as Native American. Based on location and associated funerary objects, site 25VY42 has been identified as a habitation associated with the Central Plains tradition (A.D. 1000-1400).

In 1998, human remains representing one individual were received by the Nebraska Historical Society from the Lancaster County Sheriff's Office. These human remains had been confiscated during a criminal investigation. No known individual was identified. No associated funerary objects are present.

Based on cranial morphology and the condition of the crania, this individual has been identified as Native American, dating to c. 1000-1400 A.D. Based on craniometrics, this individual has been affiliated with the Central Plains tradition.

Based on continuities of ceramic decoration, stone tool form and function, architecture, chronology, mortuary custom, subsistence pattern, settlement pattern, and geographic location, the Central Plains Tradition is recognized by many anthropologists as ancestral to the present-day Pawnee, Arikara, and Wichita. Pawnee and Arikara oral traditions also indicate cultural affiliation between the earlier Central Plains Tradition and these present-day tribes. The Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakonie), Oklahoma, and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, (representing the Arikara) have agreed to allow the Pawnee to claim the human remains listed above.

In 1998, human remains representing a minimum of five individuals from the Wright site (25NC3), near Genoa, Nance County, NE were anonymously delivered to the Nebraska State Historical Society. No known individuals were identified. No associated funerary objects were present.

Based on the note written on the box these human remains were in, these have been determined to be from the Wright site. The Wright Site is a well documented Pawnee village dating to the late 1600s or early 1700s. Based on the presumed location of these remains and skeletal morphology, these individuals have been identified as Native American of Pawnee affiliation.

During the 1930s, human remains representing a minimum of one individual were recovered from the Burkett site (25NC1), Nance County, NE and placed in the collections of the Nebraska Historical Society. In 1998, these remains were found in a mislabeled container in the collections of the Nebraska State Historical Society. No known individual was identified. No associated funerary objects are present.

Based on location, historical documents, and material culture, the Burkett site has been identified as a historic Pawnee village dating to the late 1600s or early 1700s.

Based on the above mentioned information, officials of the Nebraska State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of eleven individuals of Native American ancestry. Officials of the Nebraska State Historical Society have also determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Nebraska State Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pawnee Indian Tribe of Oklahoma; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakonie), Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco and Tawakonie), Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rob Bozell, Associate Director, Nebraska State Historical Society, 1500 R Street, P.O. Box 82554, Lincoln, NE 68501-2554; telephone: (402) 471-4789, before

February 14, 2000. Repatriation of the human remains and associated funerary objects to the Pawnee Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: December 15, 1999.

Francis P. McManamon,
*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 00-905 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Cayuga Nation of New York.

In 1894, human remains representing one individual were excavated from a burial near Union Springs, Cayuga County, NY by William W. Adams, who donated these human remains to the Academy of Natural Sciences, Philadelphia, PA. In 1997, these human remains were transferred from the Academy of Natural Sciences to the University of Pennsylvania Museum of Archaeology and Anthropology. No known individual was identified. No associated funerary objects are present.

Based on accession information, this individual has been identified as Native American. No further information exists for this individual.

Based on the above mentioned information, officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum of Archaeology

and Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Charles K. Williams II Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before February 14, 2000. Repatriation of the human remains to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: January 5, 2000.

Francis P. McManamon,
*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 00-902 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Animas-La Plata Project, Colorado and New Mexico, INT-DES-00-02

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Hearings for the Draft Supplemental Environmental Impact Statement to the 1996 Final Supplement to the Final Environmental Statement for the Animas-La Plata Project.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a Draft Supplemental Environmental Impact Statement (DSEIS) to the 1996 Final Supplement to the Final Environmental Statement for the Animas-La Plata Project (ALP). The DSEIS will evaluate the environmental impacts of various alternatives for final implementation of the Colorado Ute Settlement Act. One of the alternatives analyzed is the Administration Proposal, which was announced on August 11, 1998, and is limited to a smaller dam and reservoir

designed to supply municipal and industrial water to the Colorado Ute Tribes, Navajo Nation, and non-Indian entities in the local area. This modified project deviates from those previously evaluated for ALP, thus necessitating the need for supplemental environmental review. The proposal also contains a nonstructural element as part of the settlement implementation which has not been the subject of any previous analysis under NEPA. Three public hearings will be held to receive comments from interested individuals and organizations on the environmental impacts of the proposal.

DATES: A 60-day public review period commences with the publication of this notice. Written comments on the DSEIS are due by March 17, 2000 and should be submitted to the Four Corners Division Manager, Bureau of Reclamation. Public hearings on the DSEIS will be held during the month of February in Durango, Farmington, and Denver. The public hearings schedule is as follows:

February 15, 2000, 7-9 p.m., Double Tree Hotel, Main Ballroom, 501 Camino Del Rio, Durango, Colorado
February 16, 2000, 7-9 p.m., Farmington Civic Center, Exhibition Hall 1, 200 West Arrington, Farmington, New Mexico.
February 17, 2000, 7-9 p.m., Denver Convention Center, Room A-209, 700 14th Street, Denver, Colorado.

ADDRESSES: Written comments on the DSEIS should be addressed to Pat Schumacher, Four Corners Division Manager, Four Corners Division of the Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301-5475; telephone (970) 385-6590; faxogram (970) 385-6539; E-mail ALPDSEISComments@uc.usbr.gov. The document is available on the Internet at <http://www.uc.usbr.gov> under the Environmental Studies, Summaries & Reports heading. If requesting copies of the DSEIS, contact Mr. Schumacher using any of the methods noted above.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public disclosure in their entirety.

Copies of the DSEIS are also available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, N.W., Washington, D.C. 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 67, Denver, Colorado 80225.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138.
- Bureau of Reclamation, Four Corners Division of the Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301-5475.
- Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506.
- Local Affairs Department/Division of Local Government, Attention: Charles Unseld, 1313 Sherman Street, Room 521, Denver, Colorado 80203.
- Energy, Minerals and Natural Resources Department, Attention: Jennifer A. Salisbury, Secretary, 2040 South Pacheco Street, Santa Fe, New Mexico 87505.

Libraries

Copies will also be available for public review and inspection at the following public libraries:

Colorado

Colorado State University Library, Ft. Collins
Cortez City Library
Denver City Library
Durango High School Library
Durango Public Library
Ft. Lewis College Library, Durango
University of Northern Colorado Library, Greeley
University of Denver, Penrose Library, Denver
University of Colorado, Norlin Library, Boulder

New Mexico

Albuquerque Public Library
Alturian Public Library, Aztec
Bloomfield City Library
Farmington Public Library
Navajo Community College Library, Shiprock
New Mexico State Library, Santa Fe
New Mexico State University Library, Las Cruces
San Juan College Library, Farmington
University of New Mexico Library, Albuquerque

Zimmerman Library, Albuquerque

FOR FURTHER INFORMATION CONTACT: Ken Beck, Team Leader, Bureau of Reclamation, Four Corners Division of the Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301-5475, telephone (970) 385-6558.

SUPPLEMENTARY INFORMATION: For supplementary information please see the **Federal Register** notice of January 4, 1999, 64 FR 176-179.

Dated: January 10, 2000.

Eluid Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 00-895 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-94-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force; Meeting

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Tuesday, February 8, 2000, 1 p.m. to 5 p.m. and Wednesday, February 9, 2000, 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be at the Red Lion Hotel, 1929 Fourth Street, Eureka, California 95501. Telephone 707/441-4712 (FAX 707/441-4712).

FOR FURTHER INFORMATION CONTACT: Mr. Russell P. Smith, Chief, Environmental and Natural Resource Division, Northern California Area Office, 1639 Shasta Dam Boulevard, Shasta Lake, California 96019. Telephone: 530/275-1554 (TDD 530/450-6000).

SUPPLEMENTARY INFORMATION: The Trinity River Basin Fish and Wildlife Task Force will meet to formulate and implement the ongoing Trinity River watershed ecosystem management program for fish and wildlife. This program considers the needs of multiple species and their interactions with physical habitats in restoring the natural function, structure, and species composition of the ecosystem, recognizing that all components are interrelated.

Dated: January 10, 2000.

Lester A. Snow,

Regional Director.

[FR Doc. 00-912 Filed 1-13-00; 8:45 am]

BILLING CODE 4310-94-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-861 & 862 (Preliminary)]

Certain Expandable Polystyrene Resins From Indonesia and Korea

Determinations

On the basis of the record ¹ developed in the subject investigations, the United States International Trade Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Indonesia and Korea of certain expandable polystyrene resins (EPS resins),³ provided for in subheading 3903.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner Thelma J. Askey dissenting; Commissioner Deanna Tanner Okun not participating.

³ For purposes of these investigations, Commerce has defined "certain expandable polystyrene resins" as the raw material manufactured in the form of polystyrene beads, whether of regular (shape) type or modified (block) type, regardless of specification, having a weighted-average molecular weight of between 160,000 and 260,000, containing from 3 to 7 percent blowing agents, and having bead sizes ranging from 0.4 mm to 3 mm. Specifically excluded from this definition is off-grade, off-specification expandable polystyrene resin.

appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On November 22, 1999, a petition was filed with the Commission and the Department of Commerce by BASF Corporation, Mount Olive, NJ; Huntsman Expandable Polymers Company LC, Salt Lake City, UT; Nova Chemicals, Inc., Moon Township, PA; and StyroChem U.S., Ltd., Radnor, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of EPS resins from Indonesia and Korea. Accordingly, effective November 22, 1999, the Commission instituted antidumping duty investigations Nos. 731-TA-861 & 862 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 3, 1999 (64 FR 67934). The conference was held in Washington, DC, on December 13, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 6, 2000. The views of the Commission are contained in USITC Publication 3266 (January 2000), entitled Certain Expandable Polystyrene Resins from Indonesia and Korea: Investigations Nos. 731-TA-861 & 862 (Preliminary).

By order of the Commission.

Issued: January 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00-881 Filed 1-13-00; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-265 (Review)]

Porcelain-on-Steel Cooking Ware From Mexico

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: On January 4, 2000, the Department of Commerce published notice in the **Federal Register** of its negative final determination of the likelihood of continuation or recurrence of a countervailable subsidy in connection with the subject five-year review investigation (65 FR 284). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the five-year review of the countervailing duty order concerning porcelain-on-steel cooking ware from Mexico (investigation No. 701-TA-265 (Review)) is terminated.

EFFECTIVE DATE: January 4, 2000.

FOR FURTHER INFORMATION CONTACT:

Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

Authority: This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: January 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00-882 Filed 1-13-00; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-846-850 (Final)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube From the Czech Republic, Japan, Mexico, Romania, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA-846-850 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from the Czech Republic, Japan, Mexico, Romania, and South Africa of certain seamless carbon and alloy steel standard, line, and pressure pipe, provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 14, 1999.

FOR FURTHER INFORMATION CONTACT:

Robert Carr (202-205-3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of

affirmative preliminary determinations by the Department of Commerce that imports of certain seamless carbon and alloy steel standard, line, and pressure pipe from Japan and South Africa are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on June 30, 1999, by Koppel Steel Corp., Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX.

The petitions also alleged that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by imports sold at less than fair value from the Czech Republic, Mexico, and Romania. The Commission made affirmative preliminary injury determinations with regard to those imports. Commerce has postponed its preliminary determinations concerning whether imports from these countries are sold at less than fair value. In the event Commerce makes affirmative preliminary determinations, the Commission will activate the final phase of those antidumping investigations. The briefing schedule, hearing, and other deadlines as outlined below will also apply to those investigations.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of

these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 23, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 7, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 29, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 3, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 1, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline

for filing posthearing briefs is March 14, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before March 14, 2000. On March 27, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 29, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 7, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00-883 Filed 1-13-00; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

[USITC SE-00-002]

AGENCY HOLDING THE MEETING:

International Trade Commission.

TIME AND DATE: January 19, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.

2. Minutes.

3. Ratification List.

4. Inv. No. 731-TA-814

(Final)(Creatine Monohydrate from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on January 26, 2000.)

5. Inv. Nos. 701-TA-387-391 and 731-TA-816-821 (Final)(Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on January 28, 2000.)

6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 10, 2000.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 00-1097 Filed 1-12-00; 2:34 pm]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of December, 1999 and January, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the

separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-36,841; *Sony Magnetic Products of America, Inc., Dothan, AL*

TA-W-36,732; *F.G. Montabert Co., Midland Park, NJ*

TA-W-37,120; *Sonat Exploration Co., Oklahoma City, OK*

TA-W-37,113; *Alliance Machine Co., Alliance, OH*

TA-W-36,632; *Dailey International, Conroe, TX*

TA-W-36,782; *Durkopp Adler America, IN., Norcross, GA*

TA-W-36,980; *Brockway Mould, Inc., Brockport, PA*

TA-W-37,057; *Chromalloy Gas Turbine Corp., Turbine Airfoils Div., Harrisburg, PA*

TA-W-37,013; *Wm. F. Groce, Inc., Selinsgrove, PA*

TA-W-36,888; *Donaldson Co., Oelwein, IA*

TA-W-36,799; *Marijon Dyeing and Finishing Co., East Rutherford, NJ*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-36,928; *Operators and Consulting Service, Inc., Lafayette, LA*

TA-W-36,953; *Siematic Corp., Bensalem, PA*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-37,139; *Friendly Ice Cream Corp., Troy, OH*

TA-W-36,998; *Atlanta Attachment Co., Lawrenceville, GA*

TA-W-37,146; *National Standard Co., Corbin, KY*

TA-W-37,137; *Hale Products, Inc., Conshohocken, PA*

TA-W-36,741 & A, B; *Greenwood Mills, Inc., Adams Plant, Ninety Six, SC, Chalmers Plant, Greenwood, SC and Greenwood Plant, Greenwood, SC*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-36,994; *Belle Knitting Mills, Brooklyn, NY*

The investigation revealed that criteria (2) has not been met. Sales or

production did not decline during the relevant period as required for certification.

TA-W-37,153; *Kelley's Controls, Odessa, TX*

The investigation revealed that criteria (1) has not been met. A significant number or production of the workers did not become totally or partially separated from employment as required for certification.

TA-W-36,721; *Markco Machine Works, Inc., Odessa, TX*

Aggregate US imports of oil and gas field equipment were negligible during the relevant period.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA-W-37,110; *Red Kap Industries, A Div. of VF Workwear, Inc., Cookeville, TN: November 15, 1998.*

TA-W-37,141; *Summit Sportswear, Minor Hill, TN: November 6, 1998.*

TA-W-37,140; *Winatic Corp., Vestal, NY: November 15, 1998.*

TA-W-37,135; *HI Fashion Garment Corp., Garfield, NJ: November 17, 1998.*

TA-W-36,893; *Calabrian Chemical Corp., CuC1 Dept., Port Neches, TX: September 20, 1998.*

TA-W-36,788; *Deer Lodge Apparel, Inc., Deer Lodge, TN: August 19, 1998.*

TA-W-36,963; *Lucas Varsity PLC, Automotive Div., Cincinnati, OH: September 17, 1998.*

TA-W-37,148; *Ilsco Corp., Mt. Sterling, KY: November 16, 1998.*

TA-W-36,967; *Blue Falcon Forge, Berwick, PA: October 4, 1998.*

TA-W-37,136; *Lipton—Instant Tea Can Line, Suffolk, VA: November 23, 1998.*

TA-W-36,997; *Bestform Intimates, Johnstown, PA: October 5, 1998.*

TA-W-37,088; *Master Foam, Inc., North Hollywood, CA: November 9, 1998.*

TA-W-37,070; *Arachnid, Inc., Loves Park, IL: October 29, 1998.*

TA-W-37,118; *Hoppe Cutting, Inc., Allentown, PA: November 1, 1998.*

TA-W-36,896; *General Electric Co., Industrial Systems, Tell City, IN: September 22, 1998.*

TA-W-36,872; *Issac Hazen & Co., Inc., Brooklyn, NY: August 30, 1998.*

TA-W-36,809; *Bayer Diagnostics, Oberlin, OH: August 26, 1998.*

TA-W-37,122; *Williams Cutting Service, Inc., Brownsville, TX: November 16, 1998.*

TA-W-37,031; Nantucket Industries, Inc., Cartersville, GA: March 29, 1999 through December 31, 1999.

TA-W-36,820 & A, B; Russell Chemicals, Inc., Piscataway, NJ, Texas Warehouse, Dallas, TX, Calif. Warehouse, Chatsworth, CA: August 24, 1998.

TA-W-37,068; Company of Sharon, Inc., Atwood Plant, Atwood, TN: November 1, 1998.

TA-W-36,861; Wagnerware Corp., Sidney, OH: September 9, 1998.

TA-W-37,017; Hilton Corporate Casuals, Camden, AL: October 21, 1998.

TA-W-36,763; & A; American Power Conversion, West Kingston, RI and Fort Meyers, FL: August, 1998.

TA-W-36,706C; Greenwood Mills, Inc., Mathews Plant, Greenwood, SC: July 26, 1998.

TA-W-36,725; Corbin LTD, Ashland, KY: August 2, 1998.

TA-W-37,174; Kellwood Co. Sportswear Div., Monticello, MS: November 13, 1998.

TA-W-36,706; J & J Flock Products, Inc., Easton, PA: August 4, 1998.

TA-W-37,166; Ashmore Sportswear, Inc., Collinsville, VA: November 17, 1998.

TA-W-37,173; Dyersburg Corp., Alamac Knit Fabrics, Elizabethtown, NC: December 2, 1998.

TA-W-37,187; Sun Apparel of Texas, LTD, Armour Plant Cutting Room, El Paso, TX: March 22, 1999.

TA-W-36,794; C & K components, Inc., Clayton, NC: August 23, 1998.

TA-W-37,165; Inlet Drilling, Kenai, AK: December 1, 1998.

TA-W-37,185; Performance Oilfield Service, LLC, Kilgore, TX: December 2, 1998.

TA-W-37,005; Crowley Garment Manufacturing Co., Crowley, LA: October 19, 1998.

TA-W-36,987; ITW Paslode White River Plant, Augusta, AR: October 7, 1998.

TA-W-37,124; ARCO Permian Headquarters in Midland, TX & Operating at Various Locations in TX and Operating in The Following Locations: Jal, NM, B; Eunice, NM, C; Artesia, NM, D; Near Gardner, CO: November 19, 1998.

Also, 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 as amended, the Department of Labor presents summaries of determinations regarding

eligibility to apply for NAFTA-TAA issued during the month of December 1999 and January 2000

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determination NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-03578; Court Metal Finishing, Inc., Flint, MI
 NAFTA-TAA-03574; Bestform Intimates, Johnstown, PA
 NAFTA-TAA-03499; Brockway Mould, Inc., Brockport, PA
 NAFTA-TAA-03496; Blue Falcon Forge, Berwick, PA
 NAFTA-TAA-03388; Deer Lodge Apparel, Inc., Deer Lodge, TN
 NAFTA-TAA-03418; F.G. Montabert Company, Midland Park, NJ
 NAFTA-TAA-03245; Montana Power Co., Colstrip Project Div., Colstrip, MT
 NAFTA-TAA-03471; Topcraft Precision Molders, Inc., Warminster, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA-TAA-3415; AMP, Inc., A Tyco International Ltd Co., Fiber Optic

Div., Larue Facility, Middletown, PA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-03615; Tandycrafts, Inc., Pinnacle Art & Frame Div., Van Nuys, CA: August 23, 1998.

NAFTA-TAA-03601; Ashmore Sportswear, Inc., Collinsville, VA: November 12, 1998.

NAFTA-TAA-03572; Red Kap Industries, A Div. of VF Workwear, Inc., Cookeville, TN: November 15, 1998.

NAFTA-TAA-03561; Sony Magnetic Products, Inc. of America, VHS Div., Dothan, AL: November 12, 1998.

NAFTA-TAA-03506; Lucasvarity PLC, Automotive Div., Cincinnati, OH: September 17, 1998.

NAFTA-TAA-03595; M.S. Chambers & Son, Inc., Baltic, CT: November 29, 1998.

NAFTA-TAA-03603; Lipton—Instant Tea Can Line, Suffolk, VA: November 23, 1998.

NAFTA-TAA-03588; Williams Cutting Service, Inc., Brownsville, TX: November 16, 1998.

NAFTA-TAA-03449; General Instrument, TNS Div., Horsham, PA: September 3, 1998.

NAFTA-TAA-03582; Weiser Lock, A Masco Subsidiary, Tucson, AZ: November 19, 1998.

NAFTA-TAA-03491; Crowley Garment Manufacturing Co., Crowley, LA: September 30, 1998.

NAFTA-TAA-03555; Everest & Jennings, Earth City, MO: November 10, 1998.

I hereby certify that the aforementioned determinations were issued during the month of December, 1999 and January 2000. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Construction Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 10, 2000.

Grant D. Beale,

*Program Manager, Office of Trade
Adjustment Assistance.*

[FR Doc. 00-945 Filed 1-13-00; 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 24, 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 24, 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, DC this 27th day of December, 1999.

Grant D. Beale,

*Program Manager, Office of Trade
Adjustment Assistance.*

APPENDIX—PETITIONS INSTITUTED ON 12/27/1999

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,191	Arctic Pipe Inspection (Wkrs)	Prudhoe Bay, AK	10/15/1999	Pipe Inspection for Oil, Gas Production.
37,192	West Coast Forest (Wkrs)	Arlington, WA	12/16/1999	Raw Lumber.
37,193	Russell Athletic (Co.)	Columbia, AL	12/10/1999	Knit Apparel.
37,194	Simonds Industries (Wkrs)	Newcomerstown, OH.	12/02/1999	Metal and Wood Working Files.
37,195	Vincent Dress, Inc (Wkrs)	Jermyn, PA	12/10/1999	Ladies' Dresses.
37,196	Littonian Shoe Co (Co.)	Littlestown, PA	12/13/1999	Baby Shoes.
37,197	Kellwood Company (Co.)	Calhoun City, MS	12/06/1999	Men's and Women's Jeans and Pants.
37,198	Seagull Lighting Products (Wkrs)	Philadelphia, PA ..	12/06/1999	Electrical Lighting Fixtures.
37,199	Sulzer Pumps (Co.)	Portland, OR	12/07/1999	Pumps.
37,200	Tower Automotive Ind. (Wkrs)	Detroit, MI	12/06/1999	Stamping Dies.
37,201	Drummond Company, Inc (UMW)	Birmingham, AL ...	12/10/1999	Coal Mining for Electricity.
37,202	Jockey International (Co.)	Carlisle, KY	11/29/1999	Underwear.
37,203	Braun Thermoscan (Wkrs)	San Diego, CA	12/10/1999	Medical Infrared Thermometers.
37,204	General Electric Capital (Wkrs)	Brookfield, WI	12/09/1999	Service Support.
37,205	Belmont Garment Dyers (Wkrs)	Reading, PA	12/12/1999	Dyeing of Garments.
37,206	Tultex Yarn Mfg. (Co.)	Roxboro, NC	12/10/1999	Yarn.
37,207	Tultex Corporation (Co.)	Roanoke, VA	12/09/1999	Fleece Activewear.
37,208	Tultex Corporation (Co.)	South Boston, VA	12/16/1999	Fleece Activewear.
37,209	AGCO Corporation (USWA)	Coldwater, OH	12/16/1999	Agriculture Tractors.
37,210	Standard Products (Wkrs)	Gaylord, MI	12/09/1999	Rubber and Metal Seals & Trim.
37,211	Masonite Corporation (Co.)	Pilot Rock, OR	12/21/1999	Fiberboard.
37,212	Young Generations (Co.)	Hendersonville, NC.	12/09/1999	Infant & Junior Dresses & Sportswear.
37,213	U.S. Forest Industries (Wkrs)	White City, OR	11/27/1999	Veener and Plywood.

[FR Doc. 00-939 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-35,434]

Baker Atlas, Houston, Texas; Notice of Revised Determination on Remand

The United States Court of International Trade accepted the Department's motion for voluntary remand to conduct further investigation

in its negative determination in *Former Employees of Baker Hughes v. Alexis Herman, U.S. Secretary of Labor*, No. 99-07-00438. As a result of the new investigation, the Department is now certifying the workers of Baker Atlas, Houston, Texas as eligible to apply for worker adjustment assistance under Section 223 of the Trade Act.

The February 24, 1999, denial of TAA for workers of the subject firm was based on the finding that criterion (3) of the group eligibility requirements of Section 222 of the Trade Act was not met. Workers at the subject firm headquarters and oil equipment production facility in Houston were

denied because imports of oilfield equipment did not contribute to worker separations.

New investigation findings show that the headquarters staff including those workers producing oilfield equipment are directly in support of the subject firm's exploration and production of crude oil and natural gas.

Conclusion

After careful review of the additional facts obtained on remand, it is concluded that increased imports of articles like or directly competitive with crude oil contributed importantly to the decline in sales or production and to the

total or partial separation of workers at subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Baker Atlas, Houston, Texas, who become totally or partially separated from employment on or after November 30, 1997 through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-940 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,568]

The Boeing Company, Long Beach, California; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 18, 1999, the UAW requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA-W-36,568. The denial notice was signed on October 20, 1999 and published in the **Federal Register** on November 4, 1999 (64 FR 60230).

The Department has determined that the petition investigation warrants further examination of customer purchasing patterns of commercial aircraft.

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, DC this 6th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-943 Filed 1-13-00; 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, New York; Notice of Revised Determination on Reconsideration

On December 2, 1999, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 23, 1999 (64 FR 72101).

The Department initially denied TAA to workers of Crouse-Hinds Division of Cooper Industries, Syracuse, New York, producing EMT electrical fittings because none of the worker group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, were met.

On reconsideration, the subject firm provided additional information on imports of EMT electrical fittings. Findings on reconsideration show that the subject firm increased their reliance on imports of EMT electrical fittings. The petitioners, International Brotherhood of Electrical Workers (IBEW). Local 2084, have provided additional information showing that there is a threat of worker separations at the subject plant in Syracuse, New York.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with EMT electrical fittings, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Crouse-Hinds Division of Cooper Industries. In accordance with the provisions of the Act, I make the following certification:

"All workers of Crouse-Hinds Division of Cooper Industries, Syracuse, New York, engaged in employment related to the production of EMT electrical fittings, who became totally or partially separated from employment on or after September 1, 1998 through two years from the date of this issuance, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC this 4th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-941 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,775]

Hart Metals, incorporated, Tamaqua, Pennsylvania; Notice of Negative Determination on Reopening

By letter of November 2, 1999, the United Steelworkers of America (USWA), Local #4182, submitted information regarding the Department's denial of eligibility of workers of Hart Metals, Incorporated, Tamaqua, Pennsylvania to apply for worker adjustment assistance. The denial notice was signed on October 6, 1999 and published in the **Federal Register** on November 4, 1999 (64 FR 60230). The letter submitted by the USWA warranted reexamination of the Department's findings in this case.

The petition was filed on behalf of workers at the subject firm producing magnesium powders. The Department's investigation concentrated on the production of those articles from which the workers were separated from employment, specifically atomized magnesium powders.

The Department's initial investigation regarding atomized magnesium powders concluded that sales, production and employment at the plant declined during the relevant time period. None of the subject firm customers were replacing purchases of atomized managesium powders from Hart Metals with import purchases of like or directly competitive articles.

The USWA asserts that the workers also were engaged in the production of ground magnesium powders. One of the grinding machines was shifted to Canada to produce ground magnesium powder. The powder is then returned to the United States to be used in de-sulpherization processes in steel mills.

On reinvestigation, the Department learned that the workers are not separately identifiable by product line.

As indicated in the Department's initial investigation, the quantity of production of atomized magnesium powders declined from January through June 1999 compared to the same 1998 time period. The customer survey was for those customers reducing purchases of atomized magnesium powders. Total sales and production of other articles produced at the plant, ground magnesium granules and powders and desulfurization agents increased from 1997 to 1998 and in January through August 1999 compared to January through August 1998. Therefore, criterion (2) of Section 222 of the worker

group eligibility requirements has not been met.

The USWA states that the company shifted a grinding machine to Canada to produce ground magnesium powder. Company imports of ground magnesium powder increased in the first eight months of 1999. The company imports, however, accounted for a small percentage of the plant's total production and sales.

Conclusion

After careful review of the facts on reopening, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Hart Metals, Tamaqua, Pennsylvania.

Signed in Washington, D.C. this 7th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-946 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-35, 989]

LeTourneau, Incorporated; Longview, Texas; 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 LeTourneau, Incorporated, Longview, Texas. 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-35, 989; LeTourneau, Incorporated
Longview, Texas (January 5, 2000)

Signed at Washington, DC this 7th day of January, 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-947 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34,869]

Lone Star Steel Company Including Workers of Martin Marietta Logan and Whaley Company Lone Star, Texas; 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 September 2, 1998, applicable to all workers of Lone Star Steel Company, located in Lone Star, Texas. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51605).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at Logan and Whaley Company, Lone Star, Texas. The workers provide maintenance and operating supplies as well as material management services to support the production of steel slabs at Lone Star Steel Company, Lone Star, Texas. Worker separations occurred at Logan and Whaley Company as a result of worker separations at Lone Star Steel Company.

Based on these findings, the Department is amending the certification to include workers of Logan and Whaley Company, Lone Star, Texas who were engaged in employment related to the production of steel slabs at Lone Star Steel Company, Lone Star, Texas.

The intent of the Department's certification is to include all workers of Lone Star Steel Company adversely affected by increased imports.

The amended notice applicable to TA-W-34,869 is hereby issued as follows:

"All workers of Lone Star Company, Lone Star, Texas engaged in employment related to the production of steel slabs and all workers of Martin Marietta and Logan and Whaley Company, Lone Star, Texas engaged in employment related to support and maintenance services for the production of steel slabs for Lone Star Steel Company, Lone Star, Texas who became totally or partially separated from employment on or after August 6, 1997 through September 2, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 27th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-944 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-36,745]

Muskin Leisure Products, Inc., Wilkes-Barre, Pennsylvania; Notice of Revised Determination on Reconsideration

By letter of October 18, 1999, the International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers, AFL-CIO, requested administrative reconsideration of the Department's denial of eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA).

On September 2, 1999, the workers of the subject firm producing above ground swimming pools, liners, filters and accessories and parts were denied TAA because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974, as amended, was not met. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 77750).

The company presented new evidence regarding increasing imports of pool components from foreign sources during the relevant time period. The company will increase its reliance on imports of articles like or directly competitive with those that were produced at the Wilkes-Barre plant.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Muskin Leisure Products, Inc., Wilkes-Barre, Pennsylvania, were adversely affected by increase imports of articles like or directly competitive with those produced at the subject firm.

"All workers of Muskin Leisure Products, Inc., Wilkes-Barre, Pennsylvania, who became totally or partially separated from employment on or after August 13, 1998 through two years from the date of this issuance are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 7th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-942 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA-3372]

MUSKIN LEISURE PRODUCTS, INC. Wilkes-Barre, Pennsylvania; Notice of Revised Determination on Reconsideration

By letter of October 18, 1999, the International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers, AFL-CIO, requested administrative reconsideration of the Department's denial of eligibility for workers and former workers of the subject firm to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

On September 2, 1999, the workers of the subject firm producing above ground swimming pools, liners, filters and accessories and parts were denied NAFTA-TAA based on the finding that criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. The decline in employment was attributed to the company sourcing a portion of plant production to domestic and foreign sources. Pool components sourced to Canada were relatively low in relation to total plant production. There was no shift in production from Wilkes-Barre, Pennsylvania to Canada. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 77752).

The company presented new evidence regarding increasing imports of pool components from Canada during the relevant time period. The company will continue to increase its reliance on imports of articles from Canada and other foreign sources like or directly competitive with those that were produced at the Wilkes-Barre plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles from Canada like or directly competitive with those produced by workers of Muskin Leisure Products, Inc., Wilkes-Barre, Pennsylvania, contributed importantly to the declines in sales or production and to the total

or partial separation of workers of the subject firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Muskin Leisure Products, Inc., Wilkes-Barre, Pennsylvania, who became totally or partially separated from employment on or after August 13, 1998 through two years from the date of the certification, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, DC this 7th day of January 2000.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00-938 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

None.

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068.

Hard-copy subscription may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) or interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 6th day of January 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00-717 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR**Occupational Safety and Health Administration**

[Docket No. NRTL-2-90]

SGS U.S. Testing Company, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of SGS U.S. Testing Company, Inc. (SGSUS), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than March 14, 2000.

ADDRESS: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 693-2110.

SUPPLEMENTARY INFORMATION:**Notice of Application**

The Occupational Safety and Health Administration (OSHA) hereby gives notice that SGS US Testing Company, Inc. (SGSUS), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). The expansion request by SGSUS covers the use of additional test standards. SGSUS has also requested recognition to use additional supplemental programs. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of the preliminary finding on an application.

The most recent notice published by OSHA for the SGSUS recognition covered a correction of recognition (63 FR 69683, December 17, 1998). The correction pertained to the renewal and expansion of the SGSUS recognition,

which OSHA announced on May 19, 1998 (63 FR 27598) and granted on August 28, 1998 (63 FR 46084). In these notices, OSHA had imposed certain conditions on SGSUS, which we repeat in this notice and will include in any final notice on this expansion request.

The current address of the SGSUS facilities (sites) recognized by OSHA are: SGS U.S. Testing Company Inc., 291 Fairfield Avenue, Fairfield, New Jersey 07004, SGS U.S. Testing Company Inc., 5555 Telegraph Road, Los Angeles, California 90040.

General Background on the Application

SGSUS has submitted a request, dated August 9, 1999 (see Exhibit 14), to expand its recognition as an NRTL for the four (4) additional test standards listed below. In this letter, the NRTL also included a request for recognition to use the two (2) additional supplemental programs also listed below.

Test Standards

SGSUS seeks recognition for testing and certification of products to demonstrate compliance to the 4 test standards listed below and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). As is the case for any NRTL, the SGSUS recognition for a particular test standard is further limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements. In addition, testing or certification to these standards will be limited to those sites that have the proper capability and programs. In fact, this limitation applies to all test standards for which SGSUS is currently recognized. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate or utilize multiple sites.

ANSI/UL 696 Electric Toys
ANSI/UL 697 Toy Transformers
ANSI/UL 1310 Class 2 Power Units
ANSI/UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Programs and Procedures

SGSUS also seeks to use the supplemental programs listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice

(60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. SGSUS has already received recognition for two of the supplemental programs, and the on-site review report indicates that SGSUS appears to meet the criteria for use of the following supplemental programs for which it has applied:

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

Conditions—Use of Programs

As previously mentioned, OSHA included certain conditions in the **Federal Register** notice for the renewal of the SGSUS recognition, published on August 28, 1998 (63 FR 46084). The conditions applied to the recognition to use the additional programs listed in that notice, and also apply to the programs listed in this current notice of our preliminary finding. These conditions are in addition to the requirements detailed in the previously cited March 9, 1995 **Federal Register**:

a. SGS U.S. Testing Company, Inc., Fairfield, New Jersey, will review and approve the qualifications of all external organizations prior to SGS U.S. Testing Company, Inc., accepting test data from these organizations.

b. SGS U.S. Testing Company, Inc., Fairfield, New Jersey, will review and approve the qualifications of all external organizations prior to SGS U.S. Testing Company, Inc., using a site of any of these organizations for witnessed test data.

Preliminary Finding on the Application

SGSUS has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with the request, OSHA performed an on-site review of the SGSUS facility in Fairfield, New Jersey, on June 7–8, 1999. Discrepancies noted by the assessor during the on-site review were addressed by SGSUS following the on-site evaluation and are factored into the recommendation in the on-site review report (see Exhibit 15).

Following a review of the application file, the on-site review report, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the SGS U.S. Testing Company, Inc., facilities, listed above, the expansion of recognition to use the additional four (4) test standards, also listed above, with the limitations to be applied as noted. The staff also grants use of the two (2) supplemental programs, subject to the above conditions. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the SGS U.S. Testing Company, Inc., facilities listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition, subject to the above limitations and conditions. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether SGSUS has met the requirements of 29 CFR 1910.7 for the expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of the SGSUS request, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–2–90, the permanent record of public information on the SGSUS recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the SGSUS expansion request. The Assistant Secretary will make the final

decision on granting the expansion and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 5th day of January, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–916 Filed 1–13–00; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2000–1 CARP]

Copyright Arbitration Royalty Panels; List of Arbitrators

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of the 2000–2001 CARP arbitrator list.

SUMMARY: The Copyright Office is publishing the list of arbitrators eligible for service on a Copyright Arbitration Royalty Panel (“CARP”) during 2000 and 2001. This list will be used to select the arbitrators who will serve on panels initiated in 2000 and 2001 for determining the distribution of royalty fees or the adjustment of royalty rates.

EFFECTIVE DATE: January 14, 2000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney-Advisor, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

For royalty rate adjustments and distributions that are in controversy, the Copyright Act requires the selection of a Copyright Arbitration Royalty Panel (“CARP”) consisting of three arbitrators from “lists provided by professional arbitration associations.” See 17 U.S.C. 802(b). The Librarian of Congress selects two of the arbitrators for a CARP from a list of nominated arbitrators; those selected then choose a third arbitrator to serve as chairperson of the panel. If the two arbitrators cannot agree, the Librarian is instructed to select the third arbitrator.

On December 7, 1994, the Copyright Office issued final regulations implementing the CARP selection process. 59 FR 63025 (December 7, 1994). Subsequently, these rules were

amended to provide for the generation of a new list of nominees biannually. 61 FR 63715 (December 2, 1996). Section 251.3(a) of the regulations allows any professional arbitration association or organization to nominate qualified individuals, as described in § 251.5, to serve as arbitrators on a CARP. The regulations require that the submitting arbitration association supply the following information for each person:

(1) The full name, address, and telephone number of the person.
 (2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant. 37 CFR 251.3(a).

Section 251.3(b) of the regulations requires the Copyright Office to publish a list of qualified persons and mandates that this list must include between 30 and 75 names of persons who were nominated from at least three arbitration associations. The newly comprised list of arbitrators will be in effect until the end of the 2001 calendar year, and any arbitrator selected for a CARP during 2000 and 2001 will come from this list. The list includes the name of the nominee and the nominating association.

The publication of today's list satisfies the requirement of 37 CFR 251.3. The information submitted by the arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. Thus, for example, if the Librarian is required to convene a CARP in 2000 for a royalty fee distribution, parties to that proceeding may review that information as a means of formulating objections to listed arbitrators under § 251.4. The Licensing Division of the Copyright Office is located in the Library of Congress, James Madison Building, LM-458, 101 Independence Avenue, SE, Washington, DC 20540.

Deadline for Filing Financial Disclosure Statement

Section 251.32(a) of the CARP rules provides that, within 45 days of their nomination, each nominee must "file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress." The Copyright Office sent financial disclosure statements to the nominating associations, with specific instructions for completing and filing the statement, and asked each organization to distribute the forms to its nominees for the CARP arbitrator list. The Librarian of Congress will use the financial disclosure form to determine what financial conflicts of interest, if any, may preclude the nominee from serving as an arbitrator in a CARP proceeding. Unlike information submitted by the arbitration associations under § 251.3(a), the information contained in the financial disclosure statements is confidential and is not available to the public or to the parties to the proceeding. Each nominee has filed a completed financial disclosure form with the Librarian of Congress.

The 2000-2001 CARP Arbitrator List

The Honorable James M. Bailey—
 Judicial Dispute Resolution, Inc.
 William F. Baron, Esq.—American
 Arbitration Association
 The Honorable Tobias G. Barry—
 Judicial Dispute Resolution, Inc.
 Marjory G. Basile, Esq.—American
 Arbitration Association
 Bernard J. Bonn III, Esq.—American
 Arbitration Association
 Dorothy K. Campbell, Esq.—American
 Arbitration Association
 The Honorable Luis A. Cardenas—
 JAMS/Endispute
 Virginia S. Carson, Esq.—American
 Arbitration Association
 Terry L. Clark, Esq.—American
 Arbitration Association
 Jerry Cohen, Esq.—JAMS/Endispute
 John W. Cooley, Esq.—Judicial Dispute
 Resolution, Inc.
 Mark J. Davis, Esq.—American
 Arbitration Association
 The Honorable Gino L. DiVito—Judicial
 Dispute Resolution, Inc.
 Edward Dreyfus, Esq.—American
 Arbitration Association
 The Honorable Lenore G. Ehrig—
 American Arbitration Association
 The Honorable Jesse Etelson—Attorney/
 Client Arbitration Board, The District
 of Columbia Bar
 The Honorable John B. Farmakides—
 American Arbitration Association
 The Honorable Thomas A. Fortkort—
 American Arbitration Association
 The Honorable Charles W. Fowler—
 Arbitration and Mediation Services

William D. Friend, Esq.—American
 Arbitration Association
 David Geronemus, Esq.—JAMS/
 Endispute
 The Honorable Michael B. Getty—
 JAMS/Endispute
 The Honorable Cornelia Bright
 Gordon—Arbitration and Mediation
 Services
 The Honorable Elizabeth E. Granville—
 American Arbitration Association
 The Honorable Jerry Grissom—JAMS/
 Endispute
 The Honorable Jeffrey S. Gulin—
 Arbitration and Mediation Services
 William E. Hartgering, Esq.—JAMS/
 Endispute
 Katherine Hendricks, Esq.—American
 Arbitration Association
 Harold Himmelman, Esq.—JAMS/
 Endispute
 The Honorable Louis N. Hurwitz—
 Arbitration and Mediation Services
 The Honorable Mel R. Jiganti—JAMS/
 Endispute
 Sheldon Kapustin, Esq.—American
 Arbitration Association
 Sheldon Karon, Esq.—American
 Arbitration Association
 B. Craig Killough, Esq.—American
 Arbitration Association
 Lewis Kurlantzick, Esq.—American
 Arbitration Association
 Christine Lepera, Esq.—American
 Arbitration Association
 The Honorable Lewis A. London—
 Arbitration and Mediation Services
 The Honorable Harlan A. Martin—
 JAMS/Endispute
 Gloria Messinger, Esq.—American
 Arbitration Association
 The Honorable James R. Miller, Jr.—
 JAMS/Endispute
 Cecilia H. Morgan, Esq.—JAMS/
 Endispute
 James D. Myers, Esq.—American
 Arbitration Association
 Cheryl I. Niro, Esq.—Judicial Dispute
 Resolution, Inc.
 David M. Ostfeld, Esq.—American
 Arbitration Association
 Timothy T. Patula, Esq.—American
 Arbitration Association
 Gerald F. Phillips, Esq.—American
 Arbitration Association
 Alex S. Polsky, Esq.—JAMS/Endispute
 Sol Rosenthal, Esq.—American
 Arbitration Association
 Richard H. Sayler, Esq.—American
 Arbitration Association
 Peter C. Schaumber, Esq.—Center for
 Litigation Alternatives
 The Honorable Philip E. Schwab—
 JAMS/Endispute
 The Honorable Seymour Schwartz—
 JAMS/Endispute
 Vivien B. Shelanski, Esq.—JAMS/
 Endispute
 William Stuart Taylor, Esq.—American
 Arbitration Association

Eric E. Van Loon, Esq.—JAMS/
Endispute
The Honorable Curtis E. von Kann—
JAMS/Endispute
Frank M. Wentworth, Jr., Esq.—
American Arbitration Association
The Honorable Ronald P. Wertheim—
JAMS/Endispute
Michael D. Young, Esq.—JAMS/
Endispute
Gregg R. Zegarelli, Esq.—American
Arbitration Association

Dated: January 11, 2000.

David O. Carson,
General Counsel.

[FR Doc. 00-973 Filed 1-13-00; 8:45 am]

BILLING CODE 1410-33-P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Intent To Prepare an Environmental Impact Statement for the Rio Grande Rectification Project El Paso and Hudspeth Counties, Texas

AGENCY: United States Section,
International Boundary and Water
Commission, United States and Mexico.

ACTION: Notice of Intent to Prepare an
Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, and dependent on availability of funding, the United States Section, International Boundary and Water Commission (USIBWC) proposes to gather information necessary to analyze and evaluate the impacts of a River Management Plan by the USIBWC on the existing Rio Grande Rectification Project in El Paso and Hudspeth counties, Texas and prepare an EIS to document those effects. This notice is being provided as required by the Memorandum of Understanding between the USIBWC and Southwest Environmental Center, dated March 22, 1999; the Council on Environmental Quality Regulations (40 CFR 1501.7); and the USIBWC's Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969, published in the **Federal Register** September 2, 1981 (46 FR 44083-44094) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS.

DATES: Written comments will be accepted for an indefinite period of time from the date of this notice and

continuing until receipt of appropriation funds necessary for completion of the EIS. Participation by interested federal, state, and local agencies as well as other interested organizations and the general public is encouraged during this indefinite scoping period. Public comments on the scope of the EIS, reasonable alternatives that should be considered, anticipated environmental problems, and actions that might be taken to address them are requested.

FOR FURTHER INFORMATION CONTACT:

Comments will be accepted following the date of this notice by Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C-310, El Paso, Texas 79902. Telephone: 915/832-4741, Facsimile: 915/832-4167. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: The USIBWC proposes, pending appropriation of funds, to gather information necessary for the preparation of an EIS to be used to determine specific options for the maintenance of the Rio Grande Rectification Project (Rectification Project) that could be implemented to minimize, consistent with the law and international agreements, the impact of project maintenance on ecological and environmental resources in the area and to optimize the safety of people and property through flood management. The Rectification Project is located along the Rio Grande in El Paso and Hudspeth counties, Texas. It is an international project that provides a means of stabilizing the international boundary line between the United States and Mexico in the El Paso-Juarez valley and also provides flood protection to urban, suburban and agricultural lands in this valley. In 1927, the International Boundary Commission (now the International Boundary and Water Commission or IBWC), formulated plans for the rectification of the river and stabilization of the international boundary line in the El Paso-Juarez valley to serve as a basis for a Convention between the United States and Mexico authorizing the construction of necessary works. The initial construction on the Rectification Project was begun in March, 1934, and completed in 1938. Subsequently, in the period from 1943 through 1950, supplemental work was done which consisted of raising levees upstream from Riverside Canal Heading, revetting levees opposite arroyo entrances, revetting channel banks, and levelling floodways.

The USIBWC as lead agency proposes to collect information necessary for the preparation of an EIS; to analyze flood protection measures and alternatives to current management, including watershed-oriented and non-structural alternatives and collaborative measures with other agencies and landowners; to determine to what extent project management can support restoration of native riparian and aquatic habitats, as well as the restoration of natural fluvial processes such as channel meanders and overbank flooding. The EIS will consider a range of alternatives, including the no action alternative, based on issues and concerns associated with the project.

The EIS will identify, describe, and evaluate the existing environmental, cultural, sociological and economical, and recreational resources; explain the existing international flood protection and boundary stabilization project; and evaluate the impacts associated with the alternatives under consideration. Significant issues which have been identified to be addressed in the EIS include but are not limited to impacts to water resources, water quality, cultural and biological resources, threatened and endangered species, and recreation.

The USIBWC seeks funding for river levee improvements along the international boundary; and pending appropriation of funds, proposed construction activities that will be studied in this EIS include rehabilitation of existing levees, channel improvements such as widening or armoring with riprap, and installation of grade control structures. Required work consists of evaluating the integrity of the levee system by conducting a series of geotechnical explorations and analysis to identify where levee rehabilitation is required. The levee rehabilitation work involves the replacement of unstable reaches, reconditioning of the levee side slopes, levee road resurfacing, and replacement of existing structure gates. The levee system would be evaluated and arrangements worked with Mexico for levee rehabilitation in both countries with an equal distribution of costs. The proposed project also seeks to evaluate best management practices regarding flood control, boundary river preservation, and flood plain management, taking into account the project riparian ecosystem. In addition, the EIS will study the environmental effects of a long-range maintenance plan that will be developed.

Coordination with the United States Fish and Wildlife Service will ensure compliance with the Fish and Wildlife Coordination Act and section 7 of the

Endangered Species Act of 1973, as amended. Cultural resources reconnaissance for the project area will be coordinated with the Texas State Historic Preservation Officer. Other federal and state agencies, as required, will also be consulted to ensure compliance with federal and state laws and regulations.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, CEQ Regulations, other appropriate federal regulations, and the USIBWC procedures for compliance with those regulations. When the EIS is completed, copies will be transmitted to federal and state agencies and other interested parties for comments. It will be filed with the Environmental Protection Agency in accordance with 40 CFR Parts 1500–1508 and USIBWC procedures. The USIBWC estimates, pending receipt of funds necessary for completion, the Draft EIS will be completed within three years of receipt of those funds.

Dated: January 5, 2000.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 00–900 Filed 1–13–00; 8:45 am]

BILLING CODE 4710–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meetings

The National Credit Union Administration Board determined that its business requires the deletion of the following item from the previously announced open meeting (**Federal Register**, Vol. 65, No. 7, page 1647, Tuesday, January 11, 2000) scheduled for Thursday, January 13, 2000.

4. NCUA's "Results Act" Strategic Plan and Annual Performance Plan.

The Board voted unanimously that agency business requires that this item be deleted from the open agenda and that no earlier announcement of this change was possible.

The previously announced items are:

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Request from a Corporate Federal Credit Union for a National Field of Membership Amendment.
3. Request from a Corporate Credit Union to Convert to a Federally Chartered Corporate Credit Union with a National Field of Membership.
4. NCUA's "Results Act" Strategic Plan and Annual Performance Plan.

The National Credit Union Administration Board also determined

that its business requires the deletion of the following item from the previously announced closed meeting.

1. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

The Board voted unanimously that agency business requires that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The previously announced items are:

1. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

2. Administrative Action under sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

3. Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

4. Administrative Action under Part 703 of NCUA's Rules and Regulations. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

5. One (1) Personnel Action. Closed pursuant to exemptions (2), (5), (6), (7) and (9)(B).

FOR FURTHER INFORMATION CONTACT:

Becky Baker, Secretary of the Board,
Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–1035 Filed 1–12–00; 11:38 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (International Section) to the National Council on the Arts will be held on January 26, 2000. The panel will meet from 3 to 3:30 p.m. via teleconference from room 704 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be

closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines and Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: January 10, 2000.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations,
National Endowment for the Arts.*

[FR Doc. 00–917 Filed 1–13–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XLVII

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on January 28, 2000 from 9 a.m. to approximately 12 p.m. The meeting will be held in the Van Buren Room, 8th Floor, Department of State, Washington, DC.

The Committee meeting will begin at 9 a.m. with opening remarks by Dr. John Brademas, Chairman of the President's Committee, and Ms. Evelyn Lieberman, Undersecretary for Public Diplomacy and Public Affairs, Department of State. This will be followed by special presentations by: Shirley Brice Heath, Author/Researcher, *Champions of Change*; Whit Alexander, Chief Noddler, Cranium; and Isaac Colon III, Poet, DC WritersCorps. The Committee will hear agency presentations from Bill Ivey, Chairman of the National Endowments for the Arts, William Ferris, Chairman of the National Endowment for the Humanities, and Beverly Sheppard, Acting Director of the Institute of Museum and Library Services. There will also be Task Force Reports on Education, Oral History, and Ethnic Diversity. The meeting will conclude with remarks by Harriet Mayor Fulbright, Executive Director of the President's Committee.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote

public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Shawn Wray of the President's Committee in advance at (202) 682-5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Mr. Wray.

If you need special accommodations due to a disability, please contact Mr. Wray through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Dated: January 10, 2000.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations,
National Endowment for the Arts.*

[FR Doc. 00-918 Filed 1-13-00; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m., local time on Thursday, January 20-21, 2000, at the Double Tree Hotel, 300 Canal Street, New Orleans, Louisiana 70130 concerning Commercial Drivers License and Medical Certification. For more information, contact Barbara Czech, NTSB Office of Highway Safety at (202) 314-6169 or Lauren Peduzzi and Phil Frame, NTSB Office of Public Affairs at (202) 314-6100.

Individuals requesting specific accommodation should contact Mrs. Carolyn Dargan on 202-314-6305 by Friday, January 14, 2000.

Dated: January 11, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00-926 Filed 1-13-00; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-69 issued to Niagara Mohawk Power Corporation (the licensee) for operation of the Nine Mile Point Nuclear Station, Unit No. 2 (NMP2) located in Scriba, Oswego County, New York.

The proposed amendment would revise the reactor vessel material coupon withdrawal schedule specified in Technical Specifications (TS) Table 4.4.6.1.3-1, entitled "Reactor Vessel Material Surveillance Program—Withdrawal Schedule." The current surveillance schedule requires the withdrawal of capsule number 1 at 10 effective full-power years (EFPY). The revised surveillance schedule requires the withdrawal of capsule number 1 at 8 EFPY. The existing TS 4.0.2 requires each surveillance requirement to be performed within the specified time interval with a maximum allowable extension not to exceed 25% of the surveillance interval. Thus, the revised surveillance schedule, together with the existing TS 4.0.2, will require the withdrawal of capsule number 1 between 8 EFPY and 10 EFPY (i.e., during the upcoming refueling outage Refueling No. 7 (RFO7), estimated at 8.7 EFPY).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(1) The proposed change revises TS Table 4.4.6.1.3-1, titled "Reactor Vessel Material Surveillance Program—Withdrawal Schedule." The current reactor vessel material surveillance program schedules the withdrawal of capsule number 1 at 10 EFPY. The revised schedule would require withdrawal of capsule number 1 at 8 EFPY. Removal of the surveillance capsule in RFO7, for testing at an estimated 8.7 EFPY, satisfies the requirements of the NMP2 surveillance program. NMP2 satisfies the criteria in Section III.C of Appendix H to 10 CFR part 50 (integrated surveillance program). Compliance with the criteria of Section III.C ensures that the effect of neutron irradiation on the NMP2 reactor vessel beltline materials will be monitored throughout the life of the plant. Therefore, this change will not significantly increase the consequences of any previously evaluated accident. Since the reactor vessel surveillance specimen capsules and the results of analyses performed on the specimens contained therein are not assumed to be initiators of any design basis accident or transient, this change does not involve a significant increase in the probability of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) The proposed change does not introduce any new failure modes. Removal of the surveillance capsule in RFO7, for testing at an estimated 8.7 EFPY, satisfies the requirements of the NMP2 surveillance program. NMP2 satisfies the criteria in Section III.C of Appendix H (integrated surveillance program). Compliance with the Section III.C criteria ensures that the effect of neutron irradiation on the NMP2 reactor vessel beltline materials will be monitored throughout the life of the plant. Therefore, this proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

(3) Removal of the surveillance capsule in RFO7 for testing at an estimated 8.7 EFPY, satisfies the requirements of the NMP2 surveillance program. NMP2 satisfies the criteria in Section III.C of Appendix H (integrated surveillance program). Compliance with the 10 CFR 50, Appendix H, Section III.C criteria ensures that the effect of neutron irradiation on the NMP2 reactor vessel beltline materials will be monitored throughout the life of the plant. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 14, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific

sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing

Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 28, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 10th day of January 2000.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–974 Filed 1–13–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (<http://www.pbgc.gov>).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in January 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in February 2000. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062

and multiemployer withdrawal liability under part 4219 apply to interest accruing during the first quarter (January through March) of 2000.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the “applicable percentage” (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the “premium payment year”). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in January 2000 is 5.40 percent (*i.e.*, 85 percent of the 6.35 percent yield figure for December 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between February 1999 and January 2000.

For premium payment years beginning in	The assumed interest rate is
February 1999	4.39
March 1999	4.56
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08
September 1999	5.16
October 1999	5.16
November 1999	5.32
December 1999	5.23
January 2000	5.40

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on

late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the first quarter (January through March) of 2000, as announced by the IRS, is 8 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (“Selected Interest Rates”). The rate for the first quarter (January through March) of 2000 (*i.e.*, the rate reported for December 15, 1999) is 8.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest rate (percent)
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in February 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of January 2000.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00-860 Filed 1-13-00; 8:45 am]

BILLING CODE 7708-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24234; File No. 812-11584]

Great-West Life & Annuity Insurance Company, et al.; Notice of Application

January 7, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or Commission").

ACTION: Notice of Application for approval under Section 26(b) of the Investment Company Act of 1940, as amended.

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Janus Aspen Worldwide Growth Portfolio for the Van Eck Worldwide Hard Assets Fund; the Janus Aspen International Growth Portfolio for the Lexington Emerging Markets Fund; the SAFECO RST Growth Portfolio for the Stein Roe Special Venture Fund; the INVESCO VIF—Equity Income Fund for the INVESCO

VIF—Total Return Fund; and the Alger American Growth Portfolio for the Janus Aspen Aggressive Growth Portfolio, Alger American Small Capitalization Portfolio, Strong Discovery Fund II and American Century VP Capital Appreciation Portfolio.

APPLICANTS: Great-West Life & Annuity Insurance Company ("GWL&A"), First Great-West Life & Annuity Insurance Company ("FGWLA"), Variable Annuity-1 Series Account of GWL&A (the "GWL&A Account"), Variable Annuity-1 Series Account of FGWLA (the "FGWLA Account" or together, with the GWL&A Account, the "Accounts") (hereinafter, all parties are collectively referred to as the "Applicants").

FILING DATE: The application was filed on April 16, 1999, and amended and restated on September 29, 1999, and December 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 31, 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, c/o Jorden Burt Boors Cicchetti Benson & Johnson, LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, DC 20007-0805; Attention: Tom Ira, Esq.

FOR FURTHER INFORMATION CONTACT: Michael Pappas, Senior Counsel, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicant's Representations

1. GWL&A is a stock life insurance company organized under the laws of

the State of Colorado. GWL&A is an indirect, wholly-owned subsidiary of The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco, Inc., an insurance holding company ultimately controlled by Power Corporation of Canada. GWL&A is principally engaged in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and in all states of the United States, except New York.

2. FGWLA is a stock life insurance company organized under the laws of the State of New York. FGWLA is a wholly owned subsidiary of GWL&A, and is principally engaged in the sale of life insurance, accident and health insurance, and annuities. FGWLA is admitted to do business in New York and Iowa.

3. The GWL&A Account and the FGWLA Account are distinct investment accounts of GWL&A and FGWLA, respectively, which act as funding vehicles for certain group and individual flexible premium variable deferred annuity contracts (the "Schwab Contracts" or the "Contracts"). Charles Schwab & Co., Inc. ("Schwab") is the principal underwriter and distributor of the Schwab Contracts. The assets of the GWL&A Account and the FGWLA Account are owned by GWL&A and FGWLA, respectively, and the obligations under the Schwab Contracts are obligations of GWL&A and FGWLA, respectively. GWL&A and FGWLA each are required to maintain sufficient assets in the GWL&A Account and FGWLA Account, respectively, to meet anticipated obligations of the Schwab Contracts.

4. The Schwab Contracts currently offer twenty-eight investment sub-accounts, each of which invest exclusively in one of the corresponding portfolios (the "underlying portfolios") of sixteen open-end management investment companies. The assets of the Accounts are kept separate from the other assets of GWL&A and FGWLA. The income, gains, and losses of the Accounts, whether or not realized, are credited to or charged against the Accounts without regard to other income, gains, or losses of any other separate account or arising out of any other business that GWL&A or FGWLA may conduct.

5. The GWL&A Account is a unit investment trust ("UIT") and has filed a registration statement on form N-4 (Registration Nos. 811-07549 and 333-01153) for the purpose of registering the GWL&A Account under the 1940 Act

and the Schwab Contracts as securities under the Securities Act of 1933, as amended ("the 1933 Act").

6. The FGWLA Account is a UIT and has filed a registration statement on Form N-4 (Registration Nos. 811-08183 and 333-25289) for the purpose of registering the FGWLA Account under the 1940 Act and the Schwab Contracts as securities under the 1933 Act.

7. The Schwab Contracts are flexible premium annuity contracts which may be issued under retirement plans which qualify for federal tax benefits under Section 408 of the Internal Revenue Code (the "Code") as individual retirement accounts, other retirement plans which do not qualify under the Code or to individuals in non-plan contexts.

8. The Schwab Contracts do not have either contingent deferred or front-end

sales loads and no sales charge applies to the transfer among sub-accounts offered in the Contracts. Under the Contracts, there are no limits on the number of transfers a Contract owner can make. There is, however, a \$10.00 fee for each transfer in excess of twelve in any calendar year. The proposed substitution will not count as a transfer for this purpose. The Contracts also have an annual contract fee of \$25.00. The contract charge currently is waived for Contracts with an Annuity Account Value of at least \$50,000. These charges will not be affected by the transfer.

9. The Contracts expressly reserve GWL&A's and FGWLA's respective rights, both on their own behalf and on behalf of the Accounts, to eliminate sub-accounts, combine two or more sub-accounts are invested or for a new underlying portfolio.

10. GWL&A and FGWLA, on their own behalf and on behalf of the Accounts, propose to exercise their contractual right to eliminate the Van Eck Worldwide Hard Assets Fund, Lexington Emerging Markets Fund, Stein Roe Special Venture fund, Janus Aspen Aggressive Growth Portfolio, Alger American Small Capitalization Portfolio, Strong Discovery Fund II, American Century VP Capital Appreciation Portfolio, and the INVESCO VIF—Total Return Fund as funding options under the Contracts.

Collectively, the portfolios being eliminated will hereinafter be referred to as the "Eliminated Portfolios."

11. GWL&A and FGWLA each propose the following substitutions. Applicants state that none of the funds are affiliated with GWL&A or FGWLA under the 1940 Act.

Substituted portfolios	Eliminated portfolios
Janus Aspen Worldwide Growth Portfolio	Van Eck Worldwide Hard Assets Fund.
Janus Aspen International Growth Portfolio	Lexington Emerging Markets Fund.
SAFECO RST Growth Portfolio	Stein Roe Special Venture Fund.
INVESCO VIF—Equity Income Fund	INVESCO VIF—Total Return Fund.
Alger American Growth Portfolio	Janus Aspen Aggressive Growth Portfolio.
	Alger American Small Capitalization Portfolio.
	Strong Discovery Fund II.
	American Century VP Capital Appreciation Portfolio.

12. In each case, Applicants have determined that the Substituted Portfolio is the most appropriate investment alternative in relation to the respective Eliminated Portfolio as compared with all other options available under the Contracts, taking into account all relevant factors. Applicants believe that the Substituted Portfolios have, as their primary emphasis, investment objectives that are similar to or consistent with those of the corresponding Eliminated Portfolios such that investment expectations of Contract owners would continue to be fulfilled upon consummation of each of the proposed substitutions. While, in a relatively few cases, an Eliminated Portfolio may seek to achieve its objective by employing a strategy that

differs from the strategy employed by the respective Substituted Portfolio, Applicants argue that comparability of corresponding funds is but one factor, albeit an important one, to be considered for purposes of determining whether a proposed substitution should be approved pursuant to Section 26(b). Further, in the few cases where the Eliminated Portfolio's strategy differs from the Substituted Portfolio's strategy, Applicants note that the Eliminated Portfolios have generated less Contract owner interest while the Applicants have observed increased demand for the Substituted Portfolios. Applicants believe that essentially all other appropriate factors weigh in favor of each of the proposed substitutions. These include, among others,

comparative performance histories, relative asset bases, fee levels, the tax free nature of the proposed transactions, and the diversity of other investment options available under the Contracts. Applicants emphasize that, to the extent Contract owners seek a particular investment option, such as a small cap option, Contract owners will have ample opportunity to allocate their assets among the wide range and number of investment options available under the Contracts should they decide that the Substituted Portfolios are not appropriate for their needs.

13. Applicants represent that, without taking waivers or reductions into account, the total expenses of the Substituted Portfolios compared to the Eliminated Portfolios are as follows:

Substituted portfolios	Eliminated portfolios
Janus Aspen Worldwide Growth Portfolio—0.74% ¹	Van Eck Worldwide Hard Assets Fund—1.17%.
Janus Aspen International Growth Portfolio—0.95% ²	Lexington Emerging Markets Fund—1.84%.
SAFECO RST Growth Portfolio—0.80%	Stein Roe Special Venture Fund—0.73%.
INVESCO VIF—Equity Income Fund—0.91%	INVESCO VIF—Total Return Fund—0.92%.
Alger American Growth Portfolio—0.79%	Janus Aspen Aggressive Growth Portfolio—0.76%.
	Alger American Small Capitalization Portfolio—0.89%.
	Strong Discovery Fund II—0.1.20%.
	American Century VP Capital Appreciation Portfolio—1.00%.

¹ With waivers or reductions, the total expenses for the Janus Aspen Worldwide Growth Portfolio would be 0.72%.

² With waivers or reductions, the total expenses for the Janus Aspen International Growth Portfolio would be 0.86%.

14. Applicants represent that the Average Annual Total Return of the Substituted and Eliminated Portfolios over one, three, five and ten years as of the period ended December 31, 1998, was as follows:

Substituted Portfolios				Eliminated Portfolios			
Janus Aspen Worldwide Growth Portfolio				Van Eck Worldwide Hard Assets Fund			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
28.92%	26.66%	21.32%	N/A	-30.92%	-7.13%	-3.26%	N/A
Janus Aspen International Growth Portfolio				Lexington Emerging Markets Fund			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
17.23%	23.23%	N/A	N/A	-28.21%	-11.96%	N/A	N/A
SAFECO RST Growth Portfolio				Stein Roe Special Venture Fund			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
1.83%	24.80%	25.13%	N/A	-17.31%	4.21%	5.06%	N/A
INVESCO VIF—Equity Income Fund				INVESCO VIF—Total Return Fund			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
15.30%	21.81%	N/A	N/A	9.56%	14.75%	N/A	N/A
Alger American Growth Portfolio				Janus Aspen Aggressive Growth Portfolio			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
48.08%	27.93%	23.50%	N/A	34.26%	17.76%	19.35%	N/A
Alger American Growth Portfolio				Alger American Small Capitalization Portfolio			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
48.08%	27.93%	23.50%	N/A	15.53%	10.25%	13.21%	20.21%
Alger American Growth Portfolio				Strong Discovery Fund II			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
48.08%	27.93%	23.50%	N/A	34.26%	17.76%	19.35%	N/A
Alger American Growth Portfolio				American Century VP Capital Appreciation Portfolio			
1 Year	3 Years	5 Years	10 Years	1 Year	3 Years	5 Years	10 Years
48.08%	27.93%	23.50%	N/A	-2.22%	-3.40%	3.10%	8.40%

15. Applicants have concluded that the Substitution would be appropriate in light of, among other things, the relatively poor performance of the Eliminated Portfolios. Applicants assert that the Eliminated Portfolios will be replaced with portfolios having comparable investment objectives and better historical performance returns and, accordingly, Applicants believe the Substituted Portfolios are more likely to provide Contract owners with favorable investment performance in the future. Applicants assert that the Substitution will not expose Contract owners to any

unreasonable risks and that, in each case, expense ratios of the Substituted Portfolios are less than or comparable to the respective Eliminated Portfolios and the historical performance of the Substituted Portfolios are better than those of the respective Eliminated Portfolios.

16. If Contract owners are not satisfied with the Substituted Portfolio to which their assets will be reallocated upon consummation of the Substitution, Contract owners will have the opportunity to transfer those assets into any of the other investment options

available under their Contracts. In this regard, Applicants state that even after the Substitution is effected, there will still be a total of 27 other investment options (not including the Substituted Portfolio).

17. GWL&A and FGWLA will schedule the Substitution to occur on the Automatic Selection Date. Such date will be soon as practicable following the issuance of an order by the Commission granting the relief requested in the Application. As of the Automatic Selection Date, all Contract values allocated to the Eliminated Portfolios

will be reallocated to the corresponding Substituted Portfolios. Contract owners can always exercise their own judgment as to the most appropriate alternative investment and transfer their assets from the Eliminated Portfolios to any one or a mix of the remaining sub-accounts available under their Contracts. Applicants note that, even after the Substitution, the Contracts will continue to offer a wide array of investment options having diverse investment objectives. No sales load deductions or other charges will be assessed in connection with any transfers among sub-accounts because of the Substitution.

18. By way of sticker, the Schwab Variable Annuity prospectuses have disclosed the proposed Substitution for several months. The stickers also disclosed that the Eliminated Portfolios will not accept additional premium payments (i.e. new money or transfers) on or after June 1, 1999, and that contract values allocated to the Eliminated Portfolios can be transferred without assessment of any charges and without such transfers counting toward the twelve free transfers permitted each calendar year. These stickers were mailed to all Contract owners at or around the time of filing of the initial Application. After the Notice of Application is issued, a second notification will be provided to all Contract owners who have amounts allocated to the Eliminated Portfolios, again advising them of the pending Substitution and of their ability to transfer free of charge to the remaining sub-accounts of their choice (or remain in the Eliminated Portfolios until the automatic substitution on the Automatic Selection Date).

19. The Contract owners also will be mailed a confirmation of the Substitution transaction within five days of the Automatic Selection Date. The confirmation will contain a reminder of the Contract owner's ability to effect one transfer without incurring any charges, and such transfer will not be counted as one of the twelve free transfers permitted in a calendar year so long as the transfer is made within 30 days of the effective date of the Substitution.

20. Applicants represent that the proposed Substitution will be effected by redeeming shares of the Eliminated Portfolios on the Automatic Selection Date at net asset value and using the proceeds to purchase shares of the corresponding Substituted Portfolio at net asset value on the same date. Contract owners will not incur any fees or charges as a result of the transfer of account values from the Eliminated

Portfolios. The Substitution will not increase Contract or separate account fees and charges after the Substitution. Expenses incurred in connection with the Substitution, including legal, accounting and other expenses, will not be borne by Contract owners. Contract values will remain unchanged and fully invested following the consummation of the Substitution. In addition, Applicants represent that, as of the date of filing of the second amended Application, and to Applicants' best knowledge, the Substitution will not result in any adverse federal income tax impact on owners. Following the Substitution, the sub-accounts which invest in the Eliminated Portfolios will be terminated.

Applicant's Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of securities.

3. Applicants represent that the purposes, terms and conditions of the Substitution are consistent with the protections for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent.

4. Any Contract owner who does not want his or her assets allocated to the Substituted Portfolio would be able to transfer assets to any one of the other investment divisions available under his or her Contract without charge. Such transfers could be made prior to or after Automatic Selection Date.

5. The Substitution will be effected at net asset value in conformity with Section 22 of the 1940 Act and Rule 22c-1 thereunder. Contract owners will not incur any fees or charges as a result of the transfer of account values from any Portfolio. There will be no increase in the Contract or separate account fees and charges after the Substitution. All Contract values will remain unchanged and fully invested. In addition, Applicants represent that, as of the date of filing the second amended Application, and to Applicants' best

knowledge, the Substitution will not have any adverse federal income tax impact on Contract owners. Contract owners', GWL&A's, and FGWLA's rights and obligations under the Schwab Contracts will not be affected in any way by the Substitution.

Conclusion

In light of the foregoing facts and representations, Applicants believe that the request to allow the Substitution meets the applicable standards of an order under Section 26(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-893 Filed 1-13-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42323; File No. SR-DTC-99-24]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Collateralization Procedures

January 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ ("Act"), notice is hereby given that on October 27, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise DTC's collateralization procedures for situations where a participant holds collateral associated with the participant.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any

¹ 15 U.S.C. 78s(b)(1).

comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC employs risk management controls to protect DTC and its participants from the inability of one or more participants to pay its settlement obligation. One such control, collateralization, is meant to ensure that at all times a participant maintains collateral in its account equal to or greater than its net debit. If a participant were to fail to pay its settlement obligation, collateral in the failing participant's account would be used to support any necessary borrowing and potential liquidation.

On a small number of occasions, the collateral in a participant's account has been associated with the participant (for example, the participant's own commercial paper). In a situation where a participant's obligation is supported partly or fully by its associated securities, the risk that DTC would not have sufficient collateral if that participant were to fail to pay DTC its settlement obligation is increased. Although such incidents are infrequent, DTC has reviewed its collateralization procedures that it follows to protect against a participant's failure to settle with DTC due to a financial or operational problem with respect to such situations.³ As a result of its review, DTC is proposing to revise the aforesaid procedures to provide for a systemic monitor that will withhold collateral value for collateral associated with a participant.⁴

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will facilitate completion of daily money settlement at DTC in the event of a participant's failure to settle with DTC. According to DTC, the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which

it is responsible because the collateralization procedures supplement DTC's existing risk management controls.

B. Self-Regulatory Organization's Statement on the Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC discussed the proposed rule change with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal

office of DTC. All submissions should refer to File No. SR-DTC-99-24 and should be submitted by February 4, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-980 Filed 1-13-00; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S1 for the Office of the Deputy Commissioner for Finance, Assessment and Management (DCFAM) is being amended to reflect a title change and minor organizational changes within the Office of Financial Policy and Operations. The changes are as follows:

Section S1N.10 The Office of Financial Policy and Operations—
(Organization):

Retitle:

G. The Office of Systems Security (S1NG) to the Office of Information Systems Security (S1NG).

Section S1N.20 The Office of Financial Policy and Operations—
(Functions):

Retitle and amend as follows:

G. The Office of Systems Security (S1NG) to the Office of Information Systems Security (S1NG).

The Office of Information Systems Security directs, coordinates and manages SSA's overall information systems security program. This includes the development of SSA's security policy requirements and procedures, the effective implementation of other governing directives in the area of security, the administration of an effective access control program, an onsite review program and a comprehensive security compliance and corrective action monitoring program. It provides educational training and awareness programs to management and employees on security policy/requirements; serves as the Agency focal point for day-to-day contact with the Office of Inspector General on matters of fraud, waste and abuse; and provides direction and guidance to the Agency's component and regional security officers. The Office is also responsible

² The Commission has modified the text of the summaries prepared by DTC.

³ DTC's current procedures relating to risk management controls are set forth in memorandums dated March 17, 1995, which are attached to Exhibit 3 to DTC's filing.

⁴ DTC's proposed collateralization procedures are attached as Exhibit 2 to DTC's filing.

for developing and implementing security requirements/safeguards for SSA's State information exchange program.

Dated: January 5, 2000.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 00-880 Filed 1-13-00; 8:45 am]

BILLING CODE 4191-02-U

DEPARTMENT OF STATE

[Public Notice 3202]

Culturally Significant Objects Imported for Exhibition Determinations: "Treasures of the Last Empire"

AGENCY: United States Department of State.

ACTION: Amendment.

SUMMARY: On June 30, 1999, notice was published at page 35253 of the **Federal Register** (64 FR 35253) by the United States Information Agency pursuant to Pub. L. 89-259 relating to the exhibit "Treasures of the Last Empire." I hereby determine that seventeen additional works of art to be included in the exhibit and imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition of these works of art as part of the exhibit aboard The Queen Mary, Long Beach, California, from on or about January 15, 2000, to on or about April 25, 2000, is in the national interest.

Dated: January 9, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00-986 Filed 1-13-00; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 3203]

Bureau of Educational and Cultural Affairs Fulbright Teacher Exchange Program Orientation

AGENCY: Department of State.

ACTION: Request for Proposals.

SUMMARY: The Office of Global Educational Programs of the United States Department of State's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations, with a minimum of four years of experience in successfully administering orientation programs, and meeting the provisions

described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer August 2000 orientation activities in Washington DC for approximately 570 foreign and U.S. teachers and dependents participating in the Fulbright Teacher Exchange Program. The activities prepare participants in the program to teach (elementary, secondary, or college level) in the educational system of another country. The programming specifically strives: (a) To provide U.S. teachers with opportunities to meet face-to-face with their foreign exchange partners to discuss the details of their individual exchange assignments; (b) To provide participants with an understanding of the educational systems in which they will be teaching; and (c) To provide teachers with practical guidance on living in their countries of destination, with particular references to cross-cultural differences. The award in the FY-2000 competition will be approximately \$260,000. Grants are subject to the availability of committed funds for Fiscal Year 2000.

Proposal

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package for this RFP. The Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Announcement Title and Number: All communications with the Bureau concerning this RFP should refer to Fulbright Teacher Exchange Program

Orientation and reference number ECA/A/S/X-00-03.

Deadline for Proposals: All copies must be received at the Bureau of Educational & Cultural Affairs by 5 p.m. Washington, DC time on *Friday, March 10, 2000*. Faxed documents will not be accepted at any time, nor will documents postmarked *March 10, 2000*, but received at a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Program Dates: Grant should begin on or about May 1, 2000 and run through April 30, 2001.

FOR FURTHER INFORMATION CONTACT:

United States Department of State, Bureau of Educational & Cultural Affairs, Office of Global Educational Programs, Fulbright Teacher Exchange Branch, State Annex 44, ECA/A/S/X, room 349, 301 4th Street, SW, Washington, DC 20547, telephone: (202) 619-4556, fax: (202) 401-1433 to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify Bureau Program Officer Dehab Ghebreab, (telephone: 202-619-4556; e-mail: dghebreab@usia.gov) on all inquiries and correspondence.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at <http://e.usia.gov/education/rfps>. Please read all information before downloading.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X-00-03, Program Management Staff, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the

diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology web-site at <http://www.itpolicy.gsa.gov>.

SUPPLEMENTARY INFORMATION:

Overview: August Orientation Workshop

Approximately 570 U.S. and foreign exchange teachers and their dependents from approximately 30 countries will attend an orientation workshop in Washington, DC, from Monday, July 31 to Friday, August 4, 2000. Names and numbers of participants will be provided in May/June after completion of the educator matching process. (There will be approximately 152 US teachers, 190 foreign teachers and 228 family members.)

Participating countries arrange for non-U.S. teachers to arrive at the U.S. orientation site. Flights carrying non-U.S. teachers and their families should arrive on Monday, July 31, 2000 in the Washington, DC area. Arrangements should be made by the recipient institution for the U.S. teachers and

their families to arrive at the orientation on Tuesday, August 1, which is a rest day for foreign teachers. (The recipient institution must require U.S. teachers to make their own travel arrangements to the orientation site, on a reimbursable basis). The workshop itself will take place August 2-3 for all participants. Departure will be scheduled for August 4.

Purpose: The purpose of the August orientation workshop is to provide U.S. and foreign teachers and their spouses and dependents with a wide range of briefings, training, and discussions to assist them in preparing to function effectively in host schools and communities here and abroad in order to promote the mission of the Fulbright Program, mutual understanding. Partners meet face-to-face and share important information about their workplace and other particulars concerning their individual exchanges. The workshop should focus on the teachers' need to understand education in the host country, the professional and personal aspects of the exchange, and the many aspects of adjustment to living abroad, including cross-cultural orientation. The workshop should also address the anticipated needs and concerns of spouses and children so that they are able to optimally benefit from the exchange year abroad.

Agenda: The agenda should recognize partner relationship building as a priority by scheduling joint sessions for U.S. and foreign partners in the morning, establishing training objectives for each session, and sequencing sessions to reinforce experiential learning. An equivalent of one day should be set aside for the US teachers and their families, as well as exchange partners and their families, to attend joint sessions and discuss their individual exchanges one-on-one.

Sessions for U.S. and foreign teachers, some with their spouses, should include presentations on educational systems and cross-cultural matters. The POGI contains more specific information.

Additional Activities

In developing the program agenda, cooperating institution may wish to provide additional activities designed to strengthen teachers' and dependents' abilities to function in a foreign setting. Time constraints should be considered: sessions must not interfere with the partner joint sessions and (one-on-one) discussions. Possibilities might include sessions on cross-cultural communication and understanding, and visits to embassies, consulates, and cultural gatherings. It may also be possible to schedule sessions on August

1 when all foreign teachers are present and most U.S. teachers will have arrived by the afternoon.

Speakers

Cooperating institution is to identify and invite speakers and panelists to cover all sessions, but must demonstrate its ability and willingness to draw on its own resources to identify such individuals, as well as other resources beyond the organization. This includes universities in the area, consulting groups, embassy personnel or other experts. Speakers may include State Department's specialists, staff from foreign counterpart agencies, university faculty, international and intercultural specialists, foreign consular and embassy officials, former exchange teachers, foreign teachers, currently on exchange in the United States, U.S. administrators associated with the program and others. The Bureau must approve speaker/panelist selections. During the sessions set aside for administrative matters, Bureau staff will specifically designate State Department specialists and staff from foreign counterpart agencies to serve as resource people and speakers. The cooperating institution may also be asked to call on these people to assist with other orientation sessions. As much as possible, presenters should incorporate Fulbright specific situations, issues, and materials.

Services

In addition to developing the agenda and securing speakers, the cooperating institution will provide specific services in consultation with Bureau program officers. The POGI contains more specific information.

Web-Site

The institution will be expected to design a web-site to support easy access to information pertaining to the August orientation program. The web-site should be linked to the Bureau's and program agency's appropriate sites to help grantees access additional resources and information.

Reports

The institution will be expected to design and distribute an evaluation for the August orientation to be completed by the teachers. Such a form will cover program content, including meeting sessions, as well as logistical arrangements such as housing, food, and general meeting facilities. The form will be cleared by Bureau prior to its use. Participants' evaluations should be tabulated and sent to the Bureau no later than four weeks after the orientation.

The institution should also provide the Bureau with a substantive written analysis of the orientation, with recommendations for improving future orientations (no later than ten weeks after the orientation). The Bureau reserves the right to conduct an independent evaluation of the program. The institution is also required to provide a breakdown of actual cost figures for the orientation no later than ten weeks after the completion of the orientation.

Special note: The cooperating institution will survey the literature of appropriate subject fields to determine materials of greatest potential value to teachers. If approved by the Bureau, recipient institution will purchase materials (up to \$40 per teacher). The institution will also compile other materials as directed by the Bureau. These may include materials on U.S. education, including current trends and initiatives, materials on education in selected foreign countries, materials on cross-cultural adjustment and understanding, materials that provide guidance on living abroad, and other materials which the institution and the Bureau staff consider useful. The institution will provide these materials to U.S. and foreign exchange teachers at the orientation.

Note: The Bureau may also request that cooperating institution arrange additional orientation and/or training, or workshop briefings for program participants and administrators, resource people, and organizers during the award period. Cooperating institution may also be asked to provide programming and other services to the Bureau including, but not limited to, peer committee chairpersons workshops, predeparture orientation activities, foreign and U.S. teacher debriefings, materials purchase and distribution, and the development of new program information, including materials and videos.

Proposed Budget

Organizations must submit a comprehensive line-item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate the Bureau decisions on funding. Administrative costs should be kept low; this will be an important factor in grant competition. Also, the ability to achieve cost-effectiveness within budget guidelines through cost-sharing will enhance competitive proposals. Please refer to

the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by Bureau officers. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices of the State Department. Funding decisions will be made at the discretion of the Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with a contracts officer with competency for Bureau programs.

Review Criteria

State Department officers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighted.

1. *Quality and Clarity of Program Planning:* Proposals should exhibit substance, precision, and relevance to Bureau mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by outlining relevant aspects of the institutional profile. Achievable and relevant features should be cited in both program administration and program content (orientation sessions, resource materials, and choice of resources).

3. *Institutional Capacity and Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the State Department's Contracts office. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Project Evaluation:* Proposals should include a plan to evaluate the activities' success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended.

5. *Cost-effectiveness and Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through the internal Bureau procedures.

Dated: January 7, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs.

[FR Doc. 00-985 Filed 1-13-00; 8:45 am]

BILLING CODE 4710-11-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Functional Advisory Committee on Electronic Commerce (IFAC-4)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Functional Advisory Committee on Electronic Commerce (IFAC-4) will hold a meeting on February 3, 2000, from 9 a.m. to 3 p.m. The meeting will be open to the public from 9 a.m. to 12 noon and closed to the public from 12 noon to 3 p.m.

DATES: The meeting is scheduled for February 3, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Eric Fredell, Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230, (202) 482-0304 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. NW, Washington, DC 20508, (202) 395-6120.

SUPPLEMENTARY INFORMATION: The IFAC-4 will hold a meeting on February 3, 2000 from 9 a.m. to 3 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 12 noon to 3 p.m. The meeting will be open to the public and press from 9 a.m. to 12 noon, when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 00-894 Filed 1-13-00; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Two Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on two currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before March 14, 2000.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267-9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on the following two current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following is a short synopsis of the two currently approved public information collection activities, which will be submitted to OMB for review and renewal:

1. 2120-0608, Commercial Space Transportation Licensing Regulations. The data requested for a license application to conduct commercial space launch activities are required by the Commercial Space Launch Act of 1984, 49 U.S.C. App. §§ 2601-2623, as recodified at 49 U.S.C. 70101-70119 (1994). The required information will be used to determine if applicant proposals for conducting commercial space launches can be accomplished in a safe manner according to regulations and license orders issued by the Office of the Associate Administrator for Commercial Space Transportation. Respondents are an estimated 6 licensees authorized to conduct licensed launch activities. The estimated annual burden is 3000 hours.

2. 2120-0652, Changes in Permissible Stage 2 Airplane Operations. On 11/29/99, the President signed legislation (PL 106-113) amending the Airport Noise and Capacity Act (ANCA) of 1990. The primary focus of ANCA was the prohibition on Stage 2 airplane flight in the contiguous United States after 12/31/99. The changes to ANCA give the FAA new authority to allow certain non-revenue Stage 2 flights after the statutory compliance date. After 12/31/99, operations will need a special flight authorization to bring Stage 2 airplanes into the U.S. in non-revenue service for a certain purpose. The respondents are an estimated 100 operators of stage 2

airplanes needing to bring Stage 2 airplanes into the U.S. in non revenue service for a certain purpose. The estimated annual burden is 25 hours.

Issued in Washington, DC, on January 10, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF-100.

[FR Doc. 00-932 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-1999-6689]

Railroad Car Conspicuity; Establishment of Public Docket

Congress, in the Federal Railroad Safety Authorization Act of 1994 (Pub. L. No 103-440), requires FRA to conduct a review of the Department's rules with respect to the visibility of railroad cars. Part of this review includes collecting relevant data from operational experience by railroads having enhanced visibility measures in service. The statute, codified at 49 U.S.C. 20148, provides that if the review establishes that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary of Transportation shall initiate a rulemaking to prescribe regulations requiring enhanced visibility standards for railroad cars. The Secretary has delegated this responsibility to the Federal Railroad Administration ("FRA").

FRA will consider, at a minimum—

- (1) visibility of railroad cars from the perspective of nonrailroad traffic;
- (2) whether certain railroad car paint colors should be prohibited or required;
- (3) the use of reflective materials;
- (4) the visibility of lettering on railroad cars;
- (5) the effect of any enhanced visibility measures on the health and safety of train crew members; and
- (6) the cost/benefit ratio of any new regulations.

In an effort to carry out the Congressional mandate, FRA is establishing a public docket to provide all interested parties with a central location to both send and review relevant information concerning railroad car conspicuity. The docket established for this purpose is designated Docket No. FRA-1999-6689. The information submitted to the docket will aid FRA in determining whether or not a rulemaking will ultimately be appropriate.

The public is invited to submit both relevant information and relevant comments to the docket. Written submissions should refer to the docket number of this notice (Docket No. FRA-1999-6689) and be sent to the DOT Central Docket Management Facility, 400 Seventh Street, S.W., Washington, D.C. 20590-0001. All docketed material will be available for inspection during regular business hours at DOT's Central Docket Management Facility, Room PL-401 (Plaza Level), 400 Seventh Street, S.W. Washington, D.C. 20590-0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at <http://dms.dot.gov>.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00-892 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-06-U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA-99-5087]

Safety Performance Standards Program Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Thursday, March 16, 2000, beginning at 9:45 a.m. and ending at approximately 12 p.m., at the Best Western International Hotel, Detroit, MI. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Thursday, February 17, 2000, to the address shown below or by e-mail. If sufficient time is available, questions received after February 17, may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by February 17, 2000, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, March

6, 2000, and also will be available at the meeting.

ADDRESSES: Questions for the March 16, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS-01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202-366-4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the Best Western International Hotel, 9191 Wickham Road, Detroit, MI.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366-1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The transcript may also be accessed electronically at <http://dms.dot.gov>, at docket NHTSA-99-5087. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

- I. Rulemaking
 - A. Crash avoidance
 - B. Crashworthiness
 - C. Other Rulemakings
- II. Consumer Information
- III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366-1810, by COB March 6, 2000.

Issued: January 10, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00-971 Filed 1-13-00; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00-01]

Notice of Request for Preemption Opinion

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing for comment a written request for our opinion on whether a Pennsylvania statute regulating auctioneers applies to a national bank that uses an auction format to market and sell certificates of deposit (CDs) over the Internet. The purpose of this notice is to afford interested persons an opportunity to submit comments before the OCC issues a final opinion responding to this request.

DATES: Comments must be received on or before February 14, 2000.

ADDRESSES: You may submit comments electronically to regs.comments@occ.treas.gov or by mail to Docket No. 00-01, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090.

SUPPLEMENTARY INFORMATION: A national bank headquartered in Pennsylvania (the Bank) uses an auction format to market and sell CDs over the Internet, an activity referred to in this Notice as the "online deposit program." A Pennsylvania statute requires that auctioneers be licensed and subjects them to examination and inspection by the state. The Bank has submitted a written request for the OCC's opinion on whether Federal law preempts the application of the Pennsylvania statute to the Bank's online deposit program.

Section 114 of the Riegle-Neal Interstate Banking and Branching

Efficiency Act of 1994¹ requires the OCC to publish notice in the **Federal Register** before issuing a final written opinion about the preemptive effect of Federal law in four specified areas: community reinvestment, consumer protection, fair lending, or the establishment of interstate branches. It is not clear that the Pennsylvania statute under review falls within one of the four areas covered by section 114. The Bank's written submission does not address this issue. Nevertheless, in light of the novelty of the preemption question presented by the Bank—the applicability of state law to national banks that provide traditional financial services through electronic means—comments from interested parties will aid the OCC in considering the Bank's request. Therefore, we have concluded that it is appropriate to publish a notice and request comment on the Bank's request. We will also publish any final written opinion responding to the request in the **Federal Register**.

The Bank's Online Deposit Program

The Bank is headquartered in Pennsylvania and has branches in four other states. The Bank's Internet website permits visitors to link to a site (the Auction Site) on which the Bank offers potential customers the opportunity to purchase CDs that it issues and that are priced through an online auction process, which the Bank describes as follows.

The Bank periodically posts on the Auction Site a notice of an online auction of CDs offered by the Bank. Each auction has a starting and ending time and identifies the dollar amount, the term, the quantity, and the maximum annual percentage yield (APY) of the CDs offered. For example, an auction might contain 100 CDs, each with a face amount of \$10,000, a term of six months, and a maximum APY of 8%. In this case, the 100 bids with the lowest APY equal to or below 8% will be selected as the winning bidders. The winning bidders are required to complete an application to purchase a CD at their respective bid prices, pursuant to terms and conditions that the Bank has established for the online deposit program and that are posted on the Auction Site.²

¹ Pub. L. 103-328, sec. 114, 108 Stat. 2338, 2366-68 (1994), codified at 12 U.S.C. 43. This publication requirement is subject to certain exceptions that are described in section 114(c) of the statute.

² The Bank's request to the OCC contains additional information about its online deposit program, including eligibility requirements for CD purchasers and the mechanics of the bidding process, that is not pertinent to the preemption issue. The Bank represents that it maintains the confidentiality of information provided by

The Pennsylvania Auction Statute

The Pennsylvania auction statute is codified at 63 Pa. Stat. § 734 *et seq.* (1998). It governs the licensing and regulation of persons—"auctioneers"—engaged in the sale of property at auction. The Pennsylvania statute defines an "auction" as

the offer to sell property to the members of an audience congregated for the purpose of making bids for the purchase of property in an effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer.³

Auctioneers must be licensed by the State Board of Auctioneer Examiners⁴ and are required to keep detailed records of sales of property at auction.⁵ Pennsylvania auctioneers are subject to examination by the state.⁶ An auctioneer who fails to obtain a license is subject to civil and criminal penalties.⁷ The Pennsylvania statute permits either individuals or corporations to be auctioneers, and the Bank believes that a corporation that employs an individual auctioneer may have to be licensed both as an auctioneer and as an auction company.

Issues Presented by the Bank

The Bank asserts that Federal law authorizes it to conduct the online deposit program, that the licensing, recordkeeping, and examination requirements in the Pennsylvania auction statute impermissibly condition and burden the exercise of this Federal authority, and that the Pennsylvania statute is therefore preempted. The Bank relies on the express authority provided by 12 U.S.C. 24(Seventh) to "receive deposits," on the incidental powers clause of 12 U.S.C. 24(Seventh), and on the OCC's regulation at 12 CFR 7.1019, which authorizes national banks to perform, provide, or deliver through electronic means any authorized product or service.

The Bank also cites a line of national bank preemption cases decided by the U.S. Supreme Court and culminating in the Court's decision in *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), in support of its position that a state may not regulate an activity that a national bank is Federally authorized to conduct. The Bank notes that its use of the online Auction Site may constitute the promotion and advertising of its deposit products and

participants in the online deposit program in accordance with its privacy policy, which is posted on the Auction Site.

³ 63 Pa. Stat. at § 734.2.

⁴ *Id.* at § 734.3.

⁵ *Id.* at § 734.16.

⁶ *Id.* at § 734.20.

⁷ *Id.* at § 734.29.

that the Supreme Court has specifically held that a state law purporting to limit or restrict national bank advertising is preempted.⁸ In addition, the Bank relies on prior OCC interpretive letters opining that state laws purporting to apply licensing requirements to national banks' Federally authorized activities are preempted.⁹ Finally, the Bank asserts that application of the Pennsylvania statute to its online auction activities is preempted because the national bank visitorial powers statute, 12 U.S.C. 484, vests the OCC with exclusive authority to examine and supervise national banks.

Request for Comments

The OCC solicits comment on whether Federal law preempts the Pennsylvania auction statute as it would apply to the Bank's online deposit program.

Dated: January 4, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00-968 Filed 1-13-00; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on Mutual to Stock Conversion.

DATES: Submit written comments on or before March 14, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G

⁸ See *Franklin Nat'l Bank v. New York*, 347 U.S. 373 (1954).

⁹ See, e.g., OCC Interpretive Letter No. 749 (Sept. 13, 1996) (opining that state law requiring licensing of national banks' annuities sales activities is preempted); OCC Interpretive Letter No. 628 (July 19, 1993) (opining that state securities board regulation requiring a national bank providing trust services to register as an investment adviser is preempted).

Street, NW., Washington, DC 20552, Attention 1550-0014. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906-7755; or (202) 906-6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW, from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906-6706.

SUPPLEMENTARY INFORMATION:

Title: Mutual to Stock Conversion.

OMB Number: 1550-0014.

Form Number: Not applicable.

Abstract: 12 CFR Part 563b states that no mutual association shall convert to a stock association without previous written consent of the Office of Thrift Supervision.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 500 hours.

Estimated Total Annual Burden Hours: 5,000 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall 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; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 10, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00-899 Filed 1-13-00; 8:45 am]

BILLING CODE 6720-01-P

TWENTY-FIRST CENTURY WORKFORCE COMMISSION

Notice of Public Information Hearing

AGENCY: Twenty-First Century Workforce Commission.

ACTION: Notice of public information hearing.

SUMMARY: This notice is to announce a public information hearing on Thursday, January 20, 2000. Members of the public are invited to attend the hearing. Several witnesses have been invited by the Commissioners to testify and to address the questions identified by the agenda set forth below.

DATES: The Public Information Hearing will be held on Thursday, January 20, 2000, from 9:00 am to approximately 3 p.m. Registration is from 9:00 am to 10:00 am. The dates, locations and times for subsequent meetings will be announced in advance in the **Federal Register**.

ADDRESSES: The Eagle Ridge Conference Center in Jackson, Mississippi at Hinds Community College, Raymond Campus, is located at 1500 Raymond Lake Road, Raymond, MS 39154. For directions or other information about the Conference Center, call 664-857-3100. All interested parties are invited to attend this Information Hearing. Seating may be limited and will be available on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: Mr. Hans Meeder, Executive Director, Twenty-First Century Workforce Commission, 1201 New York Avenue, NW, Suite 700, Washington, DC 20005. (Telephone (202-289-2939. TTY (202) 289-2977) These are not toll-free numbers. Email: *Workforce21@nab.com*.

SUPPLEMENTARY INFORMATION: Establishment of the Twenty-First Century Workforce Commission was mandated by Subtitle C of Title III of the Workforce Investment Act, Sec. 331 of Pub. L. 105-220, 112 Stat. 1087-1091, (29 U.S.C. 2701 note), signed into law on August 7, 1998. The 15 voting member Twenty-First Century Workforce Commission is charged with studying all aspects of the information technology workforce in the United States. Notice is hereby given of the first Public Information Hearing of the

Twenty-First Century Workforce Commission.

The Workforce Investment Act (Pub. L. No. 105-220), signed into law on August 7, 1998, established the Twenty-First Century Workforce Commission. The Commission is charged with carrying out a study of the information technology workforce in the U.S., including the examination of the following issues:

1. What skills are currently required to enter the information technology workforce? What technical skills will be demanded in the near future?

2. How can the United States expand its number of skilled information technology workers?

3. How do information technology education programs in the United States compare with other countries in effectively training information technology workers? [The Commission study should place particular emphasis upon contrasting secondary, non-and-post-baccalaureate degree education programs available within the U.S. and foreign countries.]

The Workforce Investment Act directs the Commission to issue recommendations to the President and Congress within six months. The Commission first met on November 16, 1999, and will issue its recommendations by May 16, 2000.

Agenda: At the Jackson, Mississippi hearing, the Commission working group conducting the hearing will emphasize the following issues: (1) What are the Information Technology workforce needs of Mississippi and what strategies are the private sector, educational institutions, and federal, state and local governments developing and implementing to address these workforce shortages? (2) How can community colleges participate in initiatives to address information technology workforce development? (3) What are the special challenges and opportunities facing rural communities and what strategies are being developed and implemented to address these challenges and opportunities?

Commission Membership: The Workforce Investment Act mandates that 15 voting members be appointed by the President, Majority Leader of the Senate, and Speaker of the House (5 members each), including 3 educators, 3 state and local government representatives, 8 business representatives and 1 labor representative. The Act also mandates that the President appoint 2 ex-officio members, one each from the Departments of Labor and Education.

The Commissioners are: Chairman Lawrence Perlman, Ceridian

Corporation, Minneapolis, MN; Vice Chair, Katherine K. Clark, Landmark Systems Corporation, Reston, VA; Susan Auld, Capitol Strategies, Ltd., Montpelier, VT; Morton Bahr, Communication Workers of America, Washington, DC; Patricia Gallup, PC Communications, Inc., Merrimack, NH; Dr. Bobby Garvin, Mississippi Delta Community College, Moorhead, MS; Susan M. Green (ex officio), U.S. Department of Labor, Washington, DC; Randel Johnson, U.S. Chamber of Commerce, Washington, DC; Roger Knutsen, National Council for Higher Education, Auburn, WA; Patricia McNeil (ex officio), U.S. Department of Education, Washington, DC; The Honorable Mark Morial, Mayor, City of New Orleans, LA; Thomas Murrin, Ph.D., Duquesne University, Pittsburgh, PA; Leo Reynolds, Electronic Systems, Inc., Sioux Falls, SD; The Honorable Frank Riggs, National Homebuilders Institute, Washington, DC; The Honorable Frank Roberts, Mayor, City of Lancaster, California; Kenneth Saxe, Stambaugh-Ness, York, PA; David L. Steward, World Wide Technology, Inc., St. Louis, MO; Hans K. Meeder, Executive Director, Washington, DC.

Public Participation: Members of the public are invited to attend this hearing. Several witnesses have been invited to testify by the Commissioners to address the questions identified on the Agenda. In addition, members of the public wishing to present oral statements to the Twenty-First Century Workforce Commission should forward their requests to Mr. Hans Meeder, Executive Director, as soon as possible and at least four days before the meeting. Requests should be made by email, fax machine, or telephone, as shown above.

Time permitting, the Commissioners will attempt to accommodate requests for oral presentations. Each member of the public who is selected to testify will be allotted a three minute period to present their oral remarks. Members of the public must limit oral statements to three minutes, but extended written statements may be submitted for the record. Members of the public may also submit written statements for distribution to the Commissioners and inclusion in the public record without presenting oral statements. Such written statements should be sent to Mr. Hans Meeder, as shown above, or may be submitted at the hearing site.

The Commission is establishing a web site, www.workforce21.org, that will become operational on January 20, 2000. Any written comments regarding documents published on this web site should be directed to Mr. Hans Meeder, as shown above.

Special Accommodations: Reasonable accommodations will be available. Persons needing any special assistance such as sign language interpretation, or other special accommodation, are invited to contact Mr. Hans Meeder, as shown above. Requests for accommodations must be made four days in advance of the hearing.

Due to difficulties of scheduling the members we are unable to provide a full 15-day advance notice of this meeting.

Signed at Washington, DC this 10th day of January, 2000.

Hans K. Meeder,

Executive Director, Twenty-First Century Workforce Commission.

[FR Doc. 00-915 Filed 1-13-00; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0099]

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 revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the eligibility of the surviving spouse, spouse or child of a veteran for educational assistance for the new program of education or place of training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 14, 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. 2900-0099" 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 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: Request for Change of Program or Place of Training—Survivors' and Dependents' Educational Assistance, VA Form 22-5495.

OMB Control Number: 2900-0099.

Type of Review: Revision of a currently approved collection.

Abstract: Spouses, surviving spouses, or children of veterans who are eligible for Dependent's Educational Assistance under 38 U.S.C., chapter 35, complete VA Form 22-5494 to change their program of education and/or place of training. VA uses the information to determine if the new program selected by a spouse, surviving spouse, or child, is suitable to their abilities, aptitudes, and interests and to verify that the new place of training is approved for benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 11,000.

Dated: December 28, 1999.

By direction of the Secretary:

Sandra McIntyre,

Management Analyst, Information Management Service

[FR Doc. 00-920 Filed 1-13-00; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900-0110]****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, and allow 60 days for public comment in response to the notice. This notice solicits comments for information in determining a release of liability and substitution of entitlement of veteran-sellers to the Government on GI or direct loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 14, 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. 2900-0110" 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 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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 Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26-6381.

OMB Control Number: 2900-0110.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., Section 3713(a) provides that when a veteran disposes of his or her interest in the property securing the loan, the VA may, upon request, release the original veteran-borrower from personal liability to the Government only if three requirements are fulfilled. First, the loan must be current. Second, the purchaser must assume all of the veteran's liability to the Government and the mortgage holder on the guaranteed loan. Third, the purchaser must qualify from a credit and income standpoint, to the same extent as if he or she were a veteran applying for a VA-guaranteed loan in the same amount as the loan being assumed. Veterans who are selling their homes by assumption rather than requiring purchasers to obtain their own financing to pay off the loan must complete this form. The information furnished is essential to determinations for assumption approval, release of liability, and substitution of entitlement.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 680 hours.

Estimated Average Burden Per

Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,082.

Dated: December 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00-921 Filed 1-13-00; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900-0215]****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, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the address of a child attaining the age of majority and to determine the child's status for benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 14, 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. 2900-0215" 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 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: Request for Information to Make Direct Payment to Child Reaching Majority, VA Form Letter 21-863.

OMB Control Number: 2900-0215.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 21-863 is used by VA adjudicators to determine the address of a child attaining the age of majority and to determine the child's status. Title 38, CFR 3.403 provides direct payment to a child, if competent, from the date the child reaches the age of majority. Title 38, CFR 3.667 provided that a child may be paid from a child's 18th birthday based upon school attendance. This form letter solicits information needed to determine eligibility to benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,767 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 22,600.

Dated: December 23, 1999.

By direction of the Secretary:

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00-922 Filed 1-13-00; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0393]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Acquisitions and Materiel Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisitions and Materiel Management (OA&MM), 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 reinstatement, with 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 determine whom to award contracts or with whom to enter into blanket purchase agreements.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 14, 2000.

ADDRESSES: Submit written comments on the collection of information to Donald E. Kaliher, Office of Acquisitions and Materiel Management (95A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0393" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Donald E. Kaliher at (202) 273-8819.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&MM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&MM's functions, including whether the information will have practical utility; (2) the accuracy of OA&MM'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: VA Acquisition Regulation (VAAR) Part 813.

OMB Control Number: 2900-0393.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA issues requests for quotations (RFQs) under the procedures of the Federal Acquisition Regulation (FAR) Part 13 and VAAR Part 813 for the acquisition of the goods and services necessary to operate the Department. In addition, VA requests information from vendors for the purpose of establishing blanket purchase agreements (BPAs). Any individual or business wishing to submit an offer on an RFQ or respond to a request for the establishment of a BPA may do so. VA will use the information to determine to which business or individual VA should issue a purchase order for the acquisition of goods or services or to determine with which business or individual VA should establish a BPA. This collection of information covers only those acquisition-related actions conducted under the procedures of FAR Part 13 and VAAR Part 813 that affect 10 or more persons and are, therefore, subject

to the PRA. Such actions include open market competitive acquisitions between \$25,000 and \$100,000 and, for commercial items, acquisitions between \$100,000 and \$5 million where simplified procedures are used.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 10,650 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,650.

Dated: December 23, 1999.

By direction of the Secretary.

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 00-923 Filed 1-13-00; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0598]

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 aid physicians in diagnosing and treating Gulf War veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 14, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0598" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273-8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: National Health Survey of Gulf War Era Veterans and their Families: Phase III Physical Examinations.

OMB Control Number: 2900-0598.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: In November of 1994 the Secretary of Veterans Affairs was directed by the "Persian Gulf War Veterans' Benefits Act," Title I of the "Veterans' Benefits Improvements Act of 1994," Public Law 103-446, to conduct a health survey of Persian Gulf veterans and their spouses and children. In response to the legislative mandate, the VHA initiated a survey entitled "National Health Survey of Gulf War Era Veterans and their Families." The present survey protocol represents Phase III of the study, clinical examinations of a sample of 1,000 Gulf War veterans and their spouses and children and 1,000 Gulf War era nondeployed veterans and their spouses and children. The Cooperative Studies Evaluation Committee approved this study in September of 1997. Physicians within and outside the Department of Veterans Affairs hospital system will

use the information collected during Phase III to aid in diagnosing and treating Gulf War veterans. Researchers will also use the information to further identify any possible illnesses associated with the myriad of symptoms presented by Gulf War veterans.

Affected Public: Individuals or households.

Estimated Annual Burden: 140,046 hours.

Estimated Average Burden Per Respondent: 25 hours, 30 minutes.

Frequency of Response: The forms will be completed by the clinical staff once during at two-day battery of examinations; there will be no follow-up visits.

Estimated Number of Respondents: 5,492 study participants. (A total 2,000 veterans, 1,520 spouses, and 1,972 children will be examined during Phase III.)

Dated: December 23, 1999.

By direction of the Secretary:

Sandra McIntyre,

Program Analyst, Information Management Service.

[FR Doc. 00-924 Filed 1-13-00; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

Friday

January 14, 2000

Part II

Department of Labor

Employment and Training Administration

**Workforce Investment Act: Final Unified
Planning Guidance; Notice**

DEPARTMENT OF LABOR**Employment and Training
Administration****Workforce Investment Act: Final
Unified Planning Guidance (Developed
by the Departments of Labor,
Education, Health and Human
Services, Agriculture, and Housing and
Urban Development)****ACTION:** Notice.

SUMMARY: On October 6, 1999 the U.S. Departments of Labor, Education, Health and Human Services, Agriculture, and Housing and Urban Development published for comment a Proposed Unified Plan Guidance. During the 60-day comment period, the Departments received 18 comments from a diverse group of public and private stakeholders and participants in the workforce investment system. Generally, the comments reflect an appreciation for the efforts of the Federal government in developing the guidance. Many commenters felt that the Guidance will be a useful tool for States both in their preparation of Unified Plans and in their efforts to coordinate service delivery among multiple Federal and State programs. Some commenters viewed the guidance as a good first step, but felt in order to achieve a truly integrated system, more work is needed on both the Guidance, and on other critical areas of Workforce Investment Act implementation, including guidance on common cost allocation, evaluation, planning cycles and time frames, performance outcomes, reporting, and methods of service delivery. The Federal partners agree that more needs to be done and look forward to continuing a working partnership with stakeholders to achieve these important goals.

Many of the comments and suggestions received have been incorporated into this final version of the Guidance. Questions have been removed and replaced by certifications and assurances to ease the paperwork burden. However, some of the comments reflect certain misconceptions about the purpose of the Unified Plan Guidance. In light of these comments, the Federal partners would like to clarify the following:

- This Guidance is *not* a mandatory format for submission of Unified Plans. It is simply one approach to preparing a Unified Plan. If a State chooses not to follow this Unified Planning Guidance, the State must submit its Unified Plan by meeting the requirements of the individual programs' planning guidelines.

- This Guidance is our first attempt to assist the States in developing Unified

Plans. Currently, it is the only planning approach that streamlines current non-statutory planning requirements. However, as the Federal partners work with the States to acquire more experience with unified planning, we may develop alternative approaches that could offer greater flexibility and reduce burden.

- This Guidance does not, in any way, supercede any of the provisions and requirements of the underlying authorizing or appropriations statutes.

- In addition, it was designed so that a State following it will meet those information collection requirements in lieu of completing the individual program State planning requirements. If a State chooses not to follow this Unified Planning Guidance, the State must submit its Unified Plan by meeting the requirements of the individual programs' planning guidelines.

- In order to trigger funding for certain programs included in the Unified Plan, States may need to submit their plan, whether it be a unified or individual plan, by April 7, 2000. However, a State is not precluded from modifying a previously submitted Unified Plan at any time during the planning cycle, or from submitting a Unified Plan at a later date. For example, it would be entirely appropriate for a State to add programs in subsequent years, as the Unified Plan matures and States incorporate refinements in their plans.

- Unified Plans are not required annually. For each program included in the Unified Plan, States should consult the underlying statute to assess whether annual planning requirements apply, and the appropriate duration of the planning cycle.

One major change made based on the public comments relates to the programs administered by the U.S. Department of Housing and Urban Development (HUD). While the statute specifies that States may submit a Unified Plan that includes "training activities" carried out by HUD, for a number of reasons, the Federal Partners agree that the unique nature of HUD's training activities warrants special treatment in a Unified Plan. As pointed out in the comments, HUD's relevant State formula grant programs are not specifically employment and training programs. These grant programs authorize a wide range of allowable activities, and training activities account for only about 5 percent of HUD expenditures.

Commenters noted that because of statutory constraints, in order to trigger HUD funding, the Unified Plan would have to include dozens of housing questions that are not directly related to workforce development. Commenters also noted that HUD programs are

funded and implemented predominantly through local entities, rather than States.

Accordingly, the Federal Partners agreed that the revised Unified Plan guidance would provide for informal inclusion of HUD's programs. Since HUD programs are generally funded and implemented through local communities, and HUD's relevant State formula grant programs are not specifically employment and training programs, States that follow the final Unified Plan guidance will not trigger funding for HUD's formula programs through their Unified Plans. However, to encourage States to think strategically about developing a comprehensive workforce investment system—including how that system relates to the housing and workforce investment needs of the population receiving housing assistance—the final guidance includes references to HUD customers and services, as well as local housing agencies, in the overarching questions pertaining to the Unified Plan's vision and goals, One-Stop service delivery, and needs assessment.

Finally, some of the commenters provided valuable suggestions that we believe may be useful to States in preparing Unified Plans. In the interest of providing as streamlined a model as possible, we chose not to incorporate the suggestions in the Guidance itself, but provide them here for your consideration:

- Provide a description of how linkages between the State Rehabilitation Council and the State Workforce Investment Boards could be accomplished. [See Section II.E(1)(c)]

- Describe how your State will improve its technical and staff capacity to provide services to customers and improve entered employment outcomes in accordance with Section 3(a) of the Wagner-Peyser Act.

- Include a "sunshine" assurance that the public has access to State and local board meetings, and information on board activities, membership, and minutes.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, U. S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW, Room S-4231, Washington, DC 20210. Telephone 202-219-7831 (voice) (This is not a toll free number) or 1-800-326-2577 (TDD). Information may also be found at the website—<http://usworkforce.org>.

Paperwork Reduction Act

The Department of Labor cannot reasonably comply with the normal clearance procedures because (a) public harm is reasonably likely to result

if normal clearance procedures are followed; and, (b) the public needs the maximize time available to adhere to the guidance provided herein. Therefore, the 30-day public comment period has been waived for the State Unified Plan Planning Guidance. OMB has approved the information collection requirements under OMB control number 1205-0407. The approval expiration date is January 31, 2003. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Public reporting burden

for this collection of information is estimated to average 335 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Dolores Hall-Beran, U.S. Department of Labor, Employment and Training

Administration, Office of Workforce Security, Division of One-Stop Operations, 200 Constitution Avenue, NW, Room S-4231, Washington, DC 20210.

Dated: January 7, 2000.

Raymond J. Uhalde,

Deputy Assistant Secretary, Employment and Training Administration.

The text of the final guidance is reprinted as follows:

BILLING CODE 4510-30-P

State Unified Plan Planning Guidance

for State Unified Plans
Submitted Under Section 501
of the
Workforce Investment Act of 1998

State/Commonwealth of

for the period of

U.S. Department of Labor
Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

February 14, 2000

OMB Control No. 1205-0407
Expires: January 31, 2003

State Unified Plan Planning Guidance

A. Statement of Purpose

The purpose of this document is to provide guidance to States which submit a State Unified Plan authorized by Title V, Section 501 of the Workforce Investment Act of 1998 (WIA). The State Unified Plan Planning Guidance facilitates the development and submission of such a plan, which addresses two or more of the programs or activities specified at Section 501(b)(2). Please note that this document provides a model the State may choose to follow, but is not required to follow, in developing unified plans.

B. Background

President Clinton signed the Workforce Investment Act of 1998 (WIA) and the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) into law on August 7, 1998, and October 31, 1998, respectively. These Acts will have a major impact on the Nation's education and workforce investment systems. Implementation requires collaboration at the Federal, State, and local levels to create a more comprehensive, customer-focused workforce investment system.

C. Section 501 Programs and Activities

Below is a listing of the programs and activities covered in Section 501 of WIA, along with the commonly used name. In this document, we generally refer to the activities and programs by their commonly used names. Should State staff need information on the programs listed, a staff contact is provided here also.

- Secondary Vocational Education programs (Perkins III/Secondary) Note that inclusion of this program in the unified plan requires prior approval of State legislature. Administered by Department of Education, Office of Vocational and Adult Education.

Staff Contact: Jon Weintraub: 202-205-5602 (phone); 202-260-9183 (fax) (E-mail: jon_weintraub@ed.gov).

- Postsecondary Vocational Education programs (Perkins III/Postsecondary) Administered by Department of Education, Office of Vocational and Adult Education.

Staff Contact: Jon Weintraub: 202-205-5602 (phone); 202-260-9183 (fax) (E-mail: jon_weintraub@ed.gov).

- Tech-Prep Education (Title II of Perkins III) Administered by Department of Education, Office of Vocational and Adult Education.

Staff Contact: Jon Weintraub: 202-205-5602 (phone); 202-260-9183 (fax) (E-mail: jon_weintraub@ed.gov).

- Activities authorized under Title I, Workforce Investment Systems (Workforce Investment Activities for Adults, Dislocated Workers and Youth, or WIA Title I) Administered by Department of Labor, Employment and Training Administration.

Staff Contact: Eric Johnson: 202-219-7831 (phone); 202-219-8506 (fax) (E-mail: ejohnson@doleta.gov).

- Activities authorized under Title II of WIA, Adult Education and Family Literacy (Adult Education and Family Literacy Programs) Administered by Department of Education, Office of Vocational and Adult Education.

Staff Contact: Jon Weintraub: 202-205-5602 (phone); 202-205-260-9183 (fax) (E-mail: jon_weintraub@ed.gov).

- Food Stamp Employment and Training Program, or FSET Administered by USDA, Food and Nutrition Service.

Staff Contact: Michael Atwell: 703-305-2449 #2062 (phone); 703-305-2486 (fax) (E-mail:

Michael_Atwell@FNS.USDA.GOV).

- Activities authorized under chapter 2 of title II of the Trade Act of 1974 (Trade Act Programs) Administered by Department of Labor, Employment and Training Administration.

Staff Contact: Curtis Kooser: 202-219-4845 (phone); 202-219-5753 (fax) (E-mail: ckooser@doleta.gov).

- Programs authorized under the Wagner-Peyser Act (Employment Service) Administered by Department of Labor, Employment and Training Administration.

Staff Contact: Alison Pasternak: 202-219-9092 (phone); 202-219-6643 (fax) (E-mail: apasternak@doleta.gov).

- Programs authorized under Part B of title I of the Rehabilitation Act of 1973, other than § 112 of such Act (Vocational Rehabilitation) Administered by Department of Education, Rehabilitation Services Administration.

Staff Contact: Jerry Abbott: 202-205-5443 (phone); 202-205-9340 (fax) (E-mail: jerry_abbott@ed.gov).

- Programs authorized under chapters 41 and 42 of Title 38, USC, and 20 CFR 1001 and 1005 (Veterans Programs, including Veterans Employment, Disabled Veterans' Outreach Program, and Local Veterans' Employment Representative Program) Administered by Department of Labor, Veterans' Employment and Training Service.

Staff Contact: Effie Baldwin: 202-693-4742 (phone); 202-693-4755 (fax) (E-mail: Baldwin-Effie@dol.gov).

- Programs authorized under State unemployment compensation laws (Unemployment Insurance) Administered by Department of Labor,

Employment and Training Administration.

Staff Contact: William Coyne: 202-219-5223 #142 (phone); 202-219-8506 (fax) (E-mail: wcoyne@doleta.gov).

- Programs authorized under part A of title IV of the Social Security Act (Temporary Assistance for Needy Families (TANF), and Welfare-to-Work (WtW)) TANF administered by Health and Human Services, Administration for Children and Families.

Staff Contact: Robert Shelbourne: 202-401-5150 (phone); 202-205-5887 (fax) (E-mail:

rmshelbourne@acf.dhhs.gov) WtW administered by Department of Labor, Employment and Training Administration.

Staff Contact: Libby Queen: 202-219-0024 (phone); 202-219-0312 (fax) (E-mail: lqueen@doleta.gov).

- Programs authorized under title V of the Older Americans Act of 1965 (Senior Community Service Employment Program, or SCSEP) Administered by Department of Labor, Employment and Training Administration.

Staff Contact: Robert Lunz: 202-219-8502 (phone); 202-219-6338 (fax) (E-mail: rlunz@doleta.gov).

- Training activities funded by the Department of Housing and Urban Development under the Community Development Block Grants (CDBG) and Public Housing Programs).¹

Staff Contact: Deborah Greenstein: 202-708-1520 #5923 (phone); 202-708-0573 (fax) (E-mail: Deborah_Greenstein@hud.gov).

- Programs authorized under the Community Services Block Grant Act (Community Services Block Grant, or CSBG) Administered by Health and Human Services, Administration for Children and Families.

Staff Contact: Margaret Washnitzer: 202-401-2333 (phone); 202-401-5718 (fax) (E-mail: mwashnitzer@acf.dhhs.gov).

While the statute specifies that States may submit a Unified Plan that includes "training activities" carried out by HUD, for a number of reasons, the Federal Partners agree that the unique nature of HUD's training activities warrants special treatment in a Unified Plan.

Accordingly, the final Unified Plan guidance provides for informal

¹ While HUD programs may be included in a unified plan, following this Unified Planning Guidance and approval of a Unified Plan will not trigger funding for those programs.

inclusion of HUD's programs. Since HUD programs are generally funded and implemented through local communities, and HUD's relevant State formula grant programs are not specifically employment and training programs, States that follow the final Unified Plan guidance will not trigger funding for HUD's formula programs through their Unified Plans. However, to encourage States to think strategically about developing a comprehensive workforce investment system—including how that system relates to the housing and workforce investment needs of the population receiving housing assistance—the final guidance includes references to HUD customers and services, as well as local housing agencies, in the overarching questions pertaining to the Unified Plan's vision and goals, One-Stop service delivery, and needs assessment.

D. Questions and Answers

1. What Is a State Unified plan?

One of the most innovative reforms introduced by WIA is the State unified plan, which creates a new opportunity to maximize joint planning and coordination among programs and activities. States have the option of submitting a single plan for up to 16 Federal education and training programs. This unified plan may include the programs and activities set forth in Title V of WIA at Section 501(b)(2). The Departments of Agriculture (USDA), Education (DED), Health and Human Services (DHHS), Housing and Urban Development (HUD), and Labor (DOL) are responsible for administering these programs and activities.

The five titles of the Workforce Investment Act reform Federal employment, adult education, and vocational rehabilitation programs and create a new, comprehensive workforce investment system which is customer focused. Some of WIA's key principles are streamlining services, empowering individuals, universal access, increased accountability, integrated and coordinated services, State and local flexibility, and improved youth programs. WIA helps Americans access the tools they need to manage their careers through information and high quality services, and helps U.S. companies find skilled workers. Title I authorizes a variety of employment and training programs superseding the Job Training Partnership Act; Title II contains the Adult Education and Family Literacy Act; Title III amends the Wagner-Peyser Act to require that Employment Service/Job Service

activities become part of the "One-Stop" system and Title IV includes the Rehabilitation Act Amendments of 1998. Title V contains the authority for the State unified plan and other general provisions. States may also include Perkins III in a unified plan. Perkins III supports reforms and improvement activities in vocational and technical education to improve student achievement and preparation for postsecondary education, further learning, and careers.

2. What Is the Purpose of the State Unified Plan Option?

Building on the requirements in WIA Titles I and II that States develop five-year plans, this option encourages States toward program coordination through a unified planning process. A number of States across the country have been pioneers in coordinating the multitude of Federally-funded programs to maximize the resources available to their citizens. As reinvention efforts proceed in governmental organizations, creativity is needed at all levels—local, State, and Federal. In order to effectively implement WIA, a collaboration clearly focused on customer service, cutting red tape, and performance partnership must be built and maintained.

The Federal partners recognize that the development of State unified plans presents a unique challenge: while coordinating planning activities across department and agency lines, States are not relieved of meeting the Federal statutory requirements for each of the programs and activities they include in the unified plan. This planning guidance and the accompanying instructions were developed to enhance the quality of that planning process and make it less burdensome. We have attempted to reduce the burden by eliminating duplicative requirements and finding common elements among the planning guidance for each of the programs and activities included in Section 501. This document reflects the efforts of the Federal agencies to identify areas of overlap. States may use this guidance as an alternative to the individual plan guidance developed by Federal agencies for each of the Federal programs that may be included in a unified plan. The plans for each program submitted as a part of a unified plan will, of course, be reviewed to be sure that their content meets the requirements of the statute authorizing the program.

3. How Is This Guidance Related to State Planning Guidance Documents Which the Federal Agencies Have Already Published for the Programs and Activities Listed Above?

The Departments of Agriculture, Education, Health and Human Services, Housing and Urban Development, and Labor, and the Office of Management and Budget, jointly developed this planning document. For States submitting a unified plan, this document is an alternative to previously issued planning guidance for programs and activities included in the plan. (However, the unified plan will not trigger funding for or replace planning guidance pertinent to the broader grant programs under which training activities administered by the Department of Housing and Urban Development may be funded.) Please note that this document provides a model the State may choose to follow, but is not required to follow, in developing unified plans. However, following this model application will reduce burden on the State and ensure that the State has sufficiently met the information collection requirements in lieu of completing the individual program State planning requirements.

Materials related to funding, such as jointly executed funding instruments, grant agreements, or Governor/Secretary Agreements, items such as negotiated corrective action plans and program specific amendments are not considered planning materials for purposes of WIA § 501(c)(2). WIA's State unified plan provisions do not allow any specific statutory requirements to be superseded. For example, if a program has a statutory requirement for an annual plan, inclusion in a unified plan would not change that program's plan to a five-year plan nor would inclusion in the unified plan change the requirement to negotiate new performance levels and amend the unified plan to reflect these as required by such programs as Perkins III, AEFLA, and Title I of WIA. Funds provided under each program included in a unified plan must be used in accordance with the program's statutory and regulatory requirements.

This document also provides the "Unified Planning Guidance" cited in DOL's State Planning Guidance for submission of the strategic five-year State plan for Title I of WIA and the Wagner-Peyser Act under option four. Section 661.240 of WIA interim final regulations, published on April 15, 1999, addresses the State unified plan provisions as they apply to DOL programs. If a State chooses not to follow this Unified Planning Guidance,

the State must submit its Unified Plan by meeting the requirements of the individual programs' planning guidelines.

4. What Is Planning in the State Unified Plan Context?

Submission of a unified plan signals the State's determination to use Federal resources efficiently by looking across programs to identify coordination opportunities. For instance, given a mix of performance measures and programs, the State would decide what resources from each program can best respond to a given performance measure.

The unified planning process also balances the desire for States to achieve WIA's strategic planning objectives with the need to demonstrate compliance with the statutory and regulatory requirements for each of the programs in the unified plan. The Federal partners recognize that joint planning is a time-consuming and difficult endeavor. The unified plan option may accrue several benefits to States:

Improved customer service, based on a holistic approach to serving customers which facilitates non-duplication of services and reaches new client groups.

Improved strategic planning, reflecting the sharing of knowledge at the State level concerning a wide range of programs and resources.

Increased computer and information technology (IT) system networking, providing the opportunity to learn about other and new IT systems and to promote the integrated use of technology.

Burden reduction, achieved through non-duplication of efforts and the need for less paper as opportunities for boilerplate language and certifications are identified.

Increased coordination at the local level, as the State fosters seamless services, through the coordination of education, training and employment resources and the provision of critical ancillary services.

Improved use of State and Federal resources, leading to greater effectiveness and efficiency.

5. What Is a Consolidated Education Plan?

Another significant Federal initiative which encourages States toward integrated planning is the Department of Education's option for Consolidated Education Plans. Section 14302 of the Elementary and Secondary Education Act (ESEA), as reauthorized by Title I of the Improving America's Schools Act, allows State Education Agencies (SEAs) to apply for funding for Perkins III and a number of Federal elementary and

secondary education formula grant programs through a single, simplified consolidated plan, rather than through separate funding applications or plans. An SEA may consolidate administrative funds under the specified programs, but may not commingle program funds. States that are interested in pursuing the option of submitting a consolidated plan for Perkins III funding should contact the Division for Vocational and Technical Education at the U.S. Department of Education.

6. What Does WIA Require for the State Unified Plan?

Programs Included: According to Title V of WIA, the State may develop and submit a State unified plan for two or more of the activities and programs listed at Section 501. Your State unified plan must include at least one program from (a) through (d). These programs are listed below.

Section 501(b)(1) requires all State unified plans to cover one or more of the following programs and activities:

(a) Perkins III/Secondary.

Note: Secondary vocational education programs may only be included with prior approval of the State legislature.

(b) Perkins III/Postsecondary.

Note: For the purposes of what the State unified plans cover, Perkins III/Secondary and Perkins III/Postsecondary count as one program.

(c) Workforce Investment Activities for Adults, Dislocated Workers and Youth, or WIA Title I and Wagner-Peyser Act.

Note: If the unified plan covers programs authorized under WIA Title I, then it must also cover programs authorized under the Wagner-Peyser Act.

(d) Adult Education and Family Literacy Programs.

The State unified plan may cover one or more of the following activities:

(e) Food Stamp Employment & Training Program (FSET).

(f) Work programs authorized under § 6(o) of the Food Stamp Act of 1977.

(g) Trade Act Programs.

(h) Vocational Rehabilitation.

(i) Veterans Programs, including Veterans Employment, Disabled Veterans' Outreach Program, and Local Veterans' Employment Representative Program.

(j) Unemployment Insurance.

(k) Temporary Assistance for Needy Families (TANF).

(l) Welfare-to-Work.

(m) Senior Community Service Employment Program (SCSEP).

(n) Training activities funded by the Department of Housing and Urban Development.

Note: Training programs funded under CDBG and Public Housing may be included in your State Unified Plan if the State is the funds recipient, but following this unified planning guidance will not trigger funding for these programs.

(o) Community Services Block Grant (CSBG).

States may include additional programs in their unified plans that do not appear on this list. For example, the Department of Health and Human Services' Child Care Development Fund (CCDF) may be included. However, States should contact the applicable Federal agencies and carefully review the statutory and regulatory provisions governing these additional programs to determine whether any impediments exist to their inclusion in the unified plan. The statutory and regulatory program and planning requirements for such programs remain in place and are not superceded by the WIA Unified Planning requirements.

In addition, you may submit your application for funding under the Tech-Prep program authorized by Title II of Perkins III as part of the unified plan.

Coordination: In addition to meeting the statutory requirements as outlined in Section II-H of Attachment A for each program included in the State unified plan, a State unified plan must include: (1) a description of the methods used for joint planning and coordination of the programs and activities included in the unified plan, and (2) an assurance that the methods included an opportunity for the entities responsible for planning or administering such programs and activities to review and comment on all portions of the unified plan.

Jurisdiction: The appropriate Secretary has the authority to approve the portion of the State unified plan relating to the activity or program over which the appropriate Secretary exercises administrative authority. Once the appropriate Secretary approves the portion of the plan relating to the activity or program, that program may be implemented by the State under the applicable portion of the State unified plan. A State that submits a unified plan covering an activity or program that is approved is not required to submit any other plan or application as a condition to receive funds under that Federal statute. However, as noted above, inclusion of a particular program in the State unified plan does not remove the statutory requirement for certain programs, such as Perkins III, to amend a plan to reflect newly negotiated performances levels.

Approval by the Appropriate Secretaries (The term "appropriate

Secretary" means the head of the Federal agency who exercises administrative authority over an activity or program.)

In General: A portion of the State unified plan covering an activity or program described in Section 501 that is submitted to the appropriate Secretary under this section is considered to be approved by the appropriate Secretary at the end of the 90-day period beginning on the day the appropriate Secretary receives the portion, unless the Secretary makes a written determination, during the 90-day period that: (1) the portion is not consistent with the requirements of the Federal statute authorizing the activity or program including the criteria for approval of a plan or application, if any, under such statute, or (2) the plan is not consistent with the coordination requirements listed above regarding joint planning and the opportunity for each entity to review and comment on all portions of the unified plan.

Criteria for approval of the State unified plan, relating to activities carried out under title I or II of WIA or under the Carl D. Perkins Vocational and Technical Education Act, includes a requirement for agreement between the State and the appropriate Secretary regarding State performance measures, including levels of performance.

7. How Can Local Input Improve the Unified Planning Process?

While WIA only requires the involvement of State Board and Local Boards in the planning and coordination of the programs and activities authorized under Title I, the intent of the unified plan approach is to enable all the relevant parties in an area, if they so choose, to come together more readily to coordinate their activities in the best interests of the population to be served. However if coordination is achieved, nothing in the unified plan or in WIA itself permits a Board or any other entity to alter the decisions made by another program grantee in accord with that grantee's statutes.

Local stakeholders can play an important role in informing the State unified planning process, customizing the system to respond to local labor market needs. Chief elected officials, local boards, local education agencies, institutions of higher education, the business community, community-based organizations, representatives of special populations, service providers and other stakeholders can assist State planners in identifying needs, objectives and appropriate collaborative strategies for attaining them. Consulting these stakeholders during the development of

the unified plan would help ensure that the State's plan is broad enough to encompass different State and local approaches, yet specific enough to reflect local visions, needs, and economic development strategies.

E. Submission Options for State Unified Plans

1. Submission of the Unified Plan

States have the option of submitting a unified plan under Section 501 of the Workforce Investment Act of 1998 either in an electronic or hard-copy format. Incorporated in these options are new options for States to submit their unified plan to a single contact point. Several submission options are discussed in this notice. We strongly urge each State to submit its unified plan in electronic format so as to reduce burden and to ensure the timely receipt and review of the plan by the Federal agencies whose programs are included in the plan.

2. Submission Options

We are offering States four streamlined options for submitting their unified plans; three for electronic submission and one for hard-copy submission. These options are in addition to the option for a State to submit a hard copy of the unified plan to each Federal agency whose programs are included in the unified plan.

(a) Electronic Submission Options

A State can submit its unified plan electronically either by: (1) posting it on an Internet web site which then can be accessed by the Federal agencies whose programs are included in the unified plan; (2) transmitting it by electronic mail to the Department of Labor, which, as the State Unified Plan Review Process Coordinator (Coordinator), will be responsible for distributing the electronic plan to each Federal agency affected; or (3) transmitting it by electronic mail directly to the Federal Departments whose programs are included in the plan. Information regarding the use of each of these three electronic options is provided in this notice.

(b) Streamlined Paper Submission Option

A State can choose to submit its unified plan in hard-copy by mailing one copy to the Coordinator, rather than mailing one copy to each program(s) included in the unified plan.

3. Processes for Electronic Submission

If a State chooses to submit its unified plan by transmitting documents via electronic mail, we request that the submission be in either WordPerfect or

Microsoft Word (PC format, or an ASCII text file) to accommodate the technological capabilities of the various Federal agencies that will be recipients of the unified plan. If a State chooses to use a software program other than WordPerfect or Microsoft Word for the entire unified plan or for portions of the unified plan, it will be necessary for the State to submit those components of the unified plan in hard-copy using the instructions provided later in this notice for hard-copy submissions. In this instance, the agency's 90-day period for the review of the plan will not start until all components of the plan have been integrated and received by the affected Federal agencies.

We believe that each of the options for electronic submission will significantly reduce the burden on the States and ensure the timely start of the plan review and approval process. State plan certifications with electronic signatures will be acceptable. If a State does not have the capacity to produce electronic signatures, then the signature page must be submitted in hard-copy. Information on where to submit the signature page can be found in the section of this notice that describes the option for the submission of plans in a hard-copy format. The Office of Management and Budget or individual agencies may issue additional guidance concerning the acceptable format and mode of transmission for electronic signatures.

We encourage each State to include a table of contents at the beginning of its State unified plan so as to facilitate access to its various components. Within 48 hours of the receipt of the plan on a work day the Coordinator will confirm to the State receipt of the unified plan and indicate the date for the start of the 90-day review period. The electronic mail address for the Coordinator (Dolores H. Beran) is dberan@doleta.gov. The Coordinator may be contacted by phone at 202-219-8395, ext. 143.

Electronic Option 1: Posting Plans on an Internet Web Site

We believe that this approach offers the best opportunity to dramatically reduce both process and paperwork burden on the States and to ensure the timely review of the unified plan. Under this option, a State need only post its unified plan on an Internet web site; inform, through electronic mail, the Coordinator of the documents location on the web site; provide contact information in the event of problems with accessing the web site; and certify that no changes will be made to the version of the plan posted on the web site after it is submitted, unless the

changes have been approved by the reviewing agency. It is the responsibility of the designated State agency to circulate the modifications among the other agencies that may be affected by the changes. The Coordinator will provide the web site location information to all the other Federal agencies whose programs are included in the unified plan so that they can access the unified plan for review.

Electronic Option 2: Submitting Plans to the Coordinator of the State Unified Plan Review Process

A second option is to send the entire unified plan by electronic mail directly to the Coordinator, who will ensure that the other Federal agencies whose programs are included in the unified plan receive the electronic version of the unified plan. Again, this approach will significantly reduce burden on the States and contribute to the timely start of the 90-day period for the review of the unified plan.

Electronic Option 3: Submitting Plans to the Federal Departments Whose Programs Are Included in the Plan

A third option is for a State to submit its unified plan by electronic mail directly to each Federal Department whose programs are included in the unified plan. To reduce burden on the States, the unified plan need be sent only to the designated Federal Departmental State Unified Plan Contact (hereafter, Departmental Contact). The Departmental Contact will be responsible for ensuring that affected agencies and appropriate Regional Offices in that Department receive electronic versions of the unified plan. For example, if a unified plan contains plans for both the Vocational Rehabilitation and the Postsecondary Vocational Education programs, both of which are administered by different agencies within the United States Department of Education, the State need only submit the plan to the U.S. Department of Education once. Electronic mail addresses for the Departmental Contacts are as follows:

Department of Labor: dberan@doleta.gov
Department of Education:

Jerry Abbott@ed.gov

Department of Health and Human Services: rmshelbourne@acf.dhhs.gov

Department of Agriculture:

Michael Atwell@fns.usda.gov

Department of Housing and Urban Development:

Deborah Greenstein@hud.gov

Within 24 hours of notification of receipt of the plan by all of the affected Federal agencies, the Coordinator will

notify the State and the agencies to the start of the 90-day period for the review of the unified plan.

4. Hard Copy Submission

If a State is unable or chooses not to submit its unified plan electronically, the State can submit one copy of the unified plan to the Coordinator or submit the unified plan in the traditional manner separately to the designated contact for each activity or program included in the unified plan. We encourage States to submit unbound plans so as to facilitate their duplication.

Submitting the plan in hard-copy to the Coordinator rather than to each activity or program included will entail additional steps before the affected Federal agencies whose programs are included in the unified plan receive the unified plan for review. These additional steps could delay the start of an agency's 90-day period for the review of the unified plan. Based on our experiences to date with respect to unified plans submitted in hard-copy, a State can anticipate a delay of up to 7 to 10 working days in the start of the 90-day review period so as to accommodate the receipt, cataloging, duplication and distribution of the unified plan to the affected Federal agencies, some of which review the plan in the Regional Offices. Each State is thus encouraged to submit its unified plans in an electronic format to facilitate timely reviews.

For States that choose to submit a hard copy to the Coordinator, the Coordinator will notify the State within 10 working days of receipt of the unified plan as to the start of the 90-day period for the review of the unified plan. The mailing address for the Coordinator is: Dolores Beran, Coordinator of the State Unified Plan Review Process, United States Department of Labor, 200 Constitution Avenue, NW, Room S-4231, Washington, D.C. 20210. The Coordinator can be reached by telephone at (202) 219-8395, ext. 143, or by e-mail at dberan@doleta.gov.

F. How To Use "Attachment A: Instructions"

1. Forms for State Use

At the beginning of Attachment A: Instructions, you will find four forms for use in submitting your State Unified Plan. These forms are available for electronic download, along with this entire guidance, at <<http://www.usworkforce.org>>.

- **Unified Plan Activities and Programs Checklist:** Please provide a list of the Section 501 programs and activities you have included in your

Plan. Use of this specific format is optional.

- **Contact Information:** Please provide the contact information requested for each of the Section 501 programs and activities that you have included in your plan. Programs and activities may be combined on one form if they have the same contact information. Use of this specific format is optional.

- **Plan Signature(s):** Please provide the required signatures as appropriate for the programs and activities you have included in your State Unified Plan. Use of this specific format is optional, but the wording on your signature page must be identical to that provided here.

2. Program Descriptions

Please respond fully to the general questions in the program descriptions section, as well as the additional questions that relate to the programs and activities that are included in your State's unified plan.

3. Certifications and Assurances

By signing the signature page(s), you are assuring or certifying those items in the Certifications and Assurances section that apply to the programs and activities you have included in your State's unified plan.

G. Modifications

Plan modifications must be submitted to the appropriate Federal agency, in accordance with the procedures of the affected agency. It is the responsibility of the designated State agency to circulate the modifications among the other agencies that may be affected by the changes. As noted above, inclusion of a particular program in the State unified plan does not remove the statutory requirement for certain programs to annually review the plan and submit amendments as needed or to amend a State plan to reflect newly negotiated performance levels.

H. Inquiries

General inquiries about the State unified plan process may be directed to the Coordinator of the State Unified Plan Review Process. The electronic mail address for the Coordinator (Dolores H. Beran) is dberan@doleta.gov. The Coordinator may be contacted by phone at 202-219-8395, ext. 143. Inquiries related to specific activities and programs can be directed to the staff contacts listed above in Section C of this Guidance.

I. Submission Date

States may submit unified plans at any time up until April 7, 2000.²

J. Timing of Plan Approval

Section 501(d)(2) of WIA states that a portion of a State unified plan covering an activity or program is to be considered to be approved by the appropriate Secretary at the end of the 90-day period beginning on the day the appropriate Secretary receives the portion unless the appropriate Secretary makes a written determination, during the 90-day period, that the portion is not consistent with the requirements of the Federal statute authorizing the activity or program or section 501(c)(3) of WIA. Written determinations would include, for example, a written request from a representative of that agency for more information or documentation related to the requirements of WIA or the particular activity or program.

Attachment A**A. Unified Plan Activities and Programs Checklist**

Under Section 501 of the Workforce Investment Act, the following activities or programs may be included in a State's unified plan. From the list below, please place a check beside the programs and activities your State or Commonwealth is including in this Unified Plan.

The State unified plan shall cover one or more of the following programs and activities:

Secondary vocational education programs (Perkins III/Secondary) Note that inclusion of this program requires prior approval of State legislature. (Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 *et seq.*))

Postsecondary vocational education programs (Perkins III/Postsecondary) Note that for the purposes of what the State unified plan shall cover, Perkins III/Secondary and Perkins III/Postsecondary count as one program. (Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 *et seq.*))

Activities authorized under Title I, Workforce Investment Systems (Workforce Investment Activities for Adults, Dislocated Workers and Youth, or WIA Title I, and the Wagner-Peyser Act) (Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*))

Activities authorized under Title II, Adult Education and Family Literacy (Adult Education and Family Literacy Programs) (Workforce Investment Act of 1998 (20 U.S.C. 9201 *et seq.*))

The State unified plan may cover one or more of the following programs and activities:

Food Stamp Employment and Training Program, or FSET (7 U.S.C. 2015(d))

Activities authorized under chapter 2 of title II of the Trade Act of 1974 (Trade Act Programs) (19 U.S.C. 2271 *et seq.*)

Programs authorized under Part B of title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), other than § 112 of such Act (29 U.S.C. 732) (Vocational Rehabilitation)

Activities authorized under chapters 41 & 42 of Title 38, USC, and 20 CFR 1001 and 1005 (Veterans Programs, including Veterans Employment, Disabled Veterans' Outreach Program, and Local Veterans' Employment Representative Program)

Programs authorized under State unemployment compensation laws (Unemployment Insurance) (in accordance with applicable Federal law which is authorized under Title III, Title IX and Title XII of the Social Security Act and the Federal Unemployment Tax Act)

Programs authorized under part A of title IV of the Social Security Act (Temporary Assistance for Needy Families (TANF) and Welfare-to-Work (WtW)) (42 U.S.C. 601 *et seq.*)

Temporary Assistance for Needy Families
Welfare-to-Work

Programs authorized under title V of the Older Americans Act of 1965 (Senior Community Service Employment Program (SCSEP)) (42 U.S.C. 3056 *et seq.*)

Training activities funded by the Department of Housing and Urban Development under the Community Development Block Grants (CDBG) and Public Housing Programs) Note that programs funded by the CDBG and Public Housing programs can only be included in your State unified plan if the State is the funds recipient, and approval of the unified plan will not trigger funding for these programs.

Community Development Block Grants

Public Housing

Programs authorized under the Community Services Block Grant Act (Community Services Block Grant, or CSBG) (42 U.S.C. 9901 *et seq.*)

B. Contact Information

Please complete one copy for EACH of the separate activities and programs included in your State unified plan.

Program:

State Name for Program/Activity:

Name of Grant Recipient Agency for Program/Activity:

Address:

Telephone Number:

Facsimile Number:

E-mail Address:

Name of State Administrative Agency (if different from the Grant Recipient):

Address:

Telephone Number:

Facsimile Number:

E-mail Address:

Name of Signatory Official:

Address:

Telephone Number:

Facsimile Number:

E-mail Address:

Name of Liaison:

Address:

Telephone Number:

Facsimile Number:

E-mail Address:

C. Plan Signature(s)

Governor (if applicable)

As the Governor, I certify that for the State/Commonwealth of _____, for those activities and programs included in this plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities indicated for the programs and activities indicated. Subsequent changes in the designation of officials will be provided to the designated program or activity contact as such changes occur.

I further certify that, for those activities and programs included in this plan that are under my jurisdiction, we will operate the workforce development programs included in this Unified Plan in accordance with this Unified Plan and the assurances described in Section III of this Unified Plan.

Typed Name and Signature of Governor
Date

Responsible State Official for Eligible Agency for Vocational Education (if Applicable)

I certify that for the State/Commonwealth of _____, for those activities and programs included in this plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities indicated for the programs and activities indicated. Subsequent changes in the designation of officials will be provided to the designated program or activity contact as such changes occur.

I further certify that, for those activities and programs included in this plan that are under my jurisdiction, we will operate the programs included in this Unified Plan in accordance with this Unified Plan and the applicable assurances described in Section III of this Unified Plan.

Typed Name, Title, and Agency of
Responsible State Official for Vocational
Education

² Please note that for programs administered by OVAE, the unified plan will not go into effect for any particular program until a new grant is awarded under that program. The time period for submittal and coverage of the TANF plan is governed by section 402(a) of the Social Security Act. Detailed guidance on the submittal of a TANF plan is contained in a policy announcement dated May 15, 1999 (see publication TANF-ACF-PA-98-3). To retain eligibility for a TANF grant, States need to submit a plan based on a 27-month rule.

Signature
Date

*Responsible State Official for Eligible Agency
for Vocational Rehabilitation (if applicable)*

I certify that for the State/Commonwealth of _____, for those activities and programs included in this plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities indicated for the programs and activities indicated. Subsequent changes in the designation of officials will be provided to the designated program or activity contact as such changes occur.

I further certify that we will operate those activities and programs included in this Unified Plan that are under my jurisdiction in accordance with this Unified Plan and the assurances described in Section III of this Unified Plan.

Typed Name, Title, and Agency of
Responsible State Official for Vocational
Rehabilitation
Signature
Date

*Responsible State Official for Eligible Agency
for Adult Education (if applicable)*

I certify that for the State/Commonwealth of _____, for those activities and programs included in this plan that are under my jurisdiction, the agencies and officials designated above under "Contact Information" have been duly designated to represent the State/Commonwealth in the capacities indicated for the programs and activities indicated. Subsequent changes in the designation of officials will be provided to the designated program or activity contact as such changes occur.

I further certify that, for those activities and programs included in this plan that are under my jurisdiction, we will operate the programs included in this Unified Plan in accordance with this Unified Plan and the applicable assurances described in Section III of this Unified Plan.

Typed Name, Title, and Agency of
Responsible State Official for Adult
Education

Signature
Date

II. Unified Planning Instructions and Questions

Note: The statutes cited in parentheses refer to the authorizing legislation for each respective program. This unified planning guidance only relates to planning requirements; it does not affect the statutory and regulatory requirements relating to other aspects of programs included in the plan.

A. Vision and Goals

1. Provide the State's comprehensive vision of a workforce investment system, including broad economic, education, training, workforce development and related goals. Describe

how the State considered a broad range of issues, such as the needs of public housing residents, in the development of the State's vision and goals. Describe any challenges to achieving your vision, including any economic development, legislative or reorganization initiatives anticipated that could impact on the performance and effectiveness of your State's workforce investment system. Describe how each of the programs included in the plan will contribute to achieving these goals.

In answering the above question, if your unified plan includes:

- (a) Vocational Rehabilitation:
 - (i) In accordance with sections 101(a)(15)(C) and (D), identify the goals and priorities of the State in carrying out the program and identify the strategies to address the State's needs and achieve the State's goals and priorities (Sec. 101 (a)(15)(C) and (D))
 - (ii) Specify the goals and plans of the State with respect to the distribution of funds received under section 622 (§ 625(b)(3)).
- (b) Unemployment Insurance, provide a concise summary of the SESA's key direction and strategies for the plan, identifying the goal/main objective of each focus area.

B. One-Stop Delivery System

1. Describe the State's comprehensive vision of an integrated service delivery system, including the role each program incorporated in the unified plan in the delivery of services through that system.

In answering this question, if your unified plan includes:

- (a) WIA Title I and Wagner-Peyser Act and/or Veterans Programs:
 - (i) Describe major State policies and requirements that have been established to direct and support the development of a statewide workforce investment system not described elsewhere in this Plan. These policies may include, but are not limited to:
 - State guidelines for the selection of One-Stop operators by Local Boards.
 - The State's process to work with local boards and local Chief Elected Officials to certify existing One-Stop operators.
 - Procedures to resolve impasse situations at the local level in developing MOUs to ensure full participation of all required partners in the One-Stop delivery system.
 - (ii) Describe the existing local One-Stop delivery systems and how the services provided by each of the required and optional One-Stop partners will be coordinated and made available through the One-Stop system. Be sure to address statewide requirements, how technical assistance will be provided,

and availability of the State WIA reserved funds for One-Stop development. (§ 112(b)(14))

C. Plan Development and Implementation

1. Describe the methods used for joint planning and coordination of the programs and activities included in the unified plan. (WIA § 501(c)(3)(A))

State Consultation with Local Areas in Development of Plan: The authorizing statutes for many of the programs that may be included in a unified plan require that the State plan be developed in consultation with various public and private entities, as well as members of the general public. Some statutes also require formal public hearings. Depending upon the programs that a State chooses to include in its unified plan, it may be possible for the State to satisfy many of these consultation requirements through a single set of processes. For example, both WIA Title I and Perkins III require that the business community be involved in the development of the State plans for these programs. The State may satisfy both of these requirements by involving the business community in the development of a unified plan that includes the two programs. Separate consultations are not necessary.

2. Describe the process used by the State to provide an opportunity for public comment and participation for each of the programs covered in the unified plan.

In addition, if your unified plan includes:

- (a) *Perkins III*, the eligible agency must hold public hearings and include a summary of the recommendations made by all segments of the public and interested organizations and groups and the eligible agency's response to the recommendations in the State plan. (§ 122(a)(3)).

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, describe the process used by the State, consistent with section 111(g) of WIA, to provide an opportunity for public comment, including comment by representatives of business and representatives of labor organizations, and input into development of the plan, prior to submission of the plan.

(c) *Adult Education and Family Literacy*, describe the process that will be used for public participation and comment with respect to the AEFLA portion of the unified plan. (§ 224(b)(9)).

(d) *TANF*, the State shall make available to the public a summary of any plan or plan amendment submitted by the State under this section. (§ 402(c)).

(e) *CSBG*, provide evidence that the public participation requirements were met, including documents which confirms that a legislative public hearing on the State plan was conducted as required by subsection 675(b) and that the plan was also made available for public inspection and review as required by 675(d)(2).

3. Provide summaries of the consultations with appropriate agencies, groups and individuals in the evaluation, development and implementation of activities included in the plan. This section should describe the types of activities and outcomes that were conducted to meet this requirement. Demonstrate, as appropriate, how comments were considered in the plan development process including specific information on how the various WIA agency and program partners were involved in developing the unified State plan.

The following agencies, groups or individuals must be consulted, if your unified plan includes:

(a) *Perkins III*: (§ 122(a)(3),(b)(1), (c)(3), (e)(3)).

- Parents.
- Teachers.
- Students.
- Eligible Recipients.
- Representatives of special populations in the State.
- Representatives of business and industry in the State, including small- and medium-sized local businesses.
- Representatives of labor organizations in the State.
- Interested community members.
- Governor of the State.

In addition, the eligible agency must consult with the State agency responsible for secondary education and the State agency responsible for supervision of community colleges, technical institutes, or other 2-year post secondary institutions primarily engaged in providing postsecondary vocational and technical education concerning the amount and uses of funds proposed to be reserved for adult vocational and technical education, postsecondary vocational and technical education, tech-prep education, and secondary vocational technical education. Include any objections filed by either agencies in the plan and your response(s). (§ 122(e)(3)).

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*: (§ 112(b)(1), 112(b)(9)).

- The Governor of the State and State Board.
- Local Chief elected officials.
- Business community.
- Labor organizations.

The following agencies, groups and individuals should also be consulted:

Local Boards and Youth Councils, Educators, Vocational Rehabilitation Agencies, Service providers, Welfare agencies, Community-Based organizations and the State Employment Security Agency.

In addition, describe the role of the State Board and Local Boards in planning and coordination in the unified plan (§ 501(c)(3)). [NOTE: While WIA only requires the involvement of State Board and Local Boards in the planning and coordination of the programs and activities authorized under Title I, the intent of the unified plan approach is to enable all the relevant parties in an area, if they so choose, to come together more readily to coordinate their activities in the best interests of the population to be served. However coordination is achieved, nothing in the unified plan or in WIA itself permits a Board or any other entity to alter the decisions made by another program grantee in accord with that grantee's statutes.]

(c) *Adult Education and Family Literacy*:

- Governor of the State (any comments made by the Governor must be included in the plan) (§ 224(d)).

(d) *Vocational Rehabilitation*:
• State Rehabilitation Council (include the response of the designated State unit to such input and recommendations) (§ 101(a)(21)(A)(ii)(III)).

(e) *Welfare-to-Work*:
(§ 403(a)(5)(A)(ii)(I)(cc)).

- Public, private and non-profit organizations.
- PICs or Local Boards.
- Local TANF and administrative agency.

(f) *CSBG*:

- Low-income individuals.
- Community organizations.
- Religious organizations.
- Representatives of low-income individuals.

D. Needs Assessment

1. Describe the educational and job-training needs of individuals in the overall State population and of relevant subgroups of all the programs included in the unified plan.

Many of the programs that may be included in a unified plan require a needs assessment. State agencies should fulfill these assessment responsibilities collaboratively or, at a minimum, create a planning process that promotes the sharing of needs assessment information among all agencies involved in preparing the unified plan. Sharing of assessment data can create a framework for the coordinated and integrated services that are to be provided through

the One-Stop delivery system. The State may organize the presentation of assessment data in its unified plan in a manner it deems most appropriate and useful for planning, such as on a program-by-program basis, by geographic region, or by special population.

In answering the above question, if your unified plan includes:

(a) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, identify the types and availability of workforce investment activities currently in the State. (WIA § 112(b)(4)(D)).

(b) *Adult Education and Family Literacy*, objectively assess the adult education and literacy needs of individuals, including an assessment of those most in need and hardest to serve, including low income students, individuals with disabilities, single parents, displaced homemakers, and individuals with multiple barriers to educational enhancement (including individuals with limited English proficiency, criminal offenders in correctional institutions and other institutionalized individuals.) (§ 224(b)(10), § 225).

(c) *Food Stamp Employment & Training*, provide an answer and explain the method used to:

(i) Estimate the number and characteristics of the expected pool of work registrants during the fiscal year.

(ii) Estimate the number of work registrants the State agency intends to exempt from E&T, along with a discussion of the proposed exemption criteria.

(iii) Estimate the number of placements into E&T components during the fiscal year.

(iv) Estimate the number of ABAWDs (able-bodied adult without dependents) in the State during the fiscal year.

(v) Estimate the number of ABAWDs in both waived and unwaived area of the State during the fiscal year.

(vi) Estimate the average monthly number of ABAWDs included in the State's 15 percent exemption allowance, along with a discussion of how the State intends to apply the exemption.

(vii) Estimate the number of qualifying education/training and workfare opportunities for ABAWDs the State will create during the fiscal year.

(d) *Vocational Rehabilitation*:

(i) Assess the needs of individuals with disabilities in the State, particularly the vocational rehabilitation needs of individuals with the most significant disabilities (including their need for supported employment services), individuals with disabilities who have been unserved or underserved by the vocational rehabilitation

program, and individuals with disabilities served through other components of the statewide workforce investment system. (§ 101(a)(15)(A)(i)(I-III) and § 625(b)(2))

(ii) Include State estimates of the number of individuals in the State who are eligible for services under title I of the Rehabilitation Act, the number of such individuals who will receive services provided with funds provided under part B of title I and under part B of title VI (including, if the designated State agency uses an order of selection, estimates of the number of individuals to be served under each priority category within the order), and the costs of the services provided (including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.) (§ 101(a)(15)(B))

(iii) Provide an assessment of the need to establish, develop, or improve community rehabilitation programs within the State. (§ 101(a)(15)(A)(ii))

(e) *HUD Employment and Training Programs*: (Reminder: the following is a suggestion for incorporating HUD programs into your State's unified plan. However, following this guidance will not trigger funding for HUD programs):

(i) Address the educational and training needs of public housing residents and other families receiving housing assistance.

2. Describe the key trends that are expected to shape the economic environment of the State during the next five years. Which industries and occupations are expected to grow? Which will contract? What are the workforce and economic development needs of the State? Identify the implications of these trends in terms of overall availability of current and projected employment opportunities by occupation, and for each of your customer segments, the job skills necessary in key occupations. Also describe how the program services provided relate to State and regional occupational opportunities. (WIA § 112(b)(4) and Perkins § 122(c)(15))

E. State and Local Governance

1. What is the organization, structure and role/function of each State and local entity that will govern the activities of the unified plan?

In answering the above question, if your unified plan includes:

(a) *Perkins III*, describe the procedures in place to develop the memoranda of understanding outlined in § 121(c) of the Workforce Investment Act of 1998 concerning the provision of services only for postsecondary students and school dropouts. (§ 122(c)(21))

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:

(i) Describe the State Workforce Investment Board, or the authorized alternative entity including a description of the manner in which the Board collaborated on the State plan. (WIA § 112(b)(1) and § 111(e))

(ii) Describe the State-imposed requirements for the statewide workforce investment system. (§ 112(b)(2))

(iii) Identify the local areas designated in the State and include a description of the process used for the designation of such areas. (§ 112(b)(5))

(iv) Describe the appeals process referred to in § 116(a)(5). (§ 112(b)(15))

(v) Identify the criteria the State has established to be used by the chief elected officials in the local areas for the appointment of local Board members and establishment of youth councils based on the requirements of § 117. (WIA § 112(b)(6))

(vi) Identify the circumstances which constitute a conflict of interest for any State or State Board and Local Boards member, including voting on any matter regarding the provision of service by that member or the entity that he/she represents, and any matter that would provide a financial benefit to that member or his or her immediate family. (§ 112(b)(13))

(vii) Describe the procedures the local boards will use to identify eligible providers of training services for the Adult and Dislocated worker programs (other than on-the-job training or customized training). (§ 112(b)(17)(A)(iii))

(viii) Describe how the locally operated ITA system will be managed in the State to maximize usage, select services providers, and improve the performance information on training providers. (§ 112(b)(14), 112(b)(17)(A)(iii))

(ix) Identify the criteria to be used by local boards in awarding grants for youth activities, including criteria that the Governor and local boards will use to identify effective and ineffective youth activities and providers of such activities. (§ 112(b)(18)(B))

(x) Describe the processes that will be used at the State level to award grants and contracts for activities under Title I of WIA. (§ 112(b)(16))

(xi) Include a description of the process by which State and Local Boards were created.

(c) *Vocational Rehabilitation*, designate a State agency as the sole State agency to administer the plan, or to supervise the administration of the plan by a local agency, in accordance with § 101(a)(2)(A). (§ 101(a)(2)(A))

(d) *TANF*, describe the objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process. (§ 402(a)(1)(B)(iii))

(e) *Welfare-to-Work*, provide a description of the implementation of this program by PICs (or Local Boards) across the State, including the roles and responsibilities of the State WtW Administrative Agency and the TANF agency; a list of the substate areas and the local entities responsible for program administration; and the program's implementation target dates.

F. Funding

1. What criteria will the State use, subject to each program's authorizing law, to allocate funds for each of the programs included in the unified plan? Describe how the State will use funds the State receives to leverage other Federal, State, local, and private resources, in order to maximize the effectiveness of such resources, and to expand the participation of business, employees, and individuals in the statewide workforce investment system. (WIA § 112(b)(10))

In answering the above question, if your unified plan includes:

(a) *Perkins III*:

(i) Describe the criteria that you will use in approving applications by eligible recipients for funds under Perkins III. (§ 122(c)(1)(B))

(ii) Describe how funds received through the allotment made under section 111 will be allocated among secondary school vocational and technical education, or postsecondary and adult vocational and technical education, or both, including the rationale for such allocation. (§ 122(c)(4)(A))

(iii) Describe how funds received through the allotment made under section 111 will be allocated among consortia which will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia, including the rationale for such allocation. (§ 122(c)(4)(B))

(iv) If the eligible agency decides to develop an alternative allocation formula under the authority of sections 131(c) and/or 132(b), submit the proposed formula and supporting documentation to the Secretary of Education for approval prior to the submission of your State plan or as a part of the State unified plan. (§ 131(c) and § 132(b))

(b) *Tech-Prep*, describe how the eligible agency will award tech-prep funds in accordance with the requirements of § 204(a) and § 205 of Perkins III, including whether grants will be awarded on a competitive basis or on the basis of a formula determined by the State.

(c) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:

(i) Describe the methods and factors the State will use in distributing funds to local areas for youth activities and adult employment and training activities under sections 128(b)(3)(B) and 133(b)(3)(B), including a description of how the individuals and entities represented on the State board were involved in determining such methods and factors of distribution and how the State consulted with chief elected officials in local areas throughout the State in determining such distributions. (§ 112(b)(12)(A))

(ii) Describe the formula prescribed by the Governor for the allocation of funds to local areas for dislocated workers in Employment and Training activities. (§ 112(b)(12)(C))

(iii) Describe, in detail, the plans required under Section 8 of the Wagner-Peyser Act which will be carried out by the State. (§ 112(7))

(iv) Describe the guidelines, if any, the State has established for Local Boards regarding priority when adult funds have been determined to be limited. (§ 112(b)(17)(A)(iv) and 134(d)(4)(E))

(v) Specify how the State will use the 10 percent Wagner-Peyser Act funds allotted to it under section 7(b) in accordance with the three provisions of allowable activities: performance incentives; services for groups with special needs; and extra costs of exemplary service delivery models. (§ 112(b)(7) and 20 CFR 652.204)

(d) *Adult Education and Family Literacy*:

(i) Describe how the eligible agency will fund local activities in accordance with the considerations described in § 231(e) and the other requirements of Title II of WIA. (§ 224(b))

(ii) Describe the process to show that public notice was given of the availability of Federal funds to eligible recipients and the procedures for submitting applications to the State, including approximate time frames for the notice and receipt of applications. (§ 231(c))

(iii) Describe how the eligible agency will use funds made available under Section 222(a)(2) for State leadership activities. (§ 223(a))

(iv) Describe the steps the eligible agency will take to ensure direct and

equitable access, as required in section 231(c). (§ 224(b)(12))

(e) *Food Stamp Employment & Training*:

(i) Estimate the total cost of the State's E&T program and identify the source of funds according to the format for Table 5, Planned Fiscal Year Costs, contained in the most current release of "The Handbook on Preparing State Plans for Food Stamp Employment and Training Programs."

(ii) Acknowledge that the State will spend at least 80 percent of its total 100 percent Federal E&T grant to create qualifying work opportunities to permit ABAWDs to remain eligible for food stamps.

(iii) Indicate, if applicable, whether the State agency intends to spend at least as much as it spent of its own funds in FY 96 for E&T and optional workfare administration to receive the additional 100 percent Federal allocations provided for in the Balanced Budget Act of 1997.

(iv) Describe both the expected sources and the status of State agency funding for participant reimbursement.

(f) *Welfare-to-Work*, describe the State's plans for the expenditure, uses and goals of the 15% funds.

(g) *TANF*, indicate the name, address, and EIN number of the TANF administering agency and estimate for each quarter of the fiscal year by percentage the amount of TANF grant that it wishes to receive.

(h) *Vocational Rehabilitation*:

(i) Describe how the State will utilize funds reserved for the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities under the State plan, particularly individuals with the most significant disabilities. (§ 101(a)(18)(B))

(ii) Describe the quality, scope, and extent of supported employment services authorized under the Act to be provided to individuals who are eligible under the Act to receive the services. (§ 625(b)(3))

(iii) In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the State who apply for services, indicate the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services and provide the justification for the order. (§ 101(a)(5)(A)-(B))

(i) *CSBG*, describe how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in § 675C(b), including a description of

how the local entity will use the funds to support innovative community and neighborhood-based initiatives.

G. *Activities To Be Funded*

1. For each of the programs in your unified plan, provide a general description of the activities the State will pursue using the relevant funding.

In answering the above question, if your unified plan includes:

(a) *Perkins III*:

(i) Describe the vocational and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance. (§ 122(c)(1))

(ii) Describe the secondary and postsecondary vocational and technical education programs to be carried out, including programs that will be carried out by the eligible agency to develop, improve, and expand access to quality, state-of-the-art technology in vocational and technical education programs. (§ 122(c)(1)(A))

(iii) Describe how funds will be used to improve or develop new vocational and technical education courses and effectively link secondary and postsecondary education. (§ 122(c)(1)(D) and § 122(c)(19))

(iv) Describe how the eligible agency will improve the academic and technical skills of students participating in vocational and technical education programs, including strengthening the academic, and vocational and technical, components of vocational and technical education programs through the integration of academics with vocational and technical education to (1) Ensure learning in the core academic, vocational and technical subjects; (2) provide students with strong experience in, and understanding of, all aspects of an industry; and (3) prepare students for opportunities in post-secondary education or entry into high skill and high wage jobs in current and emerging occupations. (§ 122(c)(1)(C) and (5)(A))

(v) Describe how the eligible agency will ensure that students who participate in such vocational and technical education programs are taught to the same challenging academic proficiencies as are taught to all other students. (§ 122(c)(5)(B))

(vi) Describe how the eligible agency will actively involve parents, teachers, local businesses (including small- and medium-sized businesses), and labor organizations in the planning, development, implementation and evaluation of vocational and technical education programs.

(b) *Tech-Prep*, describe how funds will be used in accordance with the requirements of § 204(c).

(c) WIA Title I and Wagner-Peyser Act and/or Veterans Programs.:

(i) Describe how Wagner-Peyser Act funds will provide a statewide capacity for a three-tiered labor exchange service strategy that includes: (1) Self-service; (2) facilitated self-help service; and (3) staff-assisted service.

(ii) Describe how your State will ensure that veterans receive priority in the One-Stop system for labor exchange services by Wagner-Peyser and DVOP/LVER staff members.

(iii) Describe the types of employment and training activities that will be carried out with the adult and dislocated worker funds received by the State through the allotments under Section 132. How will the State maximize customer choice in the selection of training activities?

(§ 112(b)(17)(A)(i))

(iv) Define the sixth youth eligibility criterion at § 101(13)(C)(vi), if this responsibility was not delegated to local Boards. (§ 112(b)(18)(A))

(v) Describe the assistance available to employers and dislocated workers, particularly how your State determines what assistance is required based on the type of lay-off, and the early intervention strategies to ensure that dislocated workers who need intensive or training services (including those individuals with multiple barriers to employment and training) are identified as early as possible. Additionally, identify the State dislocated worker unit which will be responsible for carrying out the rapid response activities. (§ 112(b)(17)(A)(ii))

(vi) Describe your State's strategy for providing comprehensive services to eligible youth, including any coordination with foster care, education, welfare and other relevant resources. (§ 112(b)(18))

(vii) Describe the strategies to assist youth who have special needs or significant barriers to employment, including those who are deficient in basic literacy skills, school drop-outs, offenders, pregnant, parenting, homeless, foster children, runaways or have disabilities. (§ 112(b)(18))

(viii) Describe how coordination with Job Corps, youth opportunity grants, and other youth programs will occur. (§ 112(b)(18))

(d) *Adult Education and Family Literacy*, describe the Adult Education and Family Literacy activities the State will provide within the following categories: (§ 224(b)(2), § 231(b))

- Adult Education and Literacy services, including workplace literacy services.
- Family literacy services.
- English literacy programs.

(e) *Food Stamp Employment & Training*:

(i) Describe the components of the State's E&T program.

(ii) Discuss the weekly/monthly hours of participation required of each program component.

(iii) Describe planned combinations of components to meet the statutory requirement of 20 hours of participation per week to qualify as a work program for ABAWDS.

(f) *TANF*, outline how the State intends to:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient. (§ 402(a)(1)(A)(i))

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive,) whichever is earlier, consistent with section 407(e)(2). (§ 402(a)(1)(A)(ii))

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407. (§ 402(a)(1)(A)(iii))

(iv) Take such reasonable steps as deemed necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal government. (§ 402(a)(1)(A)(iv))

(v) Describe the financial eligibility criteria and corresponding benefits and services covered with State Maintenance of Effort (MOE) funds. This description applies to State MOE funds that are used in the State's TANF program or used to fund a separate State program.

(g) *Welfare-to-Work*, describe State and local strategies regarding:

(i) The employment activities that are planned under this grant.

(ii) The utilization of contracts with public and private providers of job readiness, placement and post-employment services; job vouchers for placement, readiness, and post-employment services; job retention, or support services, if not otherwise available to the individual participants receiving WtW services, that are planned under this grant.

(h) *SCSEP*, provide a description of each project function or activity and how the applicant will implement the project. The following activities should be discussed separately: (§ 3(A))

- Recruitment and selection of enrollees.
- Continued eligibility for enrollment in the SCSEP.
- Physical examinations.
- Orientations.
- Assessment.
- Individual development plan (IDP).
- Placement into subsidized employment.

• Training during community service employment and for other employment.

- Supportive services.
- Enrollee transportation.
- Placement into unsubsidized employment.

- Maximum duration of enrollment.
- IDP related terminations.
- Enrollee complaint resolution.
- Over-enrollment

(i) *CSBG*, explain how the activities funded will:

(i) Remove obstacles and solve problems that block the achievement of self-sufficiency, including those families and individuals who are attempting to transition off a State program carried out under part A of Title IV of the Social Security Act.

(ii) Secure and retain meaningful employment.

(iii) Attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives.

(iv) Make better use of available income.

(v) Obtain and maintain adequate housing and a suitable living environment.

(vi) Obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs.

(vii) Achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundation, and other public and private partners.

(viii) Create youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime.

(ix) Provide supplies, services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals.

H. Coordination and Non-Duplication

1. Describe how your State will coordinate and integrate the services provided through all of the programs identified in the unified plan in order to meet the needs of its customers, ensure there is no overlap or duplication among the programs, and ensure collaboration with key partners and continuous improvement of the workforce investment system. (States are encouraged to address several coordination requirements in a single narrative, if possible.)

In answering the above question, if your unified plan includes:

(a) *Perkins III*, describe coordination with the following agencies or programs:

- Programs listed in section 112(b)(8)(A) of the Workforce Investment Act of 1998 (§ 122(c)(21)) concerning the provision of services for postsecondary students and school dropouts.

- Other Federal education programs, including any methods proposed for joint planning and coordination. (§ 122(c)(16))

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:

(i) Describe the strategies of the State to assure coordination, avoid duplication and improve operational collaboration of the workforce investment activities among programs outlined in Section 112(b)(8)(A) and Section 112(b)(18)(C)&(D) of WIA, at both the State and local levels (e.g., joint activities, MOUs, planned mergers, coordinated policies, non-discrimination obligations, etc.).

(ii) Describe how the State Board and Agencies will eliminate any existing state-level barriers to coordination. (§ 112(b)(8)(A))

(c) *Adult Education and Family Literacy*, describe how the Adult Education and Family Literacy activities that will be carried out with any funds received under AEFLA will be integrated with other adult education, career development, and employment and training activities in the State or outlying area served by the eligible agency. (§ 224(b)(11))

(d) *Vocational Rehabilitation*:

(i) Describe the State agency's plans policies, and procedures for coordination with the following agencies or programs:

- Federal, State and local agencies and programs, including programs carried out by the Under Secretary for Rural Development of the Department of Agriculture and State use contracting programs to the extent that such agencies and programs are not carrying out activities through the statewide workforce investment system. (§ 101(a)(11)(C))

- Education officials responsible for the public education of students with disabilities, including a formal interagency agreement with the State educational agency. (§ 101(a)(11)(D))

- Private, non-profit vocational rehabilitation service providers through the establishment of cooperative agreements. (§ 101(a)(24)(B))

- Other State agencies and appropriate entities to assist in the provision of supported employment services. (§ 625(b)(4))

- Other public or nonprofit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services. (§ 625(b)(5))

(e) *Unemployment Insurance*, summarize requests for any Federal partner assistance (primarily non-financial) that would help the SESA attain its goal.

(f) *Welfare-to-Work*, describe the strategies of the State and PICs (or State Board and Local Boards) to prevent duplication of services and promote coordination among the following agencies or programs:

- TANF.
- JTPA/WIA.
- One-Stop centers/employment services.
- Other employment and training systems throughout the State.
- State Department of Transportation.
- Metropolitan planning organizations.
- Transit operators.
- Other transportation providers.
- State Housing Finance Agencies.
- Public and assisted housing providers and agencies and other community-based organizations.
- Public and private health, mental health and service agencies.
- Vocational rehabilitation and related agencies.

(g) *SCSEP*, describe the cooperative relationships and working linkages that have been established or will be established with the following employment related programs and agencies:

- JTPA/WIA. (§ 3(a)(11))
- One-Stop Delivery Centers.
- Vocational Rehabilitation.
- Job Corps.
- State employment security agencies.

- Agencies administering Titles III, IV and VI of the Older Americans Act.

(h) *CSBG*, describe how the State and eligible entities will coordinate programs to serve low-income residents with other organizations, including:

- Religious organizations.
- Charitable groups.
- Community organizations.

I. Special Populations and Other Groups

1. Describe how your State will develop program strategies, to target and serve special populations. States may present information about their service strategies for those special populations that are identified by multiple Federal programs as they deem most appropriate and useful for planning purposes, including by special population or on a program by program basis. In providing this description, if your unified plan includes any of the programs listed below, please address the following specific relevant populations:

(a) *Perkins III*:

- Each category of special populations defined in § 3(23) of the Act. (§ 122(c)(7))

- Students in alternative education programs, if appropriate. (§ 122(c)(13))

- Individuals in State correctional institutions. (§ 122(c)(18))

(i) Describe how funds will be used to promote preparation for nontraditional training and employment. (§ 122(c)(17))

(ii) Describe how individuals who are members of special populations will be provided with equal access to activities assisted under Title I of Perkins III and will not be discriminated against on the basis of their status as members of special populations. (§ 122(c)(8)(B))

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*

(§ 112(b)(17)(A)(iv) and § 112(b)(17)(B)):

- Dislocated workers, including displaced homemakers.
- Low-income individuals, including recipients of public assistance.
- Individuals training for non-traditional employment.
- Individuals with multiple barriers to employment (including older individuals, people with limited English-speaking ability, and people with disabilities).
- Veterans, including veterans' preferences under 38 U.S.C. Chapters 41 and 42.
- The agricultural community that serves the migrant and seasonal farmworker population.
- UI claimants who are identified under Worker Profiling and Reemployment Services.

(c) *Adult Education and Family Literacy*:

- Low income students

(§ 224(b)(10)(A)).

- Individuals with disabilities (§ 224(b)(10)(B)).
 - Single parents and displaced homemakers (§ 224(b)(10)(C)).
 - Individuals with multiple barriers to educational enhancement, including individuals with limited English proficiency (§ 224(b)(10)(D)).
 - Criminal offenders in correctional institutions and other institutionalized individuals (§ 225).
- (d) *TAA and NAFTA-TAA*, describe how rapid response and basic readjustment services authorized under other Federal laws will be provided to trade-impacted workers.
- (e) *Vocational Rehabilitation*:
- Minorities with most significant disabilities. (§ 21(c)).
 - (f) TANF, indicate whether the State intends to:
 - Treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program;
 - Provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance. (§ 402(a)(1)(B) (i) and (ii)); and
 - Outline how the State intends to conduct a program designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men. (§ 401(a)(1)(A)(vi)).
 - (g) *SCSEP*: (§ 3(a)(1))
 - Minority groups.
 - Individuals with the greatest economic need.
 - Individuals with poor employment prospects.
 - (h) *CSBG*:
 - Low-income families.
 - Families and individuals receiving assistance under part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).
 - Homeless families and individuals.
 - Migrant or seasonal farmworkers.
 - Elderly low-income individuals and families.
 - Youth in low-income communities.
 - (i) *HUD Employment and Training Programs*: (Reminder: the following is a suggestion for incorporating HUD programs into your State's unified plan. However, following this guidance will not trigger funding for HUD programs):
 - Public housing residents
 - Homeless and other groups
2. Identify the methods of collecting data and reporting progress on the

special populations described in Question 1 of this section.

3. If your plan includes Perkins III, Tech-Prep, Adult Education and Family Literacy or Vocational Rehabilitation, describe the steps the eligible agency will take to ensure equitable access to, and equitable participation in, projects or activities carried out with the respective funds by addressing the special needs of student, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age. (§ 427(b) General Education Provisions Act.)

J. Professional Development and System Improvement

1. How will your State develop personnel to achieve the performance indicators for the programs included in your plan?

In answering the above question, if your unified plan includes:

- (a) Perkins III:
 - (i) Describe how comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel will be provided. (§ 122(c)(2))
 - (ii) Describe how the eligible agency will provide local educational agencies, area vocational and technical education schools, and eligible institutions in the State with technical assistance. (§ 122(c)(14))
- (b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, explain how the local and State Boards will use data collected and the review process to reinforce the strategic direction and continuous improvement of the workforce investment system.

(c) *Vocational Rehabilitation*, describe the designated State agency's policies, procedures and activities to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified State rehabilitation professional and paraprofessional personnel for the designated State unit pursuant to § 101(a)(7) of the Act. (§ 101(a)(7))

K. Performance Accountability

Nothing in this guidance shall relieve a State of its responsibilities to comply with the accountability requirements of WIA Title I and II and the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), including, for example, the requirements to renegotiate performance levels at statutorily defined points in the 5-year unified plan cycle. The appropriate Secretary will negotiate

adjusted levels of performance with the State for these programs prior to approving the State plan.

1. What are the State's performance methodologies, indicators and goals in measurable, quantifiable terms for each program included in the unified plan and how will each program contribute to achieving these performance goals? (Performance indicators are generally set out by each program's statute.)

In answering the above question, if your unified plan includes:

- (a) Perkins III and Tech-Prep:
 - (i) Identify and describe the core indicators (§ 113(b)(2)(A)(i-iv)), a State level of performance for each core indicator of performance for the first two program years covered by the State plan (§ 113(b)(3)(A)(ii), any additional indicators identified by the eligible agency (§ 113(b)(1)(B)), and a State level of performance for each additional indicator (§ 113(b)(3)(B)).
 - (ii) Describe how the effectiveness of vocational and technical education programs will be evaluated annually. (§ 122(c)(6))
 - (iii) Describe how individuals who are member of special populations will be provided with programs designed to enable the special populations to meet or exceed State adjusted levels of performance, and how it will prepare special populations for further learning and for high skill, high wage careers. (§ 122(c)(8)(C))
 - (iv) Describe what steps the eligible agency will take to involve representatives of eligible recipients in the development of the State adjusted levels of performance. (§ 122(c)(9))
- (b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*:
 - (i) Describe the State performance accountability system developed for the workforce investment activities to be carried out through the statewide workforce investment system. Include expected levels of performance for each of the core indicators of performance and the customer satisfaction indicator of performance for the first three program years covered by the unified plan. (Sections 112(b)(3) and 136(b)(3)(A)(ii))
 - (ii) Compare the State level of the performance goals with the State adjusted levels of performance established for other States (if available), taking into account differences in economic conditions, the characteristics of participants when they entered the program and the services to be provided. (Sections 112(b)(3) and 136(b)(3)(A)(ii))

(c) *Adult Education and Family Literacy*:

(i) Include a description of how the eligible agency will evaluate annually the effectiveness of the Adult Education and Family Literacy activities, such as a comprehensive performance accountability system, based on the performance measures in § 212.

(ii) Identify levels of performance for the core indicators of performance described in § 212(b)(2)(A) for the first three program years covered by the plan (§ 212(b)(3)(A)(ii)), and any additional indicators selected by the eligible agency. (§ 212 (b)(2)(B))

(iii) Describe how such performance measures will be used to ensure the improvement of Adult Education and Family Literacy activities in the State or outlying area. (§ 224(b)(4))

(d) *Unemployment Insurance:*

(i) Submit a plan to achieve an enhanced goal in service delivery for areas in which performance is not deficient. Goals may be set at a State's own initiative or as the result of negotiations initiated by the Regional Office.

(ii) Identify milestones/intermediate accomplishments that the SESA will use to monitor progress toward the goals.

(e) *TANF*, outline how the State intends to establish goals and take action to prevent and reduce the incidence of out of wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State for calendar years 1996 through 2005. (§ 402(a)(1)(A)(v))

(f) *SCSEP*, specify the number of authorized employment positions under the program, the number of unsubsidized placements to be achieved during the funding period and the number of enrollees to be served during the program year.

(g) *CSBG:*

(i) Describe how the State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, a performance measure system pursuant to § 678E(b) of the Act, or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization.

(ii) Describe the standards and procedures that the State will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved,

including the comprehensive planning requirements. (§ 91.330)

2. Has the State developed any common performance goals applicable to multiple programs? If so, describe the goals and how they were developed.

L. Data Collection

1. What processes does the State have in place to collect and validate data to track performance and hold providers/operators/subgrantees accountable?

In answering the above question, if your unified plan includes:

(a) *Perkins III and Tech-Prep:*

(i) Describe how data will be reported relating to students participating in vocational and technical education in order to adequately measure the progress of the students, including special populations. (§ 122(c)(12))

(ii) Describe how the data reported to the eligible agency from local educational agencies and eligible institutions under Perkins III and the data you report to the Secretary are complete, accurate, and reliable. (§ 122(c)(20))

(b) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, describe the common data collection and reporting processes to be used for the programs and activities described in § 112(b)(8)(A). (§ 112(b)(8)(B))

(c) *Food Stamp Employment & Training*, describe how employment and training data will be compiled and where responsibility for employment and training reporting is organizationally located at the State level. Include the department, agency, and telephone number for the person(s) responsible for both financial and non-financial E&T reporting.

2. What common data elements and reporting systems are in place to promote integration of unified plan activities?

M. Corrective Action

1. Describe the corrective actions the State will take for each program, as applicable, if performance falls short of expectations.

In answering the above question, if your unified plan includes:

(a) *Vocational Rehabilitation*, include the results of an evaluation of the effectiveness of the vocational rehabilitation program, and a report jointly developed with the State Rehabilitation Council (if the State has a Council) on the progress made in improving effectiveness from the previous year including:

(i) An evaluation of the extent to which program goals were achieved and a description of the strategies that contributed to achieving the goals.

(ii) To the extent the goals were not achieved, a description of the factors that impeded that achievement.

(iii) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act.

(§ 101(a)(15)(E)(i))

(b) *Unemployment Insurance*, explain the reasons for the areas in which the State's performance is deficient. If a plan was in place the previous fiscal year, provide an explanation of why the actions contained in that plan were not successful in improving performance and an explanation of why the actions now specified will be more successful.

N. Waiver and Work-Flex Requests

1. Will your State be requesting waivers as a part of this unified plan?

In answering the above question, the following waiver provisions apply if your unified plan includes:

(a) *WIA Title I and Wagner-Peyser Act and/or Veterans Programs*, States may submit a Workforce Flexibility (Work-Flex) Plan under WIA § 192 and/or a General Statutory Waiver Plan under WIA § 189(i) as part of the WIA Title I Plan. These waiver plans may also be submitted separately, in which case they must identify related provisions in the State's Title I plan. State waiver plans should be developed in accordance with planning requirements at Subpart D of 20 CFR Part 661.420 and planning guidelines issued by the Department of Labor.

(b) *Vocational Rehabilitation*, if a State requests a waiver of the Statewide requirement identified in assurance number 13 for the vocational rehabilitation program in Section III of this unified planning guidance, the request must be made in accordance with the provisions of 34 CFR 361.26(b).

III. Certifications and Assurances

General Certifications and Assurances

By signing the Unified Plan signature page, you are certifying that:

1. The methods used for joint planning and coordination of the programs and activities included in the unified plan included an opportunity for the entities responsible for planning or administering such programs and activities to review and comment on all portions of the unified plan. Workforce Investment Act, 501(c)(3)(B).

In addition, if you submit your unified plan by posting it on an Internet web site, you are certifying that:

2. The content of the submitted plan will not be changed after it is submitted. Plan modifications must be approved by the reviewing State agency. It is the

responsibility of the designated agency to circulate the modifications among the other agencies that may be affected by the changes.

In addition, the following certifications and assurances apply to the extent that the programs and activities are included in your State Unified Plan.

3. **Nonconstruction Programs.** By signing the Unified Plan signature page, you are certifying that:

1. The grantee has filed the Government-wide standard assurances for nonconstruction programs (SF 424). States can print SF 424 from <http://ocfo.ed.gov/grntinfo/appforms.htm>.

EDGAR Certifications, Nonconstruction Programs, Debarment, Drug-Free Work Place and Lobbying Certifications

You must include the following certifications for each of the State agencies that administer one of these programs: Perkins III, Tech-Prep, Adult Education and Literacy or vocational rehabilitation. A State may satisfy the EDGAR requirement by having all responsible State agency officials sign a single set of EDGAR certifications.

EDGAR Certifications

By signing the Unified Plan signature page, you are certifying that:

1. The plan is submitted by the State agency that is eligible to submit the plan. [34 CFR 76.104(a)(1)]

2. The State agency has authority under State law to perform the functions of the State under the program. [34 CFR 76.104(a)(2)]

3. The State legally may carry out each provision of the plan. [34 CFR 76.104(a)(3)]

4. All provisions of the plan are consistent with State law. [34 CFR 76.104(a)(4)]

5. A State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan. [34 CFR 76.104(a)(5)]

6. The State officer who submits the plan, specified by title in the certification, has authority to submit the plan. [34 CFR 76.104(a)(6)]

7. The agency that submits the plan has adopted or otherwise formally approved the plan. [34 CFR 76.104(a)(7)]

8. The plan is the basis for State operation and administration of the program. [34 CFR 76.104(a)(8)]

9. A copy of the State plan was submitted into the State Intergovernmental Review Process. [Executive Order 12372]

Debarment, Drug-Free Work Place, and Lobbying

By signing the Unified Plan signature page, you are certifying that:

1. The ED grantee has filed ED 80-0013. This form also applies to AEFLA and RSA. States can print ED 80-0013 from <http://ocfo.ed.gov/grntinfo/appforms.htm>.

Perkins III

By signing the Unified Plan signature page, the eligible agency is certifying that:

1. The State plan complies with the requirements of Title I of Perkins III and the provisions of the State plan, including the provision of a financial audit of funds received under this title which may be included as part of an audit of other Federal or State programs. (§ 122(c)(10))

2. None of the funds expended under Title I of Perkins III will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, the employees of the purchasing entity, or any affiliate of such an organization. (§ 122(c)(11))

3. § 501(b)(1) provides that secondary vocational education programs authorized under Perkins III may only be included in a unified plan "with the prior approval of the legislature of the State." Documentation of this approval is submitted with the unified plan. State legislative approval may be conferred by a resolution adopted by votes of both houses of your State legislature (unless your State has a unicameral legislature) on any date following July 28, 1998. The resolution need not be freestanding; it may be included as an amendment to other legislation. In either event, the resolution should be specific and refer to the requirements of section 501(b)(1) and must clearly differentiate between secondary and postsecondary vocational education.

WIA Title I/Wagner-Peyser Act/Veterans Programs

By signing the Unified Plan signature page, you are certifying that:

1. The State Board will ensure that the public (including people with disabilities) has access to Board meetings and information regarding State Board activities, including membership and meeting minutes. (§ 112(b)(1))

2. The State assures that it will establish, in accordance with section 184 of the Workforce Investment Act, fiscal control and fund accounting

procedures that may be necessary to ensure the proper disbursement of, and accounting for, funds paid to the State through the allotments made under sections 127 and 132. (§ 112(b)(11))

3. The State assures that it will comply with section 184(a)(6), which requires the Governor to, every two years, certify to the Secretary, that—

A. The State has implemented the uniform administrative requirements referred to in section 184(a)(3);

B. The State has annually monitored local areas to ensure compliance with the uniform administrative requirements as required under section 184(a)(4); and

C. The State has taken appropriate action to secure compliance pursuant to section 184(a)(5). (§ 184(a)(6))

4. The State assures that the adult and youth funds received under the Workforce Investment Act will be distributed equitably throughout the State, and that no local areas will suffer significant shifts in funding from year to year during the period covered by this plan. (§ 112(b)(12)(B))

5. The State assures that veterans and other preference eligible persons will be afforded a priority service, in accordance with the requirements of chapter 41 of title 38 and 20 CFR 1001, in the One-Stop system for the provision of labor exchange services funded under the Wagner-Peyser Act.

6. The State assures that the Governor shall, once every two years, certify one local board for each local area in the State. (§ 117(c)(2))

7. The State assures that it will comply with the confidentiality requirements of section 136(f)(3)

8. The State assures that no funds received under the Workforce Investment Act will be used to assist, promote, or deter union organizing. (§ 181(b)(7))

9. The State assures that it will comply with the nondiscrimination provisions of section 188, and its implementing regulations at 29 CFR part 37, including an assurance that a Methods of Administration has been developed and implemented. (§ 188 and § 112(b)(17))

10. The State assures that it will collect and maintain data necessary to show compliance with the nondiscrimination provisions of section 188, as provided in the regulations implementing that section. (§ 185)

11. The State certifies that the Wagner-Peyser Act Plan, which is part of this document, has been certified by the State Employment Security Administrator.

12. The State assures that veterans workforce investment programs funded

under WIA, Section 168 will be carried out in accordance with that section, and further assures veterans will be afforded employment and training services under WIA section 134, to the extent practicable.

13. The State certifies that Workforce Investment Act section 167 grantees, advocacy groups, the State monitor advocate, agricultural organizations, and employers were given the opportunity to comment on the Wagner-Peyser Act agricultural services submission, including any local office affirmative action plans.

14. The State assures that it will comply with the annual Migrant and Seasonal Farmworker significant office requirements in accordance with 20 CFR part 653.

15. The State has developed this Plan in consultation with local elected officials, local workforce boards, the business community, labor organizations and other partners.

16. The State assures that funds will be expended in accordance with the requirements of the WIA, the Wagner-Peyser Act, chapter 41 of Title 38, the regulations implementing such laws, written guidance issued by the Department of Labor, grant agreements, and other applicable Federal laws.

17. The State certifies that labor exchange activities funded under the Wagner-Peyser Act will be provided by State merit-staff employees. The State assures that it will submit a plan modification to the Department if there is any change in policy regarding the public merit-staffed delivery of Wagner-Peyser Act services in any local workforce investment area.

18. The State Workforce Investment system and entities carrying out activities in the community who are in receipt of assistance from the workforce investment system or from the workforce investment system partners shall comply with the Architectural Barriers Act of 1968, sections 503 and 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

19. The State assures to include State and local EO officers and advocates for groups protected from discrimination under WIA Section 188 in the planning process in a meaningful way, beginning with the earliest stages.

20. The State assures that it will comply with the grant procedures prescribed by the Secretary (pursuant to the authority at section 189(c) of the Act) which are necessary to enter into grant agreements for the allocation and payment of funds under the Act. The procedures and agreements will be provided to the State by the ETA Office

of Grants and Contract Management and will specify the required terms and conditions and assurances and certifications, including, but not limited to, the following:

General Administrative Requirements

- 29 CFR part 97—Uniform Administrative Requirements for State and Local Governments (as amended by the Act).
- 29 CFR part 96 (as amended by OMB Circular A-133)—Single Audit Act.
- OMB Circular A-87—Cost Principles (as amended by the Act).

Assurances and Certifications

- SF 424 B—Assurances for Nonconstruction Programs.
- 29 CFR part 31, 32—Nondiscrimination and Equal Opportunity Assurance (and regulation).
- CFR part 93—Certification Regarding Lobbying (and regulation).
- 29 CFR part 98—Drug Free Workplace and Debarment and Suspension.

21. The State certifies that, in providing an opportunity for public comment and input into the development of the plan, the State has consulted with persons of disabilities and has provided information regarding the plan and the planning process, including the plan and supporting documentation in alternative formats when requested.

Adult Education and Family Literacy

By signing the Unified Plan signature page, you are certifying that:

1. The eligible agency will award not less than one grant to an eligible provider who offers flexible schedules and necessary support services (such as child care and transportation) to enable individuals, including individuals with disabilities, or individuals with other special needs, to participate in Adult Education and Literacy activities, which eligible provider shall attempt to coordinate with support services that are not provided under this subtitle prior to using funds for Adult Education and Literacy activities provided under AEFLA for support services. (§ 224(b)(5))
2. The funds received under subtitle A of Title II of WIA will not be expended for any purpose other than for activities under subtitle A of Title II of WIA. (§ 224(b)(6))
3. The eligible agency will expend the funds under subtitle A of Title II of WIA only in a manner consistent with fiscal requirements in section 241. (§ 224(b)(8))

Food Stamp Employment and Training (FSET)

By signing the Unified Plan signature page, you are certifying that:

1. Federal funds allocated by the Department of Agriculture to the State under section 16(h)(1) of the Food Stamp Act of 1977 (the Act), or provided to the State as reimbursements under sections 16(h)(2) and 16(h)(3) of the Act will be used only for operating an employment and training program under section 6(d)(4) of the Act.

2. The State will submit to the Food and Nutrition Service (FNS) annual updates to its Employment and Training Plan for the coming fiscal year. The updates are due by August 15 of each year. The annual update must include any changes the State anticipates making in the basic structure or operation of its program. At a minimum, the annual update must contain revisions to Tables 1 (Estimated Participant Levels), 2 (Estimated E&T Placement Levels), 4 (Operating Budget), and 5 (Funding Categories).

3. If significant changes are to be made to its E&T program during the fiscal year, the State will submit to FNS a request to modify its plan. FNS must approve the modification request before the proposed change is implemented. The State may be liable for costs associated with implementation prior to approval. See "The Handbook on Preparing State Plans for Food Stamp Employment and Training Programs" for additional information.

4. The State will submit a quarterly E&T report, FNS-583. Reports are due no later than 45 days after the end of each Federal fiscal quarter. The information required on the FNS-583 is listed in Exhibit 3 of the "The Handbook on Preparing State Plans for Food Stamp Employment and Training Programs."

5. The State will submit E&T program financial information on the SF-269, Financial Status Report. It must include claims for the 100 percent Federal grant, 50 percent matched funding, and participant reimbursements. The SF-269 is due 30 days after the end of each Federal fiscal quarter.

6. The State will deliver each component of its E&T program through the One-Stop delivery system, an interconnected strategy for providing comprehensive labor market and occupational information to job seekers, employers, core services providers, other workforce employment activity providers, and providers of workforce education activities. If the component is not available locally through such a

system, the State may use another source.

Vocational Rehabilitation

By signing the Unified Plan signature page, you are certifying that:

1. As a condition for the receipt of Federal funds under title I, part B of the Rehabilitation Act³ for the provision of vocational rehabilitation services, the designated State agency⁴ agrees to operate and administer the State Vocational Rehabilitation Services Program in accordance with provisions of this Title I State plan⁵, the Act and all applicable regulations⁶, policies and procedures established by the Secretary. Funds made available under section 111 of the Act are used solely for the provision of vocational rehabilitation services under title I and the administration of the title I State plan.

2. As a condition of the receipt of Federal funds under title VI, part B of the Act for supported employment services, the designated State agency agrees to operate and administer the State Supported Employment Services Program in accordance with the provisions of the supplement to this State plan⁷, the Act, and all applicable regulations⁸, policies, and procedures established by the Secretary. Funds made available under title VI, part B are used solely for the provision of supported employment services and the administration of the supplement to the title I State plan.

3. The designated State agency or designated State unit is authorized to submit this State plan under title I of the Act and its supplement under title VI, part B of the Act.

4. The State submits only those policies, procedures, or descriptions required under this State plan and its supplement that have not been

previously submitted to and approved by the Commissioner of the Rehabilitation Services Administration. (§ 101(a)(1)(B))

5. The State submits to the Commissioner at such time and in such manner as the Secretary determines to be appropriate, reports containing annual updates of the information relating to the: comprehensive system of personnel development; assessments, estimates, goals and priorities, and reports of progress; innovation and expansion activities; and requirements under title I, part B or title VI, part B of the Act. (§ 101(a)(23))

6. The State plan and its supplement are in effect subject to the submission of such modifications as the State determines to be necessary or as the Commissioner may require based on a change in State policy, a change in Federal law, including regulations, an interpretation of the Act by a Federal court or the highest court of the State, or a finding by the Commissioner of State noncompliance with the requirements of the Act, until the State submits and receives approval of a new State plan or plan supplement. (§ 101(a)(1)(C))

7. The State has an acceptable plan for carrying out part B of title VI of the Act, including the use of funds under that part to supplement funds made available under part B of title I of the Act to pay for the cost of services leading to supported employment. (§ 101(a)(22))

8. The designated State agency, prior to the adoption of any policies or procedures governing the provision of vocational rehabilitation services under the State plan and supported employment services under the supplement to the State plan, including making any amendment to such policies and procedures, conducts public meetings throughout the State after providing adequate notice of the meetings, to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures, and actively consults with the Director of the client assistance program, and, as appropriate, Indian tribes, tribal organizations, and Native Hawaiian organizations on the policies or procedures. (§ 101(a)(16)(A))

9. The designated State agency takes into account, in connection with matters of general policy arising in the administration of the plan, the views of individuals and groups of individuals who are recipients of vocational rehabilitation services, or in appropriate cases, the individual's representatives; personnel working in programs that provide vocational rehabilitation

services to individuals with disabilities; providers of vocational rehabilitation services to individuals with disabilities; the Director of the client assistance program; and the State Rehabilitation Council, if the State has such a Council. (§ 101(a)(16)(B))

10. The designated State agency (or, as appropriate, agencies) is a State agency that is:

a. primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities; or

b. not primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, and includes within the State agency a vocational rehabilitation bureau, or division, or other organizational unit that: is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities, and is responsible for the designated State agency's vocational rehabilitation program; has a full-time director; has a staff, all or substantially all of whom are employed full time on the rehabilitation work of the organizational unit; and is located at an organizational level and has an organizational status within the designated State agency comparable to that of other major organizational units of the designated State agency. (§ 101(a)(2)(B))

11. The designated State agency (or, as appropriate, agencies):

a. is an independent commission that is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State; is consumer-controlled by persons who are individuals with physical or mental impairments that substantially limit major life activities; and represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind; includes family members, advocates, or other representatives, of individuals with mental impairments; and undertakes the functions set forth in § 105(c)(4) of the Act; or

b. has established a State Rehabilitation Council that meets the criteria set forth in section 105 of the Act and the designated State unit: jointly with the Council develops, agrees to, and reviews annually State goals and priorities, and jointly submits annual reports of progress with the Council, in accordance with the provisions of § 101(a)(15) of the Act; regularly consults with the Council regarding the development,

³ Unless otherwise specified, any references to "the Act" means to the Rehabilitation Act of 1973, as amended, (Public Law 93-112, as amended by Public Laws 93-516, 95-602, 99-506, 100-630, 102-569, 103-073, and 105-220).

⁴ All references in this plan to "designated State agency" or to "the State agency" relate to the agency identified in this paragraph.

⁵ No funds under title I of the Act may be awarded without an approved State plan in accordance with section 101(a) of the Act and 34 CFR part 361.

⁶ Applicable regulations include Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 76, 77, 79, 80, 81, 82, 85 and 86 and the State Vocational Rehabilitation Services Program regulations in 34 CFR part 361.

⁷ No funds under title VI, part B of the Act may be awarded without an approved supplement to the title I State plan in accordance with section 625(a) of the Act.

⁸ Applicable regulations include Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 76, 77, 79, 80, 81, 82, 85 and 86; 34 CFR part 361; and 34 CFR 363.

implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services; includes in the State plan and in any revision to the State plan, a summary of input provided by the Council, including recommendations from the annual report of the Council described in section 105(c)(5) of the Act, the review and analysis of consumer satisfaction described in section 105(c)(4), and other reports prepared by the Council, and the response of the designated State unit to such input and recommendations, including explanations for rejecting any input or recommendation; and transmits to the Council all plans, reports, and other information required under this title to be submitted to the Secretary; all policies, and information on all practices and procedures, of general applicability provided to or used by rehabilitation personnel in carrying out this title; and copies of due process hearing decisions issued under this title, which shall be transmitted in such a manner as to ensure that the identity of the participants in the hearings is kept confidential. (§ 101(a)(21))

12. The State provides for financial participation, or if the State so elects, by the State and local agencies, to provide the amount of the non-Federal share of the cost of carrying out title I, part B of the Act. (§ 101(a)(3))

13. The plan is in effect in all political subdivisions of the State, except that in the case of any activity that, in the judgment of the Commissioner, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of individuals with disabilities or groups of individuals with disabilities, the Commissioner may waive compliance with the requirement that the plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by the Commissioner, but only if the non-Federal share of the cost of the vocational rehabilitation services involved is met from funds made available by a local agency (including funds contributed to such agency by a private agency, organization, or individual); and in a case in which earmarked funds are used toward the non-Federal share and such funds are earmarked for particular geographic areas within the State, the earmarked funds may be used in such areas if the State notifies the Commissioner that the State cannot provide the full non-Federal share without such funds. (§ 101(a)(4))

14. The State agency employs methods of administration found by the Commissioner to be necessary for the proper and efficient administration of the State plan. (§ 101(a)(6)(A))

15. The designated State agency and entities carrying out community rehabilitation programs in the State, who are in receipt of assistance under title I of the Act, take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as set forth in § 503 of the Act. (§ 101(a)(6)(B))

16. Facilities used in connection with the delivery of services assisted under the State plan comply with the provisions of the Act entitled "An Act to insure that certain buildings financed with federal funds are so designed and constructed as to be accessible to the physically handicapped," approved on August 12, 1968 (commonly known as the "Architectural Barriers Act of 1968"), with § 504 of the Act and with the Americans with Disabilities Act of 1990. (§ 101(a)(6)(C))

17. If, under special circumstances, the State plan includes provisions for the construction of facilities for community rehabilitation programs—

a. The Federal share of the cost of construction for the facilities for a fiscal year will not exceed an amount equal to 10 percent of the State's allotment under section 110 for such year;

b. The provisions of section 306 (as in effect on the day before the date of enactment of the Rehabilitation Act Amendments of 1998) shall be applicable to such construction and such provisions shall be deemed to apply to such construction; and

c. There shall be compliance with regulations the Commissioner shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of facilities for community rehabilitation programs) because the plan includes such provisions for construction. (§ 101(a)(17))

18. The designated State unit submits, in accordance with section 101(a)(10) of the Act, reports in the form and level of detail and at the time required by the Commissioner regarding applicants for and eligible individuals receiving services under the State plan and the information submitted in the reports provides a complete count, unless sampling techniques are used, of the applicants and eligible individuals in a manner that permits the greatest possible cross-classification of data and ensures the confidentiality of the

identity of each individual.

(§ 101(a)(10)(A) and (F))

19. The designated State agency has the authority to enter into contracts with for-profit organizations for the purpose of providing, as vocational rehabilitation services, on-the-job training and related programs for individuals with disabilities under part A of title VI of the Act, upon the determination by the designated State agency that such for-profit organizations are better qualified to provide such vocational rehabilitation services than non-profit agencies and organizations. (§ 101(a)(24)(A))

20. The designated State agency has cooperative agreements with other entities that are components of the statewide workforce investment system of the State in accordance with section 101(a)(11)(A) of the Act and replicates these cooperative agreements at the local level between individual offices of the designated State unit and local entities carrying out activities through the statewide workforce investment system. (§ 101(a)(11)(A) and (B))

21. The designated State unit, the Statewide Independent Living Council established under section 705 of the Act, and the independent living centers described in part C of title VII of the Act within the State have developed working relationships and coordinate their activities. (§ 101(a)(11)(E))

22. If there is a grant recipient in the State that receives funds under part C of the Act, the designated State agency has entered into a formal agreement that meets the requirements of section 101(a)(11)(F) of the Act with each grant recipient. (§ 101(a)(11)(F))

23. Except as otherwise provided in part C of title I of the Act, the designated State unit provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides such services to other significant populations of individuals with disabilities residing in the State. (§ 101(a)(13))

24. No duration of residence requirement is imposed that excludes from services under the plan any individual who is present in the State. (§ 101(a)(12))

25. The designated State agency has implemented an information and referral system that is adequate to ensure that individuals with disabilities are provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining, or regaining employment, and

are appropriately referred to Federal and State programs, including other components of the statewide workforce investment system in the State. (§ 101(a)(20))

26. In the event that vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in the State who apply for the services, individuals with the most significant disabilities, in accordance with criteria established by the State for the order of selection, will be selected first for the provision of vocational rehabilitation services and eligible individuals, who do not meet the order of selection criteria, shall have access to services provided through the information and referral system implemented under section 101 (a)(20) of the Act. (§ 101(a)(5)(C) and (D))

27. Applicants and eligible individuals, or, as appropriate, the applicants' representatives or the individuals' representatives, are provided information and support services to assist the applicants and eligible individuals in exercising informed choice throughout the rehabilitation process, consistent with the provisions of section 102(d) of the Act. (§ 101(a)(19))

28. An individualized plan for employment meeting the requirements of section 102(b) of the Act will be developed and implemented in a timely manner for an individual subsequent to the determination of the eligibility of the individual for services, except that in a State operating under an order of selection, the plan will be developed and implemented only for individuals meeting the order of selection criteria; services under this plan will be provided in accordance with the provisions of the individualized plan for employment. (§ 101(a)(9))

29. Prior to providing any vocational rehabilitation services, except:

a. Assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

b. Counseling and guidance, including information and support services to assist an individual in exercising informed choice consistent with the provisions of section 102(d) of the Act;

c. Referral and other services to secure needed services from other agencies through agreements developed under section 101(a)(11) of the Act, if such services are not available under this State plan;

d. Job-related services, including job search and placement assistance, job

retention services, follow-up services, and follow-along services;

e. Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices; and

f. Post-employment services consisting of the services listed under subparagraphs (a) through (e), to an eligible individual, or to members of the individual's family, the State unit determines whether comparable services and benefits exist under any other program and whether those services and benefits are available to the individual unless the determination of the availability of comparable services and benefits under any other program would interrupt or delay:

- Progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

- An immediate job placement; or
- Provision of such service to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(§ 101(a)(8)(A))

30. The Governor of the State in consultation with the designated State vocational rehabilitation agency and other appropriate agencies ensures that there is an interagency agreement or other mechanism for interagency coordination that meets the requirements of section 101(a)(8)(B)(i)–(iv) of the Act between any appropriate public entity, including the State Medicaid program, public institution of higher education, and a component of the statewide workforce investment system, and the designated State unit so as to ensure the provision of the vocational rehabilitation services identified in section 103(a) of the Act, other than the services identified as being exempt from the determination of the availability of comparable services and benefits, that are included in the individualized plan for employment of an eligible individual, including the provision of such services during the pendency of any dispute that may arise in the implementation of the interagency agreement or other mechanism for interagency coordination. (§ 101(a)(8)(B))

31. The State agency conducts an annual review and reevaluation of the status of each individual with a disability served under this State plan who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or any other employment under section 14(c) of the Fair Labor Standards Act (29 U.S.C.

214(c)) for 2 years after the achievement of the outcome (and annually thereafter if requested by the individual or, if appropriate, the individual's representative), to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment; provides for the input into the review and reevaluation, and a signed acknowledgment that such review and reevaluation have been conducted, by the individual with a disability, or, if appropriate, the individual's representative; and makes make maximum efforts, including the identification and provision of vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist such individuals in engaging in competitive employment. (§ 101(a)(14))

32. Funds made available under title VI, part B of the Act will only be used to provide supported employment services to individuals who are eligible under this part to receive the services. (§ 625(b)(6)(A))

33. The comprehensive assessments of individuals with significant disabilities conducted under section 102(b)(1) of the Act and funded under title I will include consideration of supported employment as an appropriate employment outcome. (§ 625(b)(6)(B))

34. An individualized plan for employment, as required by section 102 of the Act, will be developed and updated using funds under title I in order to specify the supported employment services to be provided; specify the expected extended services needed; and identify the source of extended services, which may include natural supports, or to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, a statement describing the basis for concluding that there is a reasonable expectation that such sources will become available. (§ 625(b)(6)(C))

35. The State will use funds provided under title VI, part B only to supplement, and not supplant, the funds provided under title I, in providing supported employment services specified in the individualized plan for employment. (§ 625(b)(6)(D))

36. Services provided under an individualized plan for employment will be coordinated with services provided under other individualized plans established under other Federal or State programs. (§ 625(b)(6)(E))

37. To the extent jobs skills training is provided, the training will be provided on site. (§ 625(b)(6)(F))

38. Supported employment services will include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities. (§ 625(b)(G))

39. The State will expend not more than 5 percent of the allotment of the State under title VI, part B for administrative costs of carrying out this part. (§ 625(b)(7))

40. The supported employment supplement to the title I State plan contains such other information and be submitted in such manner as the Commissioner of the Rehabilitation Services Administration may require. (§ 625(b)(8))

Unemployment Insurance

The Governor, by signing the Unified Plan Signature Page, certifies that:

1. The SESA will comply with the following assurances, and that the SESA will institute plans or measures to comply with the following requirements. Because the Signature Page incorporates the assurances by reference into the Unified Plan, States should not include written assurances in their Unified Plan submittal. The assurances are identified and explained in Paragraphs (2)–(11) below.

2. Assurance of Equal Opportunity (EO). As a condition to the award of financial assistance from ETA:

(a) The State assures that it will comply with the nondiscrimination provisions of section 188, and its implementing regulations at 29 CFR part 37, including an assurance that a Method of Administration has been developed and implemented. (§ 188 and § 112(b)(17));

(b) The State assures that it will collect and maintain data necessary to show compliance with the nondiscrimination provisions of section 188, as provided in the regulations implementing that section (§ 185).

3. Assurance of Administrative Requirements and Allowable Cost Standards. The SESA will comply with administrative requirements and cost principles applicable to grants and cooperative agreements as specified in 20 CFR Part 601 (Administrative Procedure), 29 CFR Part 93 (Lobbying Prohibitions), 29 CFR Part 96 (Audit Requirements), 29 CFR Part 97 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and OMB

Circular A–87 (Revised), 60 FR 26484 (May 17, 1995), further amended at 62 FR 45934 (August 29, 1997) (Cost Principles for State, Local, and Indian Tribal Governments), and with administrative requirements for debarment and suspension applicable to subgrants or contracts as specified in 29 CFR Part 98 (Debarment and Suspension). The cost of State staff travel to regional and national meetings and training sessions is included in the grant funds. It is assured that State staff will attend mandatory meetings and training sessions, or unused funds will be returned.

States that have subawards to organizations covered by audit requirements of OMB Circular A–133 (Revised) (Audit Requirements of Institutions of Higher Education and Other Non-Profits) must (1) ensure that such subrecipients meet the requirements of that circular, as applicable, and (2) resolve audit findings, if any, resulting from such audits, relating to the UI program.

(a) The SESA also assures that it will comply with the following specific administrative requirements.

(i). Administrative Requirements. Program Income. Program income is defined in 29 CFR 97.25 as gross income received by a grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. States may deduct costs incidental to the generation of UI program income from gross income to determine net UI program income. UI program income may be added to the funds committed to the grant by ETA. The program income must be used only as necessary for the proper and efficient administration of the UI program. Any rental income or user fees obtained from real property or equipment acquired with grant funds from prior awards shall be treated as program income under this grant.

Budget Changes. Except as specified by terms of the specific grant award, ETA, in accordance with the regulations, waives the requirements in 29 CFR 97.30(c)(1)(ii) that States obtain prior written approval for certain types of budget changes.

Real Property Acquired with Reed Act Funds. The requirements for real property acquired with Reed Act or other non-Federal funds and amortized with UI grants are in UIPL 39–97, dated September 12, 1997, and in 29 CFR 97.31 to the extent amortized with UI grants.

Equipment Acquired with Reed Act Funds. The requirements for equipment acquired with Reed Act or other non-

Federal funds and amortized with UI grants are in UIPL 39–97, dated September 12, 1997, and in 29 CFR 97.31 to the extent amortized with UI grants.

Real Property, Equipment, and Supplies. Real property, equipment, and supplies acquired under prior awards are transferred to this award and are subject to the relevant regulations at 29 CFR Part 97.

For super-microcomputer systems and all associated components which were installed in States for the purpose of Regular Reports, Benefits Accuracy Measurement, and other UI Activities, the requirements of 29 CFR Part 97 apply. The National Office reserves the right to transfer title and issue disposition instructions in accordance with paragraph (g) of Federal regulations at 29 CFR 97.32. States also will certify an inventory list of system components which will be distributed annually by ETA.

Standard Form 272, Federal Cash Transactions Report. In accordance with 29 CFR 97.41(c), SESAs are required to submit a separate SF 272 for each sub-account under the Department of Health and Human Services (DHHS) Payment Management System. However, SESAs are exempt from the requirement to submit the SF 272A, Continuation Sheet.

(ii). Exceptions and Expansions to Cost Principles. The following exceptions or expansions to the cost principles of OMB Circular No. A–87 (Revised) are applicable to SESAs:

—Employee Fringe Benefits. As an exception to OMB Circular A–87 (Revised) with respect to personnel benefit costs incurred on behalf of SESA employees who are members of fringe benefit plans which do not meet the requirements of OMB Circular No. A–87 (Revised), Attachment B, item 11, the costs of employer contributions or expenses incurred for SESA fringe benefit plans are allowable, provided that:

For retirement plans, all covered employees joined the plan before October 1, 1983; the plan is authorized by State law; the plan was previously approved by the Secretary; the plan is insured by a private insurance carrier which is licensed to operate this type of plan in the applicable State; and any dividends or similar credits because of participation in the plan are credited against the next premium falling due under the contract.

For all SESA fringe benefit plans other than retirement plans, if the Secretary granted a time extension after October 1, 1983, to the existing approval of such a plan, costs of the plan are

allowable until such time as the plan is comparable in cost and benefits to fringe benefit plans available to other similarly employed State employees. At such time as the cost and benefits of an approved fringe benefit plan are equivalent to the cost and benefits of plans available to other similarly employed State employees, the time extension will cease and the cited requirements of OMB Circular A-87 (Revised) will apply. (3) For retirement plans and all other fringe benefit plans covered in (1) and (2) of this paragraph, any additional costs resulting from improvements to the plans made after October 1, 1983, are not chargeable to UI grant funds.

—UI Claimant's Court Appeals Costs. To the extent authorized by State law, funds may be expended for reasonable counsel fees and necessary court costs, as fixed by the court, incurred by the claimant on appeals to the courts in the following cases:

Any court appeal from an administrative or judicial decision favorable in whole or in part for the claimant;

Any court appeal by a claimant from a decision which reverses a prior decision in his/her favor;

Any court appeal by a claimant from a decision denying or reducing benefits awarded under a prior administrative or judicial decision;

Any court appeal as a result of which the claimant is awarded benefits;

Any court appeal by a claimant from a decision by a tribunal, board of review, or court which was not unanimous; and

Any court appeal by a claimant where the court finds that a reasonable basis exists for the appeal. Reed Act. Payment from the SESA's UI grant allocations, made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (Section 903(c)(2) of the Social Security Act, as amended (42 U.S.C. 1103(c)(2))), are allowable costs provided that:

The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State-owned real property (as defined in 29 CFR 97.3); and

With respect to each acquisition or improvement of property, the payments are accounted for as credit against equivalent amounts of Reed Act funds previously withdrawn under the respective appropriation.

Prior Approval of Equipment Purchases. As provided for in OMB

Circular No. A-87 (Revised), Attachment B, item 19, the requirement that grant recipients obtain prior approval from the Federal grantor agency for all purchases of equipment (as defined in 29 CFR 97.3) is waived and approval authority is delegated to the SESA Administrator.

4. Assurance of Management Systems, Reporting, and Record Keeping. The SESA assures that:

—Financial systems provide fiscal control and accounting procedures sufficient to permit timely preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended improperly (29 CFR 97.20).

The financial management system and the program information system provide Federally-required reports and records that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit, and evaluation purposes.

It will submit reports to ETA as required in instructions issued by ETA and in the format ETA prescribes.

The financial management system provides for methods to insure compliance with the requirements applicable to procurement and grants as specified in 29 CFR Part 98 (Debarment and Suspension), and for obtaining the required certifications under 29 CFR 98.510(b) regarding debarment, suspension, ineligibility, and voluntary exclusions for lower tier covered transactions.

5. Assurance of Program Quality. The SESA assures that it will administer the UI program in a manner that ensures proper and efficient administration. "Proper and efficient administration" includes performance measured by ETA through Tier I measures, Tier II measures, program reviews, and the administration of the UI BAM, BTQ measures, and TPS program requirements.

6. Assurance on Use of Unobligated Funds. The SESA assures that non-automation funds will be obligated by December 31 of the following fiscal year, and liquidated (expended) within 90 days thereafter. ETA may extend the liquidation date upon written request. Automation funds must be obligated by the end of the 3rd fiscal year, and liquidated within 90 days thereafter. ETA may extend the liquidation date upon written request. Failure to comply with this assurance may result in disallowed costs from audits or review findings.

7. Assurance of Disaster Recovery Capability. The SESA assures that it will maintain a Disaster Recovery plan.

8. Assurance of Conformity and Compliance. The SESA assures that the State law will conform to, and its administrative practice will substantially comply with, all Federal UI law requirements, and that it will adhere to DOL directives.

9. Assurance of Participation in UI PERFORMS. The SESA assures that it will participate in the annual UI PERFORMS State Quality Service Planning process by submitting: (1) Any Corrective Action Plans (CAPs) required under UI PERFORMS, and (2) any Continuous Improvement Plans (CIPs) negotiated with the Department of Labor as part of the State Quality Service Planning process.

10. Assurance of Financial Reports and Planning Forms. The SESA assures that it will submit financial reports and financial planning forms as required by the Department of Labor to support the annual allocation of administrative grants.

11. Assurance of Prohibition of Lobbying Costs (29 CFR Part 93). The SESA assures and certifies that, in accordance with the DOL Appropriations Act, no UI grant funds will be used to pay salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States. (k). Drug-Free Workplace (29 CFR Part 98). The SESA assures and certifies that it will comply with the requirements at this part.

Temporary Assistance for Needy Families (TANF)

By signing the Unified Plan signature page, you are certifying that:

1. During the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D. (§ 402(a)(2))

2. During the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under title XIX. (§ 402(a)(3))

3. Which State agency or agencies will administer and supervise the TANF program for the fiscal year, which shall include assurances that local governments and private sector organizations have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and have had at least 45 days to submit comments on the plan and the design of such services. (§ 402(a)(4))

4. That, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to federally-funded assistance under the State's TANF program (§ 402(a)(5))

5. That the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage. (§ 402(a)(6))

6. (Optional) that the State has established and is enforcing standards and procedures to:

- Screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

- Refer such individuals to counseling and supportive services; and

- Waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence. (§ 402(a)(7)(A)(i), (ii), (iii))

Welfare-to-Work (WtW)

By signing the Unified Plan signature page, you are certifying that:

1. The State is an eligible State, pursuant to SSA section 402(a) for the fiscal year. (SSA § 402(a); SSA § 403(a)(5)(A)(ii)(IV))

2. The State assures that qualified State expenditures (within the meaning of SSA section 409(a)(7)) for the fiscal year will not be less than the applicable percentage of historic State expenditures (within the meaning of SSA section 409(a)(7)) with respect to the fiscal year. (SSA section 403(5)(A)(ii)(V); SSA Section 409(a)(7))

3. The State has consulted and coordinated with the appropriate entities in the substate areas regarding the plan and the design of WtW services in the State. Statutory Citation: SSA section 403(a)(5)(A)(ii)(I)(cc).

4. The State will make available to the public a summary of the WtW plan. Statutory Citation: SSA section 402(b).

5. The State has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under SSA section 413(j) and to cooperate with the conduct of such an evaluation. (SSA § 403(a)(5)(A)(ii)(III); SSA § 413(j))

6. The State shall not use any part of these grant funds, nor any part of state expenditures made to match the funds, to fulfill any obligation of any State, political subdivision, or private industry council to contribute funds under SSA sections 403(b) or 418 or any other provision of the Social Security Act or other Federal law.

Note: There is an exception to this requirement for Access to Jobs. Statutory Citation: SSA section 403(a)(5)(C)(vi).

7. The State will return to The Secretary of Labor any part of the WtW funds that are not expended within 3 years after the date the funds are so provided. Statutory Citation: SSA section 403(a)(5)(C)(vii).

8. The State WtW program will be conducted in accordance with the WtW legislation, regulatory provisions, future written guidance provided by the Department, and all other applicable Federal and State laws.

9. The State will apply the TANF law and regulations to the operation of the WtW program, unless otherwise specified by the Department or defined in SSA section 403(a)(5) or the applicable WtW regulations.

10. The State will provide services under the WtW grant to eligible participants only.

11. The State will maintain and submit accurate, complete and timely participant and financial records reports, as specified by the Secretary of Labor and the Secretary of Health and Human Services.

12. The State will establish a mechanism to exchange information and coordinate the WtW program operated by the State and PICs with other programs available that will assist in providing welfare recipients employment.

13. The State shall adhere to the certifications required under TANF and will meet the TANF maintenance of effort requirements.

14. The State will comply with the "common rule" Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments codified for DOL at 29 CFR Part 97.

15. The State will follow the audit requirements of The Single Audit Act

Amendments of 1996 and OMB-Circular A-133.

16. The State will follow the allowable cost/cost principles of OMB Circular A-87.

17. The State will establish policies to enforce the provisions regarding nondisplacement in work activities under a program operated with funds provided under WtW. Statutory Citation: SSA section 403(a)(5)(J)(i).

18. Assures that the Health and Safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of other participants engaged in a work activity under a program operated with funds provided under WtW. Statutory Citation: SSA section 403(a)(5)(J)(ii).

19. The State will enforce the provision that an individual may not be discriminated against by reason of gender with respect to participation in work activities under a program operated with funds provided under WtW. Statutory Citation: SSA section 403(a)(5)(J)(iii).

20. The State shall establish and maintain procedures for grievances or complaints from participants and employees under the WtW program. The procedures established will be consistent with the requirements of SSA section 403(a)(5)(J)(iv). Statutory Citation: SSA section 403(a)(5)(J)(iv).

21. The State shall establish and enforce standards and procedures to ensure against fraud and abuse, including standards and procedures against nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State WtW program, kickbacks, and the use of political patronage.

22. The State will comply with the nondiscrimination provisions of the laws enumerated at SSA section 408(d), with respect to participation in work activities engaged in under the WtW program.

Senior Community Service Employment Program (SCSEP)

1. By signing the Unified Plan signature page, you are certifying that the State agrees to follow the provisions of Title V of the Older Americans Act of 1965 as amended or its successor legislation, the regulations at 20 CFR part 641 and Department of Labor guidance when administering funds provided pursuant to that Act.

Community Services Block Grant (CSBG)

By signing the Unified Plan signature page, you are certifying that:

1. Funds made available through the grant or allotment will be used—

- To support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

- To remove obstacles and solve problems that block the achievement of self-sufficiency (including self-sufficiency for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act); to secure and retain meaningful employment;

- To attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives;

- To make better use of available income;

- To obtain and maintain adequate housing and a suitable living environment;

- To obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and to achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to—
- Document best practices based on successful grassroots intervention in urban areas, to develop methodologies for widespread replication; and strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts.

2. The needs of youth in low-income communities are being met through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as—

- Programs for the establishment of violence-free zones that would involve

youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and

- After-school child care programs.

There is an effective use of, and to coordinate, other programs related to the purposes of this subtitle (including State welfare reform efforts).

3. There is an effective use of, and to coordinate with, other programs related to the purposes of this subtitle (including State welfare reform efforts).

4. A description is provided on how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 675C(b) in accordance with this subtitle, including a description of how the State will support innovative community and neighborhood-based initiatives related to the purposes of this subtitle.

5. Information is provided by eligible entities in the State, containing—

- A description of the service delivery system, for services provided or coordinated with funds made available through grants made under section 675C(a), targeted to low-income individuals and families in communities within the State;

- A description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations;

- A description of how funds made available through grants made under section 675C(a) will be coordinated with other public and private resources; and

- A description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this subtitle, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging effective parenting.

6. Eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals.

7. The State and the eligible entities in the State will coordinate, and establish linkages between, governmental and other social services programs to assure the effective delivery of such services to low-income individuals and to avoid duplication of such services, and a description of how the State and the eligible entities will coordinate the provision of employment

and training activities, as defined in section 101 of such Act, in the State and in communities with entities providing activities through statewide and local workforce investment systems under the Workforce Investment Act of 1998.

8. The State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI (relating to low-income home energy assistance) are conducted in such community.

9. The State will permit and cooperate with Federal investigations undertaken in accordance with section 678D.

10. Any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this subtitle will not have its funding terminated under this subtitle, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 678C(b).

11. The State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation.

12. The State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation.

13. The State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this subtitle for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Secretary, with the State plan) that includes a community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs.

14. The State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development

pursuant to section 678E(b), or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-

sufficiency, family stability, and community revitalization.

15. The information describing how the State will carry out the assurances is described in this subsection.

[FR Doc. 00-811 Filed 1-13-00; 8:45 am]

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Federal Register

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Part III

Department of Commerce

Bureau of Export Administration

15 CFR Parts 734, 740, et al.

**Revisions to Encryption Items; Interim
Final Rule**

DEPARTMENT OF COMMERCE**Bureau of Export Administration****15 CFR Parts 734, 740, 742, 770, 772, and 774****[Docket No. 000110010-0010-01]****RIN: 0694-AC11****Revisions to Encryption Items****AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Interim final rule; request for comments.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to allow the export and reexport of any encryption commodity or software to individuals, commercial firms, and other non-government end-users in all destinations. It also allows exports and reexports of retail encryption commodities and software to all end-users in all destinations. Post-export reporting requirements are streamlined, and changes are made to reflect amendments to the Wassenaar Arrangement. This rule implements the encryption policy announced by the White House on September 16 and will simplify U.S. encryption export rules. Restrictions on terrorist supporting states (Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria), their nationals and other sanctioned entities are not changed by this rule.

DATES: This rule is effective January 14, 2000. Comments must be received on or before May 15, 2000.

ADDRESSES: Written comments on this rule should be sent to Frank J. Ruggiero, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044. Express mail address: Frank J. Ruggiero, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave, N.W., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Director, Office of Strategic Trade, at (202) 482-0092.

SUPPLEMENTARY INFORMATION:**Background:**

On September 16, 1999, the U.S. announced a new approach to its encryption export control policy. This approach rests on three principles: A technical review of encryption products in advance of sale, a streamlined post-export reporting system, and a process that permits the government to review exports of strong encryption to foreign governments. The full range of national

interests continue to be served by this new policy: supporting law enforcement and national security, protecting privacy and promoting electronic commerce. Encryption export controls will be simplified and U.S. companies will have new opportunities to sell their products in the global marketplace.

This regulation also implements changes for encryption items made by the Wassenaar Arrangement, including: conversion of Category 5—Part 2 (Information Security) of the Commerce Control List (CCL) to a positive list; creation of a Cryptography Note and removal of encryption software from the General Software Note; decontrol of 64-bit mass market software and commodities, including components; and decontrol of certain 512-bit key management products.

The EAR is amended as follows:

1. In § 734.2, Important EAR Terms and Principles, unrestricted encryption source code under § 740.13(e), commercial encryption source code under § 740.17(a)(5)(i) and retail products under § 740.17(a)(3) are exempted from Internet download screening requirements in § 734.2 (b)(9)(iii). A revised screening mechanism for other encryption products exported to government end-users is added. Please note that § 734.2(b)(9) contains the relevant definitions for the export of encryption source code and object code software. In addition, cross-referencing changes are made to §§ 734.7, 734.8, and 734.9.

2. In § 740.13, Technology and Software Unrestricted, changes are made to reflect amendments to the Wassenaar Arrangement. Specifically, encryption software is no longer eligible for mass market treatment under the General Software Note. Encryption commodities and software are now eligible for mass market treatment under the new Cryptography Note in Category 5—Part 2 of the CCL. This Note multilaterally decontrols mass market encryption commodities and software up to and including 64-bits. Such products, after review and classification by BXA, are classified under Export Commodity Control Numbers (ECCNs) 5A992 or 5D992, thereby releasing them from “EI” (Encryption Items) and “NS” (National Security) controls, and making them eligible for export and reexport to all destinations (see § 742.15(b)(1)(iii) of the EAR). Once mass market encryption software and commodities are released from “EI” controls they may be eligible for *de minimis* and publicly available treatment (see part 734 of the EAR).

3. Also in § 740.13, to, in part, take into account the “open source” approach to software development,

unrestricted encryption source code not subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code can, without review, be released from “EI” controls and exported and reexported under License Exception TSU. Intellectual property protection (e.g., copyright, patent, or trademark) would not, by itself, be construed as an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code. To qualify, exporters must notify BXA of the Internet location (e.g., URL or Internet address) or provide a copy of the source code by the time of export. These notifications are only required for the initial export; there are no notification requirements for end-users subsequently using the source code. Notification can be made by e-mail to crypt@bxa.doc.gov.

Review and classification are not required for foreign made products using this source code. Moreover, under § 744.9, exporters of unrestricted encryption source code are not restrained from providing technical assistance to foreign persons working with such source code. In addition, exporters of source code are not subject to Internet download screening requirements under § 734.2(b)(9)(iii). Posting of the source code on the Internet (e.g., FTP or World Wide Web site), where it may be downloaded by anyone, would not establish “knowledge” (as that term is defined in the EAR) of a prohibited export or reexport. Such posting would not trigger “red flags” necessitating the affirmative duty to inquire under the “Know Your Customer” guidance provided in Supplement No. 3 to Part 732. Otherwise, compliance with EAR requirements as to prohibited exports and reexports still apply.

4. In § 740.17, Encryption Commodities and Software, language is added to implement the Administration’s new policy. License Exception ENC (Encryption Commodities and Software) is revised as follows:

a. Encryption items under ECCNs 5A002, 5D002 or 5E002 can be exported and reexported to foreign subsidiaries of U.S. companies, including the transfer of encryption technology to their foreign employees in the U.S., without technical review and classification. Any items developed by the U.S. company for sale or retransfer outside the U.S. company are subject to review and classification by BXA. Foreign companies with subsidiaries in the U.S.

can apply for Encryption Licensing Arrangements (ELAs) to obtain treatment equivalent to that extended to foreign subsidiaries of U.S. parent companies.

b. A new paragraph, entitled "Encryption commodities and software," is created to implement the broad authorization for encryption exports contained in the September 16 announcement. Under this paragraph, any encryption commodity, software or components of any key length classified under ECCNs 5A002 and 5D002 can be exported and reexported to individuals, commercial firms and other non-government end-users. Previous sector-specific liberalizations for banks and financial institutions, health and medical end-users and on-line merchants are subsumed into this new paragraph. Previous restrictions limiting exports to foreign commercial firms for internal company proprietary use are removed. In addition, foreign products developed from encryption components, while subject to the EAR, do not require review and classification prior to reexport. Exports and reexports to government end-users require a license.

c. A new paragraph entitled "Retail encryption commodities and software" is created. Retail encryption commodities and software under ECCNs 5A002 and 5D002 are those which are widely available and can be exported and reexported to any end-user (including any Internet and telecommunications service provider), to provide products and services (e.g., e-commerce, client-server applications, or software subscriptions) to any end-user. The criteria to determine eligibility as a retail product include functionality, sales volume, distribution methods, ability to modify products and requirements for substantial support by the supplier. Substantial support for retail encryption commodities and software would mean a service contract or other significant vendor support beyond what is minimally necessary for the product's operation. Help desk calls are not considered substantial support. Refer to § 740.17(a)(3) of the EAR for a detailed definition of retail encryption commodities and software (which may include components as well as encryption source code) and an illustrative, yet non-restrictive, list of such products. Finance-specific, 56-bit non-mass market products with a key exchange greater than 512 bits and up to 1024 bits, network-based applications and other products which are functionally equivalent to retail products are considered retail products.

Encryption software patches for retail products remain eligible under License

Exception TSU and certain upgrades for retail products, where the cryptographic functionality has not changed, are authorized under License Exception ENC. Also, foreign products developed from retail encryption components, while subject to the EAR, require no technical review or license authorization prior to reexport; however, post-export reporting requirements exist. Retail encryption products are not subject to Internet download screening requirements listed in § 734.2(b)(9)(iii); however, all other general prohibitions, such as those for the seven terrorist-supporting countries, apply.

d. A new paragraph is added to License Exception ENC entitled "Telecommunications and Internet service providers." Telecommunications and Internet service providers can obtain and use any encryption product under this license exception to provide encryption services, including public key infrastructure services for the general public; however, provision of services specific to governments (e.g., running a virtual private network for a government agency), will require a license.

e. A paragraph entitled "Commercial encryption source code and general purpose encryption toolkits" is added. You may export and reexport general purpose encryption toolkits and encryption source code, not released under § 740.13, classified under ECCN 5D002, subject to the following provisions:

(1) Commercial encryption source code which would be considered publicly available under § 734.3 and which is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code, can be exported or reexported to any end-user. This source code, which includes some "community" source code, may be exported or reexported without review and classification, provided you have submitted to BXA, by the time of export, written notification of the Internet location (e.g., URL or Internet address) or a copy of the source code. These notifications are only required for the initial export; there are no notification requirements for end-users subsequently utilizing the source code. The notification can be sent via e-mail to crypt@bxa.doc.gov.

(2) Encryption source code which would not be considered publicly available may be exported or reexported to any non-government end-user after review and classification by BXA.

(3) General purpose encryption toolkits may be exported and reexported after review and classification by BXA to any non-government end-user.

Note to this paragraph: Neither review and classification nor reexport licensing requirements are required under this section for foreign finished products using U.S.-origin source code, toolkits and components; yet the foreign finished products remain subject to the EAR. Post-export reporting for foreign products developed for commercial sale with source code and general purpose encryption toolkits exported under this paragraph is limited to the name and address of the foreign manufacturer and certain non-proprietary technical information about the foreign product. Exporters should always be aware of the General Prohibitions identified in part 736 of the EAR (e.g., prohibited exports and reexports to Denied Persons and embargoed destinations).

f. Grandfathering and Upgrades in Key Length: Encryption commodities and software previously approved under a license, or eligible for License Exception ENC, excluding items previously approved only to U.S. subsidiaries, can be exported and reexported to non-government end-users without additional review and classification. Previously classified financial-specific or certain 56-bit products are eligible for export and reexport to any end-users without an additional classification. All previously classified products can be upgraded provided the only change is in the key length used for confidentiality and key exchange. Exporters must, prior to export of an upgraded product, certify in a letter from a corporate official the only change is the key length for confidentiality or key exchange algorithms and there is no other change in cryptographic functionality.

g. Exporters may export any product to any non-government end-user 30 days after receipt by BXA of a complete classification request, unless otherwise notified by BXA. No exports to government end-users are allowed under this provision and BXA reserves the right to suspend eligibility in those instances where requested additional information has not been provided or when the classification review is not proceeding in an appropriate fashion.

h. Reporting requirements under License Exception ENC are eliminated for many encryption items. Remaining reporting requirements are streamlined to reflect business models normally used by exporters. Note that reporting requirements for exports and reexports of encryption components can be adjusted or reduced, on a case-by-case basis, provided an exporter supplies BXA with sufficient information during the initial technical review of the U.S.

encryption component concerning its incorporation into a final foreign product. Examples include those components restricted by their design for use in certain types of products. BXA will notify exporters of such treatment in its classification determination. All required notifications, upgrade certifications and reports should be sent electronically or mailed to the addresses cited in this regulation.

Note to this paragraph: Post-export reporting is required for certain exports to foreign banks and financial institutions.

5. In part 740, Supplement No. 3 is removed. Supplement No. 3 previously listed countries eligible to receive certain encryption products; such products are now eligible for export and reexport to all destinations.

6. In § 742.15, the licensing policy section for exports and reexports of encryption items is changed as follows:

a. Review and classification are required by BXA before certain encryption items can be released from "EI" and "NS" controls under ECCNs 5A992, 5D992 and 5E992. These items include: 64-bit mass market encryption commodities and software; certain encryption items up to and including 56-bits; and asymmetric key exchange algorithms not exceeding 512 bits or an elliptic curve at 112 bits. Encryption items under these ECCNs do not require a license or license exception and may be exported and reexported as "NLR" (No License Required).

b. Upgrades: 40 and 56-bit DES or equivalent mass market commodities and software previously classified as eligible for License Exception ENC or TSU may be upgraded to 64-bits for the confidentiality algorithm. Exporters must, prior to export of an upgraded product, certify to BXA in a letter from a corporate official that the only change is the key length for confidentiality or key exchange algorithms and there is no other change in cryptographic functionality. Note that other mass market encryption commodities and software previously exported under License Exception ENC or TSU are now classified as either 5A992 or 5D992 and eligible for "NLR" treatment. Encryption items under 5A992, 5D992 and 5E992 are not subject to Internet download screening requirements listed in § 734.2(b)(9)(iii).

c. The licensing policies for exports and reexports of encryption items for banks and financial institutions, health and medical end-users, and on-line merchants, as well as U.S. subsidiaries, are subsumed into a new licensing policy paragraph for all encryption

items under ECCNs 5A002, 5D002 or 5E002 eligible for License Exception ENC. For U.S. subsidiaries, any encryption item (including technology classified under 5E002 to foreign employees located in the U.S.) is permitted for export or reexport under License Exception ENC without review and classification. Also, any encryption item, including components, under ECCNs 5A002 or 5D002 can be exported and reexported to non-government end-users in all destinations. Retail products under 5A002 or 5D002 can be exported and reexported to all end-users.

d. Licenses required for exports and reexports of encryption items to governments, or Internet and telecommunications service providers for the provision of services specific to governments, may be considered favorably for civil uses.

e. Under Encryption Licensing Arrangements (ELAs), distributors and resellers can export and reexport under ELAs as long as they comply with restrictions contained in the ELA.

7. In § 770.2, Commodity interpretations, a new interpretation for "Encryption commodity and software reviews" is added. This interpretation clarifies which encryption items require a review and what a review entails.

8. In part 772, Definition of terms, definitions for the following terms are added: Asymmetric Algorithm, Encryption Component, Government End-User, Open Cryptographic Interface and Symmetric Algorithm.

9. In part 774, the Commerce Control List, ECCNs 5A002 and 5D002 are revised to reflect changes in the Wassenaar Arrangement, and the Cryptography Note is added as Note 3 to Category 5—Part 2.

In addition to these changes, BXA is making the following clarifications and interpretations for all encryption items subject to the EAR.

1. The review and classification process is used to classify encryption items for their proper licensing mechanism and not to delay or deny a proposed transaction. Once a classification request is received, the item's specifications are reviewed and processed in accordance with § 748.3 of the EAR to determine its classification. Once completed, exporters will receive a document by mail informing them of the product's technical classification and proper licensing mechanism. The EAR also provides an appeal process for exporters unsatisfied with BXA's product classification (see § 756.2 of the EAR).

2. It is BXA's intent to allow end-users of encryption items to provide their customers with encryption

products and services. However, exports to Internet and telecommunications service providers are subject to restrictions when providing services specific to government end-users.

3. It was not the intent of the new Wassenaar language for ECCN 5A002 to be more restrictive concerning Message Authentication Codes (MAC). "Data authentication equipment that calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication" continues to be excluded from control under 5A002. These commodities are controlled under ECCN 5A992.

4. Note that § 740.8, Key Management Infrastructure (KMI), authorizes the export and reexport of certain encryption software and commodities under License Exception KMI and will continue as an eligible licensing mechanism for encryption products.

5. A number of companies have expressed concern that the European Union (EU) may implement a general authorization permitting encryption items to be exported freely within the EU and other specified countries. If and when the EU implements such an authorization, the Administration will take the necessary steps to ensure U.S. exporters are not disadvantaged.

6. Note that Serbia and the Taliban controlled areas of Afghanistan are embargoed destinations.

7. Please refer to the BXA website at "www.bxa.doc.gov" for a detailed explanation of the EAR, the Commerce Control List, the licensing process and key terms used in this regulation. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rulemaking Requirements

1. This interim final rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork

Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0088, "Multi-Purpose Application" and 0694-0104, "Commercial Encryption Items Transferred from the Department of State to the Department of Commerce." The Department has submitted to OMB an emergency request for approval of the changes to the collection of information under OMB control number 0694-0104.

This interim final rule reduces the annual burden hours associated with collection 0694-0104 from 703 hours to 692 hours, and reduces collection 0694-0088 by 200 burden hours. For collection 0694-0104, it is estimated it will take companies 5 minutes to complete notifications for source code under License Exceptions TSU and ENC. It will take companies 15 minutes to complete upgrade notifications. For reporting under License Exception ENC and licenses for encryption items, it will take companies 4 hours to complete semi-annual reporting requirements.

Comments on collection 0694-0104 are welcome, and will be accepted until April 13, 2000. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, should be forward to Frank J. Ruggiero, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044, and David Rostker, Office of Management and Budget, OMB/OIRA, 725 17th Street, NW, NEOB Rm. 10202, Washington, D.C. 20503.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism

assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed Rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by this regulation, it is issued in interim final form and comments will be considered in the development of final regulations. Accordingly, the Department of Commerce encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close May 15, 2000. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Comments should be provided with 5 copies.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street

and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-0500.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and record keeping requirements.

15 CFR Parts 742, 770, 772, and 774

Exports, Foreign Trade.

Accordingly, parts 734, 740, 742, 770, 772, and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

3. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

4. The authority citation for part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

5. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

6. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 734—[AMENDED]

7. Section 734.2 is amended by revising paragraph (b)(9)(ii) and adding new paragraph (b)(9)(iii) to read as follows:

§ 734.2 Important EAR terms and principles.

* * * * *

(b) * * *

(9) * * *

(i) * * *

(ii) The export of encryption source code and object code software controlled for “EI” reasons under ECCN 5D002 on the Commerce Control List (see Supplement No. 1 to part 774 of the EAR), except for source code eligible for export under §§ 740.13(e) and 740.17(a)(5)(i), includes downloading, or causing the downloading of, such software to locations (including electronic bulletin boards, Internet file transfer protocol, and World Wide Web sites) outside the U.S., or making such software available for transfer outside the United States, over wire, cable, radio, electromagnetic, photo optical, photoelectric or other comparable communications facilities accessible to persons outside the United States, including transfers from electronic bulletin boards, Internet file transfer protocol and World Wide Web sites, unless the person making the software available takes precautions adequate to prevent unauthorized transfer of such code.

(iii) Subject to the General Prohibitions described in part 736 of the EAR, such precautions for Internet transfers of products eligible for export under §§ 740.17(a)(2) (encryption software products), (a)(5)(ii) (certain encryption source code) and (a)(5)(iii) (encryption toolkits) shall include such measures as:

(A) The access control system, either through automated means or human intervention, checks the address of every system outside of the U.S. or Canada requesting or receiving a transfer and verifies such systems do not have a domain name or Internet address of a foreign government end-user (e.g., “.gov,” “.gouv,” “.mil” or similar addresses);

(B) The access control system provides every requesting or receiving party with notice that the transfer includes or would include cryptographic software subject to export controls under the Export Administration Regulations, and anyone receiving such a transfer cannot export the software without a license or other authorization; and

(C) Every party requesting or receiving a transfer of such software must acknowledge affirmatively that the software is not intended for use by a government end-user, as defined in part 772, and he or she understands the cryptographic software is subject to export controls under the Export Administration Regulations and anyone receiving the transfer cannot export the software without a license or other authorization. BXA will consider acknowledgments in electronic form provided they are adequate to assure legal undertakings similar to written acknowledgments.

§ 734.4 [Amended]

8. Section 734.4 is amended by revising the last sentence of paragraph (b) to read as follows: “Certain encryption commodities, software and technology controlled under ECCNs 5A992, 5D992, and 5E992 may be eligible for *de minimis* (refer to § 742.15(b)(1)).”

9. Section 734.7 is amended by revising paragraph (c) to read as follows:

§ 734.7 Published information and software.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, note that encryption software controlled under ECCN 5D002 for “EI” reasons on the Commerce Control List (refer to Supplement No. 1 to part 774 of the EAR) remains subject to the EAR (refer to §§ 740.13(e) and 740.17(a)(5)(i) of the

EAR for release under license exception).

§ 734.8 [Amended]

10. Section 734.8 is amended by revising the last sentence of paragraph (a) to read as follows: “Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for “EI” reasons on the Commerce Control List (refer to §§ 740.13(e) and 740.17(a)(5)(i) of the EAR for release under license exception).”

§ 734.9 [Amended]

11. Section 734.9 is amended by revising the last sentence to read as follows: “Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for “EI” reasons on the Commerce Control List (refer to §§ 740.13(e) and 740.17(a)(5)(i) of the EAR for release under license exception).”

PART 740—[AMENDED]

12. Section 740.8 is amended by revising the address in paragraph (b)(2) to read as follows:

§ 740.8 Key management infrastructure (KMI).

* * * * *

(b) * * *

(2) * * *

Attn: KMI Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Fort Meade, MD 20755-6000.

* * * * *

13. Section 740.13 is amended by:

- By revising the introductory paragraph;
- By revising paragraph (d)(2); and
- By adding new paragraph (e) to read as follows:

§ 740.13 Technology and software—unrestricted (TSU)

This license exception authorizes exports and reexports of operation technology and software; sales technology and software; software updates (bug fixes); “mass market” software subject to the General Software Note; and unrestricted encryption source code. Note that encryption software is not subject to the General Software Note (see paragraph (d)(2) of this section).

* * * * *

(d) * * *

(2) *Software not eligible for this license exception.* This license exception is not available for certain encryption software controlled under ECCN 5D002. (Refer to the Cryptography Note in Category 5—Part 2 of the Commerce Control List for information

on Mass Market Encryption commodities and software. Also refer to §§ 742.15(b)(1) and 748.3(b) of the EAR for information on item classifications for release from "EI" controls and "NS" controls).

* * * * *

(e) *Unrestricted encryption source code.*

(1) Encryption source code controlled under 5D002, which would be considered publicly available under § 734.3(b)(3) and which is not subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed with the source code, is released from "EI" controls and may be exported or reexported without review under License Exception TSU, provided you have submitted written notification to BXA of the Internet location (e.g., URL or Internet address) or a copy of the source code by the time of export. Submit the notification to BXA and send a copy to ENC Encryption Request Coordinator (see § 740.17(g)(5) for mailing addresses). Intellectual property protection (e.g., copyright, patent or trademark) will not, by itself, be construed as an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code.

(2) You may not knowingly export or reexport source code or products developed with this source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(3) Posting of the source code on the Internet (e.g., FTP or World Wide Web site) where the source code may be downloaded by anyone would not establish "knowledge" of a prohibited export or reexport, including that described in paragraph (e)(2) of this section. In addition, such posting would not trigger "red flags" necessitating the affirmative duty to inquire under the "Know Your Customer" guidance provided in Supplement No. 3 to part 732 of the EAR.

14. Section 740.17 is revised to read as follows:

§ 740.17 Encryption commodities and software (ENC).

(a) *Exports and reexports of certain encryption commodities and software.* As enumerated in this section, you may export and reexport encryption commodities, software and components (as defined in part 772 EAR) under License Exception ENC. License Exception ENC cannot be used if the encryption commodity or software provides an open cryptographic interface (as defined in part 772), unless

the export is to a subsidiary of a U.S. company, as described in paragraph (a)(1) of this section.

(1) *Encryption commodities, software, and technology for U.S. subsidiaries.* You may export and reexport any encryption item of any key length under ECCNs 5A002, 5D002 and 5E002 to foreign subsidiaries of U.S. companies (as defined in part 772) without review and classification. This includes source code and technology for internal company use, such as the development of new products. U.S. firms may also transfer under License Exception ENC encryption technology (5E002) to their foreign employees in the U.S. (except nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria) for internal company use, including the development of new products. All items produced or developed by U.S. subsidiaries with encryption commodities, software and technology exported under this paragraph are subject to the EAR and require review and classification before any sale or retransfer outside of the U.S. company.

(2) *Encryption commodities and software.* You may export and reexport any encryption commodity, software and component after review and classification by BXA under ECCNs 5A002 and 5D002 to any individual, commercial firm or other non-government end-user. Encryption products classified under this paragraph require a license for export and reexport to government end-users (as defined in part 772). The former restriction limiting exports or reexports to internal company proprietary use is removed.

(3) *Retail encryption commodities and software.* You may export and reexport to any end-user encryption commodities, software and components which have been reviewed and classified as retail under ECCNs 5A002 and 5D002. Retail encryption commodities, software and components are products:

(i) Generally available to the public by means of any of the following:

(A) Sold in tangible form through retail outlets independent of the manufacturer;

(B) Specifically designed for individual consumer use and sold or transferred through tangible or intangible means; or

(C) Sold in large volume without restriction through mail order transactions, electronic transactions, or telephone call transactions; and

(ii) Meeting all of the following:

(A) The cryptographic functionality cannot be easily changed by the user;

(B) Do not require substantial support for installation and use;

(C) The cryptographic functionality has not been modified or customized to customer specification; and

(D) Are not network infrastructure products such as high end routers or switches designed for large volume communications.

(iii) Subject to the criteria in paragraphs (a)(3)(i) and (ii) of this section, retail encryption products include (but are not limited to) general purpose operating systems and their associated user-interface client software or general purpose operating systems with embedded networking and server capabilities; non-programmable encryption chips and chips that are constrained by design for retail products; low-end routers, firewalls and networking or cable equipment designed for small office or home use; programmable database management systems and associated application servers; low-end servers and application-specific servers (including client-server applications, e.g., Secure Socket Layer (SSL)-based applications) that interface directly with the user; and encryption products distributed without charge or through free or anonymous downloads.

(iv) Encryption products and network-based applications which provide functionality equivalent to other encryption products classified as retail will be considered retail.

(v) Encryption products exported or reexported under paragraph (a)(3) of this section can be used to provide services to any entity.

(vi) Finance-specific encryption commodities and software of any key length restricted by design (e.g., highly field-formatted with validation procedures and not easily diverted to other end-uses) and used to secure financial communications such as electronic commerce will be considered retail encryption products.

(vii) 56-bit products with key exchange mechanisms greater than 512 bits and up to and including 1024 bits, or equivalent products not classified as mass market, will be considered retail.

(4) *Internet and Telecommunications service providers.* Certain restrictions apply to Internet and telecommunications service providers. Any Internet or telecommunications service provider can obtain retail products under License Exception ENC and use them to provide any service to any entity. Internet and telecommunications service providers can obtain and use any encryption product for their internal use and to provide any service under License Exception ENC. However, a license is required for the use of any product not

classified as retail to provide services specific to government end-users, e.g., WAN, LAN, VPN, voice and dedicated-link services; application specific and e-commerce services and PKI encryption services specifically for government end-users only.

(5) *Commercial encryption source code and general purpose toolkits.* You may export and reexport encryption source code not released under § 740.13(e) or general purpose toolkits (application specific toolkits are covered under components, as defined in part 772), subject to the following provisions:

(i) Encryption source code, which would be considered publicly available under § 734.3(b)(3) of the EAR and which is subject to an express agreement for the payment of a licensing fee or royalty for commercial production or sale of any product developed using the source code, can be exported or reexported using License Exception ENC to any end-user without review and classification, provided you have submitted to BXA, by the time of export, written notification of the Internet location (e.g. URL or Internet address) or a copy of the source code. You may not knowingly export or reexport source code or products developed with this source code to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria. Posting of the source code on the Internet (e.g., FTP or World Wide Web site) where the source code may be downloaded by anyone would not establish "knowledge" of a prohibited export or reexport. In addition, such posting would not trigger "red flags" necessitating the affirmative duty to inquire under the "Know Your Customer" guidance provided in Supplement No. 3 to part 732 of the EAR.

(ii) Encryption source code which would neither be considered publicly available nor includes source code that when compiled provides an open cryptographic interface (see § 740.17(f)), may be exported or reexported using License Exception ENC to any non-government end-user after review and classification by BXA.

(iii) General purpose encryption toolkits may be exported or reexported after review and classification by BXA under License Exception ENC to any non-government end-user.

(iv) Any foreign product developed for commercial sale using encryption source code or general purpose toolkits exported under paragraph (a)(5) of this section is subject to reporting requirements under paragraph (g)(3) of this section. Foreign products developed by bundling or compiling of

source code are not subject to this reporting requirement.

(b) *Ineligible destinations.* No encryption item(s) may be exported or reexported under this license exception to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(c) *Transfers.* Transfers of encryption items listed in paragraph (a) of this section to government end-users or end-users within the same country are prohibited unless otherwise authorized by license or license exception.

(d) *Exports and reexports of foreign products incorporating U.S. encryption source code, components or general purpose encryption toolkits.* Foreign products developed with or incorporating U.S.-origin encryption source code, components or toolkits remain subject to the EAR, but do not require review and classification by BXA and can be exported or reexported without further authorization.

(e) *Eligibility for License Exception ENC.* (1) *Review and classification.* You may initiate review and classification of your encryption commodities and software as required by paragraph (a) of this section by submitting a classification request in accordance with the provisions of § 748.3(b) and Supplement 6 to part 742 of the EAR. Indicate "License Exception ENC" in Block 9: Special purpose, on form BXA-748P. Submit the original request to BXA in accordance with § 748.3 of the EAR and send a copy of the request to ENC Encryption Request Coordinator (see paragraph (g)(5) of this section for mailing addresses). Thirty days after receipt of a complete classification request by BXA, unless otherwise notified by BXA, exporters may export and reexport to any non-government end-user any encryption product eligible under paragraphs (a)(2), (a)(4) and (a)(5) of this section. No exports to government end-users are allowed under this provision, and BXA reserves the right to suspend eligibility to export while a classification is pending.

(2) *Grandfathering.* Finance-specific and 56-bit products previously reviewed and classified by BXA can be exported or reexported to any end-user without further review. Other encryption commodities, software or components previously approved for export can be exported and reexported without further review to any non-government end-user under the provisions of § 740.17 (a). This includes products approved under a license, an Encryption Licensing Arrangement, or previously classified as eligible to use License Exception ENC (except for those products which were only authorized for export to U.S. subsidiaries). Exports to government

end-users require a license unless BXA has classified the product as a "retail" product under paragraph (a)(3) of this section.

(3) *Key Length Increases.* Exporters can increase the key lengths of previously classified products and continue to export without another review. No other change in the cryptographic functionality is allowed.

(i) Any product previously classified as 5A002 or 5D002 can, with any upgrade to the key length used for confidentiality or key exchange algorithms, be exported or reexported under provisions of License Exception ENC to any non-government end-user without an additional review. Another classification is necessary to determine eligibility as a "retail" product under paragraph (a)(3) of this section.

(ii) Exporters must certify to BXA in a letter from a corporate official that the only change to the encryption product is the key length for confidentiality or key exchange algorithms and there is no other change in cryptographic functionality. Certifications must include the original authorization number issued by BXA and the date of issuance. BXA must receive this certification prior to any export of an upgraded product. The certification should be sent to BXA, with a copy sent to the ENC Encryption Request Coordinator (see paragraph (g)(5) of this section for mailing addresses).

(f) *Open cryptographic interfaces.* License Exception ENC shall not apply to exports or reexports of encryption commodities, software and components (unless exported to a subsidiary of a U.S. company under paragraph (a)(1) of this section), if the encryption product provides an open cryptographic interface (as defined in part 772). This does not apply to source code that would be considered publicly available under § 734.3(b)(3).

(g) *Reporting requirements.* (1) No reporting is required for exports of:

(i) Any encryption to U.S. subsidiaries;

(ii) Finance-specific products;

(iii) Encryption commodities or software with a symmetric key length not exceeding 64 bits or otherwise classified as qualifying for mass market treatment;

(iv) Retail products exported to individual consumers;

(v) Any export made via free or anonymous download; and

(vi) Any export made from or to a U.S. bank, financial institution or their subsidiaries, affiliates, customers or contractors for banking or financial operations.

(2) Exporters must provide all available information as follows:

(i) For items exported to a distributor or other reseller, the name and address of the distributor or reseller and the quantity exported and, if collected in the normal course of business, the end-user's name and address;

(ii) For items exported through direct sale, the name and address of the recipient and the quantity exported (except for retail products if the end-user is an individual consumer); and

(3) For direct sales or transfers of encryption components, commercial source code described under § 740.17(a)(5) or general purpose encryption toolkits to foreign manufacturers, you must submit the names and addresses of the manufacturers using such encryption components, commercial source code or general purpose encryption toolkits and a non-proprietary technical description of the products for which the component, source code or toolkit are being used (*e.g.*, brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available).

(4) Exporters of encryption commodities, software and components which were previously classified under License Exception ENC, or which have been licensed for export under an Encryption Licensing Arrangement, must comply with the reporting requirements of this section.

(5) Beginning January 14, 2000, you must submit reports required under this section semi-annually to BXA, unless otherwise provided in this paragraph. For exports occurring between January 1 and June 30, a report is due no later than August 1. For exports occurring between July 1 and December 31, a report is due no later than February 1. For exports and reexports to Internet and telecommunications service providers of network infrastructure products (*e.g.*, high-end routers or switches designed for large volume communications), reports are due by the time of export. Reports must include the classification or other authorization number. These reports must be provided in electronic form to BXA; suggested file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BXA to better reflect their business models. Reports should be sent electronically to crypt@bxa.doc.gov, or disks and CDs

can be mailed to the following addresses:

(i) Department of Commerce, Bureau of Export Administration, Office of Strategic Trade and Foreign Policy Controls, 14th Street and Pennsylvania Ave., N.W., Room 2705, Washington, DC 20230, Attn: Encryption Reports.

(ii) A copy of the report should be sent to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Ft. Meade, MD 20755-6000.

(h) *Distributors and resellers.* U.S. or foreign distributors, resellers or other entities who are not original manufacturers of encryption commodities and software are permitted to use License Exception ENC only in instances where the export or reexport meets the applicable terms and conditions of § 740.17.

PART 742—[AMENDED]

15. Section 742.15 is revised to read as follows:

§ 742.15 Encryption items.

Encryption items can be used to maintain the secrecy of information, and thereby may be used by persons abroad to harm national security, foreign policy and law enforcement interests. The U.S. has a critical interest in ensuring that important and sensitive information of the public and private sector is protected. Consistent with our international obligations as a member of the Wassenaar Arrangement, the U.S. has a responsibility to maintain control over the export of encryption items. As the President indicated in Executive Order 13026 and in his Memorandum of November 15, 1996, export of encryption software, like export of encryption hardware, is controlled because of this functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain, or represent, or that its export may convey to others abroad. For this reason, export controls on encryption software are distinguished from controls on other software regulated under the EAR.

(a) *License requirements.* Licenses are required for exports and reexports to all destinations, except Canada, for items controlled under ECCNs having an "EI" (for "encryption items") under the "Control(s)" paragraph. Such items include: encryption commodities controlled under ECCN 5A002; encryption software controlled under ECCN 5D002; and encryption technology controlled under ECCN 5E002. Refer to part 772 of the EAR for the definition of "encryption items".

(b) *Licensing policy.* The following licensing policies apply to items identified in paragraph (a) of this section. Except as otherwise noted, applications will be reviewed on a case-by-case basis by BXA, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. For subsequent bundling and updates of these items see paragraph (n) of § 770.2 of the EAR.

(1) *Encryption commodities, software and technology under ECCNs 5A992, 5D992 and 5E992.* Certain encryption commodities, software and technology may, after classification by BXA as ECCNs 5A992, 5D992 or 5E992, be released from "EI" or "NS" controls. Items controlled under these ECCNs are eligible for export and reexport to all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria. Refer to § 748.3(b)(3) of the EAR for additional information regarding classification requests. The following encryption items may be eligible for such treatment:

(i) *56-bit encryption commodities, software and technology.* Encryption commodities, software and technology up to and including 56-bits with an asymmetric key exchange algorithm not exceeding 512 bits may be classified under ECCNs 5A992, 5D992 or 5E992.

(ii) *Key management products.* Products which only provide key management with asymmetric key exchange algorithms not exceeding 512 bits may be eligible for classification under ECCNs 5A992 or 5D992.

(iii) *64-bit mass market encryption commodities and software.* (A) Mass market encryption commodities and software with key lengths not exceeding 64-bit for the symmetric algorithm may be eligible for classification by BXA under ECCNs 5A992 or 5D992.

Refer to the Cryptography Note (Note 3) to part 2 of Category 5 of the CCL for a definition of mass market encryption commodities and software. Key exchange mechanisms, proprietary key exchange mechanisms, or company proprietary commodities and software implementations may also be eligible for this treatment. Refer to Supplement No. 6 to part 742 and § 748.3(b)(3) of the EAR for additional information.

(B) Mass market encryption commodities and software (*e.g.*, 40 and 56-bit DES or equivalent) previously eligible for License Exception TSU (or for hardware, ENC) may increase key lengths for the confidentiality algorithm up to 64 bits and still be exported as a mass market product without an additional review. Exporters must

certify to BXA in a letter from a corporate official the only change to the encryption product is the key length for confidentiality or key exchange algorithms and there is no other change in cryptographic functionality. Certifications must include the original authorization number issued by BXA and the date of issuance. BXA must receive this certification prior to any export of upgraded products. The certification should be sent to BXA, with a copy to ENC Encryption Request Coordinator at the following addresses:

(1) Department of Commerce, Bureau of Export Administration, Office of Strategic Trade and Foreign Policy Controls, 14th Street and Pennsylvania Ave., N.W., Room 2705, Washington, DC 20230.

(2) A copy of the report should be sent to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Ft. Meade, MD 20755-6000.

(iv) For classification of these encryption items under these ECCNs, mark "NLR" in Block 9: Special purpose, on Form BXA-748P, of your classification request.

(2) *Encryption commodities and software eligible for classification under ECCNs 5A002, 5D002 and 5E002 and qualified for License Exception ENC.* Items classified by BXA as retail products under ECCNs 5A002 and 5D002 are permitted for export and reexport to any end-user. All other encryption commodities, software and components classified by BXA under ECCNs 5A002 and 5D002 may be exported to any individual, commercial firm or other non-government end-user. Any encryption item (including technology classified under 5E002) will be permitted for export or reexport to U.S. subsidiaries (as defined in part 772). Products developed using U.S. encryption items are subject to the EAR. No exports are authorized to Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria.

(3) *Encryption licensing.* Exporters may submit applications for licenses or Encryption Licensing Arrangements for exports and reexports of encryption items not eligible for license exception, including exports and reexports of encryption technology to strategic partners of U.S. companies (as defined in part 772). For Encryption Licensing Arrangements, the applicant must specify the sales territory and class of end-user. Encryption Licensing Arrangements granted for exports of unlimited quantities for all destinations except Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, are valid for four years, and may require reporting.

Licenses are required for exports of encryption items to governments, or Internet and telecommunications service providers for the provision of services specific to governments, and may be favorably considered for civil uses, e.g., social or financial services to the public; civil justice; social insurance, pensions and retirement; taxes and communications between governments and their citizens.

16. Supplement No. 6 to Part 742 is revised to read as follows:

**Supplement No. 6 to Part 742—
Guidelines for Submitting a
Classification Request for Encryption
Items**

Classification requests for encryption items must be submitted on Form BXA-748P, in accordance with § 748.3 of the EAR. Insert in Block 9: Special Purpose of the Form BXA-748P, the phrase "License Exception ENC" or "NLR", based on your classification request. Failure to insert this phrase will delay processing. In addition, the Bureau of Export Administration recommends that such requests be delivered via courier service to: Bureau of Export Administration, Office of Exporter Services, Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230. In addition, you must send a copy of the request and all supporting documents to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6131, Fort Meade, MD 20755-6000.

(a) Requests for encryption items will be processed in thirty (30) days from receipt of a properly completed request.

(b) To submit a classification request for a technical review of commodities and software, ensure that the information provided includes brochures or other documentation or specifications (to include applicable cryptographic source code) related to the technology, commodity or software, as well as any additional information which you believe would assist the review process. You must provide the following information in a cover letter to the classification request:

(1) Clearly state at the top of the page either "ENC" or "NLR"—"30 Day Technical Review Requested;"

(2) State that you have reviewed and determined that the commodity or software subject to the classification request meets the criteria of this Supplement;

(3) State the name of the commodity or software product being submitted for review;

(4) State how the commodity or software has been written to preclude user modification of the encryption

algorithm, key management mechanism, and key space;

(5) State that a duplicate copy has been sent to the ENC Encryption Request Coordinator;

(6) Provide the following information for the commodity or software product:

(i) Description of all encryption algorithms and key lengths, e.g. source code, and how the algorithms are used. If any combination of different algorithms are used in the same product, also state how each is applied to the data.

(ii) Pre-processing information of plaintext data before encryption (e.g. compression of the data).

(iii) Post-processing information of cipher text data after encryption (e.g. packetization of the encrypted data).

(iv) For classification requests regarding object code or Java byte code, describe what techniques (including obfuscation, private access modifiers, final classes) are used to protect against decompilation and misuse.

(v) For classification requests regarding components:

(A) Reference the application for the components if known;

(B) State if there is a general programming interface to the component;

(C) State whether the component is constrained by function;

(D) List any standards and protocols that the component adheres to;

(E) Include a complete description of all functionalities and their accessibility; and

(F) Encryption components need to be clearly identified to include the name of the manufacturer, component model number, or other identifier.

(vi) For classification requests regarding source code:

(A) If applicable, reference the executable product that has already received a technical review;

(B) Include whether the source code has been modified and, if modified, provide the technical details on how the source code was modified;

(C) Include a copy of the sections of the source code that contain the encryption algorithm, key management routines, and their related calls.

PART 770—[AMENDED]

17. Section 770.2 is amended by adding new paragraph (n) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(n) *Interpretation 14: Encryption commodity and software reviews.* Classification of encryption

commodities or software is required to determine eligibility for all licensing mechanisms except source code (see §§ 740.13(e) and 740.17(a)(5)(i) of the EAR) and exports to subsidiaries of U.S. firms (see § 740.17(a)(1)). Note that subsequent bundling, patches, upgrades or releases, including name changes, may be exported or reexported under the applicable provisions of the EAR without further technical review as long as the functional encryption capacity of the originally reviewed encryption product has not been modified or enhanced. This does not extend to products controlled under a different category on the CCL.

18. Part 772 is amended by removing the definitions for "Health/medical end-user" and "On-line merchant" and adding definitions for "asymmetric algorithm", "encryption component", "government end-user", "open cryptographic interface", and "symmetric algorithm" in alphabetical order, to read as follows:

PART 772—DEFINITIONS OF TERMS

* * * * *

"Asymmetric algorithm". (Cat 5, Part II) A cryptographic algorithm using different, mathematically-related keys for encryption and decryption. A common use of "asymmetric algorithms" is key management.

* * * * *

"Encryption component". Any encryption commodity or software (except source code), including encryption chips, integrated circuits, application specific encryption toolkits, or executable or linkable modules that alone are incapable of performing complete cryptographic functions, and is designed or intended for use in or the production of another encryption item.

* * * * *

Government end-user (as applied to encryption items). A government end-user is any foreign central, regional or local government department, agency, or other entity performing governmental functions; including governmental research institutions, governmental corporations or their separate business units (as defined in part 772 of the EAR) which are engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List, and international governmental organizations. This term does not include: utilities (including telecommunications companies and Internet service providers); banks and financial institutions; transportation; broadcast or entertainment; educational organizations; civil health and medical organizations; retail or wholesale firms;

and manufacturing or industrial entities not engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions List.

* * * * *

"Open cryptographic interface". A mechanism which is designed to allow a customer or other party to insert cryptographic functionality without the intervention, help or assistance of the manufacturer or its agents, e.g., manufacturer's signing of cryptographic code or proprietary interfaces. If the cryptographic interface implements a fixed set of cryptographic algorithms, key lengths or key exchange management systems, that cannot be changed, it will not be considered an "open" cryptographic interface. All general application programming interfaces (e.g., those that accept either a cryptographic or non-cryptographic interface but do not themselves maintain any cryptographic functionality) will not be considered "open" cryptographic interfaces.

* * * * *

"Symmetric algorithm". (Cat 5, Part II) A cryptographic algorithm using an identical key for both encryption and decryption. A common use of "symmetric algorithms" is confidentiality of data.

* * * * *

PART 774—[AMENDED]

Supplement No. 1 to Part 774 [Amended]

19. Supplement No. 1 to Part 774, Category 5—Telecommunications and Information Security, is amended:

a. By revising, immediately following EAR 99, the heading for "Part 2—'Information Security,'" removing the Note, and inserting in its place three new Notes;

b. By revising the heading and the "List of Items Controlled" for ECCN 5A002; and

c. By revising the Licensing Requirements section of ECCN 5D002 to read as follows:

Category 15—Telecommunications and "Information Security"

* * * * *

II. "Information Security"

Note 1: The control status of "information security" equipment, "software", systems, application specific "electronic assemblies", modules, integrated circuits, components, or functions is determined in Category 5, Part 2 even if they are components or "electronic assemblies" of other equipment.

Note 2: Category 5, Part 2 encryption products, when accompanying their user for

the user's personal use, are eligible for License Exceptions TMP or BAG.

Note 3: Cryptography Note: ECCNs 5A002 and 5D002 do not control items that meet all of the following:

a. Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following:

1. Over-the-counter transactions;
2. Mail order transactions;
3. Electronic transactions; or
4. Telephone call transactions;

b. The cryptographic functionality cannot be easily changed by the user;

c. Designed for installation by the user without further substantial support by the supplier;

d. Does not contain a "symmetric algorithm" employing a key length exceeding 64-bits; and

e. When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter's country in order to ascertain compliance with conditions described in paragraphs (a) through (d) of this note. See § 742.15(b)(1) of the EAR.

* * * * *

5A002 Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", and other specially designed components therefor.

* * * * *

List of Items Controlled

Unit: \$ value.

Related Controls: See also 5A992.

This entry does not control: (a) "Personalized smart cards" where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this note. Note that if a "personalized smart card" has multiple functions, the control status of each function is assessed individually; (b) receiving equipment for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers; (c) portable or mobile radiotelephones for civil use (e.g., for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption; (d) equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following: (1) Execution of copy-protected "software"; (2) access to any of the following: (a) Copy-protected read-only media; or (b) information stored in encrypted form on media (e.g., in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets

to the public; or (3) one-time encryption of copyright protected audio/video data; (e) cryptographic equipment specially designed and limited for banking use or money transactions; (f) cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (e.g., a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications.

Related Definitions: (1) The term *money transactions* in paragraph (e) of Related Controls includes the collection and settlement of fares or credit functions.

(2) For the control of global navigation satellite systems receiving equipment containing or employing decryption (e.g., GPS or GLONASS) see 7A005.

Items

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific "electronic assemblies", modules and integrated circuits for "information security", and other specially designed components therefor:

a.1. Designed or modified to use "cryptography" employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes: 1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. "Cryptography" does not include "fixed" data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use "cryptography" employing analogue principles when implemented with digital techniques.

a.1.a. A "symmetric algorithm" employing a key length in excess of 56-bits; or

a.1.b. An "asymmetric algorithm" where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (e.g., RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (e.g., Diffie-Hellman over Z/pZ); or

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002a.1.b.2 in excess of 112 bits (e.g., Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform crypto analytic functions;

a.3. [Reserved]

a.4. Specially designed or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for the health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for "spread spectrum" or the hopping code for "frequency agility" systems;

a.6. Designed or modified to provide certified or certifiable "multilevel security" or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.7. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

* * * * *

5D002 Information Security—"Software".

License Requirements

Reason for Control: NS, AT, EI.

Control(s)	Country chart
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

EI applies to encryption items transferred from the U.S. Munitions List

to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of the EAR.

Note: Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other "software"; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002.

Note: Encryption software controlled for "EI" reasons under this entry remains subject to the EAR even when made publicly available in accordance with part 734 of the EAR. See §§ 740.13(e) and 740.17(5)(i) of the EAR for information on releasing certain source code which may be considered publicly available from "EI" controls.

Note: After a technical review, 56-bit items, key management products not exceeding 512 bits and mass market encryption commodities and software eligible for the Cryptography Note (see § 742.15(b)(1) of the EAR) may be released from "EI" and "NS" controls.

License Exceptions: * * *

* * * * *

20. Supplement No. 2 to part 774 (General Technology and Software Notes) is amended by revising the Note at the end of the Supplement to read as follows:

Supplement No. 2 to Part 774—General Technology and Software Notes

* * * * *

Note: The General Software Note does not apply to "software" controlled by Category 5, Part 2 ("Information Security"). For "software" controlled by Category 5, Part 2, see Supplement No. 1 to Part 774, Category 5, Part 2, Note 3—Cryptography Note.

Dated: January 11, 2000.

R. Roger Majak,
Assistant Secretary for Export Administration.

[FR Doc. 00-983 Filed 1-12-00; 9:04 am]

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Federal Register

Friday

January 14, 2000

Part IV

General Services Administration

41 CFR Parts 101–6 and 102–3

**Federal Advisory Committee Management;
Proposed Rule**

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–3

[FPMR Amendment A-]

RIN 3090–AG49

Federal Advisory Committee Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is revising Federal Property Management Regulations (FPMR) coverage on Federal advisory committee management and moving it into the Federal Management Regulation (FMR). A cross-reference will be added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language and will provide agencies with updated regulatory material that is easy to read and understand.

DATES: Comments on this proposed rule must be received by March 14, 2000.

ADDRESSES: General Services Administration, Office of Governmentwide Policy, Committee Management Secretariat (MC), 1800 F Street NW (Room G–230), Washington, DC 20405. Copies of all documents received are available for public inspection at the same location.

In addition to providing written comments at the address listed above, interested parties may file comments electronically at the following Internet address: charles.howton@gsa.gov, or by facsimile to (202) 273–3559.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Deputy Director, Committee Management Secretariat (202) 273–3561.

SUPPLEMENTARY INFORMATION:

Background

GSA's authority for administering the Federal Advisory Committee Act as amended, (5 U.S.C. App. 2) also referred to as the "Act" or "FACA" is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445; 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by section 6(c) is prepared by the Administrator for the President's consideration and transmittal to the Congress. GSA's responsibilities for administering the Act have been delegated to the Associate

Administrator for Governmentwide Policy and to the Director of the Committee Management Secretariat.

Why Is the Rule Being Revised?

GSA's regulations implementing the Act are being revised for the following reasons:

Ten years have elapsed since the regulation was last updated. Revisions are needed due to legislative changes, shifts in Federal policy, and decisions issued by the Supreme Court and other Federal Courts.

Growing reliance on public involvement in Federal decisionmaking has surfaced the need to differentiate advisory committees covered by FACA from alternate, but related sources of advice and recommendations. There is also a need to promote Governmentwide consistency in applying the Act within a variety of decisionmaking and public outreach situations.

GSA has determined that there is a need to simplify the way it works with Federal agencies to implement the Act. Consequently, the rule is being revised, in part, to emphasize GSA's customer focus.

How Did GSA Determine What Changes to Make?

The Committee Management Secretariat conducted an internal management review of the current regulation that resulted in a list of recommended changes and a plan for revising the rule. Then, following the plan, the Secretariat:

Published an Advance Notice of Proposed rulemaking (ANPRM) in the **Federal Register** with a request for comments (62 FR 31550, June 10, 1997).

Conducted outreach to end-users of the regulation, including notification of 4,000 Federal and state officials nationwide of its plan to issue a new rule. Stakeholders contacted were asked at the beginning to provide input into the rulemaking process. The Secretariat also invited them to provide any information (such as case studies, best practices, or articles) that would be useful in developing a comprehensive regulation.

Requested comments from the Interagency Committee on Federal Advisory Committee Management.

Established a Core Regulatory Revision Team of Secretariat staff and FACA experts from the Departments of Agriculture, Defense, the Interior, Justice, and Transportation; the Environmental Protection Agency; and the National Science Foundation to analyze issues and recommendations resulting from the comments and feedback from other outreach efforts.

What Significant Revisions Are Being Made?

The proposed rule includes the following significant revisions:

The definition of an advisory committee that is "utilized" subject to FACA has been updated to reflect judicial opinions issued since the rule was last revised. This revision emphasizes the degree to which the Executive Branch exercises "actual management and control" over a group not directly established by an agency official. Factors used in the current rule to determine whether a group is "utilized," such as the desire for group consensus or the establishment of "preferred sources of advice," have been de-emphasized. Instead, the proposed rule applies an "actual management and control" test that is consistent with current case law construing FACA's scope. (See *Washington Legal Found. v. United States Sentencing Commission*, 17 F. 3d (D.C. Cir. 1994), *Food Chemical News v. Young*, (900 F. 2d 328 (D.C. Cir.), cert. denied, 498 U.S. 846 (1990)).

The applicability of the procedural requirements contained in FACA and this proposed rule to subcommittees of advisory committees has been clarified. GSA's current FACA regulation does not make clear that subcommittees reporting to a parent committee are not subject to FACA. Indeed, the regulation states just the opposite, providing that "[s]ubcommittees that do not function independently of the full or parent advisory committee" are subject to all requirements of FACA except the requirement for a charter. (See 41 CFR 102–3.35(b)(3)). This provision is problematic for two reasons. First, it applies FACA more broadly than the statute itself requires. Second, it essentially creates a special type of advisory committee that is subject to some, but not all, of FACA's requirements, which has no foundation in the statute. Under FACA, a group is either an advisory committee subject to all of the statutory requirements, or it is not an advisory committee, and therefore not subject to any of its requirements. Because a subcommittee which reports to a parent committee is not an "advisory committee" under FACA, there is no legal basis for applying any of FACA's requirements to such a subcommittee.

The process used by GSA to consult with agency heads regarding the establishment, re-establishment, and renewal of advisory committees has been revised to offer more options. These changes are intended to eliminate the need for agencies to consult with GSA on a committee-by-committee

basis; instead, a new annual planning and approval process will be implemented. Accordingly, GSA and agency staffs will be able to devote more time to reviewing the substantive activities of advisory committees.

The provisions of amendments to FACA and other legislation enacted since the current rule was last revised have been incorporated. These changes include exclusions from the Act's coverage for elected officials of state, local, and tribal governments, as well as for committees created by the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA).

The format of the proposed rule reflects the use of "plain language" concepts and includes "key points and principles" to illustrate how the Act applies to given situations. In addition, GSA reorganized the rule so the end-user could find needed information more quickly.

To Whom Does This Regulation Apply?

This part solely applies to Departments and agencies within the Executive Branch. It does not apply to committees that advise only the Legislative and Judicial Branches of the U.S. Government, or state, local or tribal governments.

Discussion of Comments

In a previous issue of the **Federal Register** (62 FR 31550, June 10, 1997) GSA published an Advance Notice of Proposed Rulemaking (ANPRM) and requested comments. Additional comments were requested from the Interagency Committee on Federal Advisory Committee Management. GSA requested comments on suggested issues to address, specific recommendations about changes needed in the current part, examples of situations where FACA was either a useful tool or a hindrance to public involvement, and GSA's intent to include illustrative examples and principles.

All comments received were considered in drafting this proposed rule, which is intended to improve the management and operation of Federal advisory committees in the Executive Branch.

Twenty-nine commenters submitted formal written comments. Other commenters contacted GSA verbally to offer support for revising the part and to state that they had no formal comments to make at that time.

Most of the comments received related to four general recommendations discussed below. Other comments are summarized by topic in the table at the end of this section.

Provide Clear Explanations of FACA's Scope and Applicability

Several commenters noted that Federal agencies are increasingly reliant on local communities, individual citizens, and interested parties to obtain information, advice, and recommendations on which to base decisions. They expressed concerns that: (a) Uncertainty about the Act's scope creates a disincentive for Federal officials wishing to engage in public outreach; (b) the Act's requirements are being interpreted differently within and among agencies; and (c) GSA's regulations do not adequately differentiate between those groups and activities covered by FACA and others that are not.

Within this group of comments, GSA noted a consistent theme related to the need for more information regarding public participation tools and techniques that would allow for more collaboration without creating a conflict with FACA. GSA believes this requirement to be particularly important because advisory committees support Federal decisions in a variety of situations. GSA concurs with the need for Federal agencies to engage in continuous collaboration using diverse, but complementary, tools, techniques, and methods. Whether or not the selected approaches include the use of advisory committees, the potential or perceived applicability of FACA must not prevent collaboration from taking place. Agencies are encouraged to contact GSA concerning not only the use of advisory committees but of other alternative forms of public involvement.

While FACA is not a public participation statute, it directly affects how the Executive Branch is held accountable for the use and management of advisory committees as a major means of obtaining public involvement. GSA agrees that the proposed rule needs to provide clearer guidance for comparing and reconciling the Act's requirements with other Federal statutes that affect how and when the Government must consult the public during the decisionmaking process. Accordingly, it is especially important for the end-users of this rule to have access to clear policies and principles that can be used to appropriately employ advisory committees to satisfy public consultation requirements mandated either generally or specifically by law.

Provide Additional Guidance Regarding What Advisory Committees and Their Subcommittees Must Do to Comply With FACA

Suggestions received from both Federal and non-Federal commenters reflected a need to define more specifically both the requirements of FACA and the procedures contained in GSA's regulations that apply to subcommittees of chartered advisory committees. Commenters expressed concerns that chartered committees may in some instances merely "rubber stamp" recommendations produced by their subcommittees without adequate public disclosure. Other commenters stressed the need to provide flexibility to subcommittees whose recommendations are subject to meaningful public disclosure through deliberations by the parent committee.

Subcommittees perform essential tasks and are an efficient means for accomplishing the work of chartered advisory committees. GSA agrees that agencies should assure that subcommittees are appropriately reporting to agency officials through their parent committees and that there is reasonable opportunity for the public to have access to the deliberative process. Accordingly, this proposed rule includes language further clarifying the relationship between a parent committee and its subcommittees.

The Format of GSA's Regulations Should be Improved to Better Communicate FACA's Requirements

To communicate FACA's requirements more clearly, some commenters requested that GSA's new part be written to include illustrative examples of how FACA policies and guidelines should be applied. In addition, several suggestions were made that GSA should use a "plain language" approach in drafting the rule.

GSA's ANPRM noted that the rule's format would reflect "plain language" principles and make use of more examples to demonstrate important policies and principles. By adopting this approach, GSA seeks to make it easier for users of the rule to apply FACA's requirements at the many decisionmaking levels where advisory committees are used to support public participation and consultation.

GSA Should Streamline Its Processes Related to the Establishment, Renewal, Reestablishment, and Termination of Federal Advisory Committees

Several Federal agency commenters suggested that GSA's new regulations incorporate steps to streamline the

process of creating and managing advisory committees. In particular, these commenters suggested that information collected by GSA as part of its efforts to prepare the *Annual Report of the President on Federal Advisory Committees* could eliminate GSA's need to collect what appeared to be the same or similar information as part of the justification for continuing advisory committees.

This proposed rule reflects GSA's efforts to reengineer its process for consulting with Federal agencies on the establishment, renewal, reestablishment, and termination of advisory committees. In addition, the

proposed rule provides agencies with more options regarding the way they choose to interact with GSA on these issues.

Since this rule was last revised, many factors have influenced GSA's business processes in this area. For example, there have been several initiatives to reduce the number and costs of advisory committees directly created by the Executive Branch. The current means to accomplish these outcomes are based on Executive Order 12838 of February 10, 1993, and its implementing policy document, OMB Circular A-135 of October 5, 1994. These policies and practices are reflected in the way this

proposed rule governs committee life-cycle issues. Other changes outlined in the proposed rule reflect GSA's desire to streamline the processes associated with managing advisory committees by leveraging advances in telecommunications and computer technologies, including the Internet.

Miscellaneous Comments and Suggestions

In addition to the comments addressed in the four general recommendations above, the following miscellaneous comments and suggestions were received.

Subject	Comment/suggestion
Definitions	Clarify the definition of "Agency" to indicate how it applies within the context of the Act.
	Interpret the role of "consensus" in defining "advisory committee."
	Describe the characteristics of an "operational committee."
	Revise the definition of "utilize" in light of prevailing judicial opinions.
	Clarify FACA's applicability or non-applicability to meetings between Federal officials and contractors or licensees.
	Incorporate legislative changes including exclusions from the Act's coverage under the Unfunded Mandates Reform Act of 1995.
Committee Meetings	Provide examples of non-deliberative committee activities that are excluded from FACA's procedural requirements.
	Outline what flexibility agencies have in providing notice to the public regarding committee meetings, including clarification on whether it is acceptable to run multiple Federal Register notices for a committee's meeting events.
Committee Members	Explain whether an agency head can appoint members without a lengthy process.
	Describe the status of consultants as it relates to committee roles and responsibilities.
	Provide guidance regarding whether appointed members may be offices or organizations (rather than individual appointments) so that individual delegates would participate at a given meeting.
	Update the part's guidance regarding pay guidelines for advisory committee members and staff.
Committee Records	Clarify how long an agency must keep committee files once the committee has been terminated.
	Identify the committee documents that need to be sent to the Library of Congress.

Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993.

Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule

does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, et seq.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is considered a major rule under 5 U.S.C. 804.

List of Subjects in 41 CFR Parts 101-6 and 102-3

Advisory committees.

Dated: January 10, 2000.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

For the reasons set forth in the preamble, it is proposed to amend 41 CFR Chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

PART 101-6—MISCELLANEOUS REGULATIONS

1. Subpart 101-6.10 is revised to read as follows:

Subpart 101-6.10—Federal Advisory Committee Management

Authority: 5 U.S.C. App.; 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390; and EO 12024, 3 CFR, 1977 Comp., p. 158.

§ 101-6.1001 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For Federal advisory committee management information previously contained in this subpart, see FMR part 3 (41 CFR 102-3).

CHAPTER 102—[AMENDED]

2. Part 102-3 is added to subchapter A to read as follows:

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

Sec.

- 102-3.5 What does this subpart cover and how does it apply?
- 102-3.10 What is the purpose of the Federal Advisory Committee Act?
- 102-3.15 What policies govern the use of Federal advisory committees?
- 102-3.20 Who should use this part?
- 102-3.25 How does this part meet the needs of its audience?
- 102-3.30 What definitions apply to this part?
- 102-3.35 What types of advisory committees or groups are specifically excluded from FACA and this part?
- 102-3.40 Key points and principles.

Subpart B—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

- 102-3.45 What does this subpart cover and how does it apply?
- 102-3.50 What does this subpart require agencies to do?
- 102-3.55 Key points and principles.

Subpart C—How Are Advisory Committees Established, Reestablished, Renewed, and Terminated?

- 102-3.60 What does this subpart cover and how does it apply?
- 102-3.65 Who can establish advisory committees?
- 102-3.70 What rules apply to the duration of an advisory committee?
- 102-3.75 What actions are required to establish, reestablish, or renew an advisory committee?
- 102-3.80 What are the public notification requirements for discretionary advisory committees?
- 102-3.85 What charter filing requirements must be addressed by agencies?
- 102-3.90 What information must be included in a committee's charter?
- 102-3.95 How are minor charter amendments accomplished?

- 102-3.100 How are major charter amendments accomplished?
- 102-3.105 Key points and principles.

Subpart D—How Are Advisory Committees Managed?

- 102-3.110 What does this subpart cover and how does it apply?
- 102-3.115 What oversight functions are assigned by FACA to the Congress?
- 102-3.120 What responsibilities and functions are assigned by FACA to GSA?
- 102-3.125 What roles and responsibilities for managing advisory committees are assigned by FACA to agency heads?
- 102-3.130 What roles and responsibilities for managing advisory committees are assigned by FACA to the Chairperson of an independent presidential advisory committee?
- 102-3.135 What roles and responsibilities for managing advisory committees are assigned by FACA to an agency Committee Management Officer (CMO)?
- 102-3.140 What roles and responsibilities for managing advisory committees are assigned by FACA to the Designated Federal Officer (DFO)?
- 102-3.145 What is the role of committee members and staff?
- 102-3.150 What other policies or requirements must be addressed by the agency head and included in the agency's guidelines implementing the Act?
- 102-3.155 Key points and principles.

Subpart E—Advisory Committee Meeting and Recordkeeping Procedures

- 102-3.160 What does this subpart cover and how does it apply?
- 102-3.165 What basic policies apply to advisory committee meetings?
- 102-3.170 What basic policies apply to subcommittee meetings?
- 102-3.175 How are committee meetings announced to the public?
- 102-3.180 How are advisory committee meetings closed to the public?
- 102-3.185 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?
- 102-3.190 How are advisory committee meetings documented?
- 102-3.195 What reports must be prepared by an agency covering the activities of each advisory committee it establishes or utilizes?
- 102-3.200 Key points and principles.

Authority: 5 U.S.C. App.; 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390; and EO 12024, 3 CFR, 1977 Comp., p. 158.

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

§ 102-3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Act to advisory committees they establish. In addition to listing key definitions underlying the

interpretation of the Act, this subpart establishes the Act's scope and applicability and outlines specific exclusions from its coverage.

§ 102-3.10 What is the purpose of the Federal Advisory Committee Act?

The Federal Advisory Committee Act as amended (5 U.S.C. App. 2), governs the establishment, operation, and termination of advisory committees within the Executive Branch of the Federal Government. The Federal Advisory Committee Act, also referred to as the "Act" or "FACA", defines what constitutes a Federal advisory committee and provides general procedures for the Executive Branch to follow for the operation of these committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

§ 102-3.15 What policies govern the use of Federal advisory committees?

The policy to be followed by Federal Departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) *Determination of need in the public interest.* An advisory committee may be established only when it is essential to the conduct of agency business. Decision criteria may include whether committee deliberations will result in the creation or elimination of (or change in) regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of

the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the bases for closure in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(e) *Advisory functions only.* The function of advisory committees is advisory only, unless specifically authorized by law.

§ 102-3.20 Who should use this part?

The primary users of this part are:

(1) Executive Branch officials and others outside Government currently involved with an established advisory committee;

(2) Executive Branch officials who seek to establish or utilize an advisory committee;

(3) Executive Branch officials and others who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating FACA; and

(4) Field personnel of Federal agencies who are increasingly involved with the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the Executive Branch who seek to interpret the Act, or are seeking additional guidance.

§ 102-3.25 How does this part meet the needs of its audience?

This part meets the general and specific needs of its audience by addressing the following issues and related topics:

(a) *Policies and guidelines.* This part defines the policies, establishes minimum requirements, and provides guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Act, as amended. This includes reporting standards that keep Congress and the public informed of the number, purpose, membership, activities, benefits and costs of these advisory committees. These requirements form the basis for implementing the Act at the agency and Governmentwide levels.

(b) *Examples and principles.* Each subpart of this part provides summary-level key points and principles to provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the

applicability of the Act to different decisionmaking scenarios.

(c) *Scope and applicability.* This subpart provides guidance on the threshold issue of what constitutes an advisory committee. The Act's broad definition of an "advisory committee," as noted many times by the judiciary, could be interpreted to extend the Act's coverage to any gathering of two or more persons from whom the President or other Federal official seeks advice and/or information. Accordingly, this subpart clarifies the Act's limits for the benefit of those Federal officials responsible for interacting with the public.

§ 102-3.30 What definitions apply to this part?

The following definitions apply to this part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her official responsibilities.

Agency has the same meaning as in section 551(i) of Title 5 of the United States Code.

Committee Management Secretariat (Secretariat), means the organization established pursuant to the Act which is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of committee members or subcommittee members (whether in person or through electronic means) authorized by an agency for the purpose of deliberating on the substantive matters upon which the committee provides advice and recommendations.

Committee member means an individual who serves by appointment and/or invitation on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, consultant, or other party (whether under contract or not) who serves in a support capacity to an advisory committee or subcommittee.

Discretionary advisory committee means any advisory committee that is

established under an agency head's authority or authorized by law. Advisory committees referenced by general (non-specific) authorizing language or committee report language are discretionary.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either mandated by Presidential directive or by statute. A non-discretionary advisory committee mandated by statute is:

(1) Specifically identified in statute by name, specific purpose or functions; and

(2) A committee whose creation or termination is beyond an agency's legal discretion.

Presidential advisory committee means any advisory committee authorized by the President or the Congress which directly advises the President.

Subcommittee means a group that reports to a chartered advisory committee and not directly to the agency, whether or not its members are drawn in whole or in part from the parent committee.

Utilized for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal agency exercises actual management and control over its operation.

§ 102-3.35 What types of advisory committees or groups are specifically excluded from FACA and this part?

The following are examples of advisory committees or groups that are not covered by the Act or this part:

(a) *Committees established by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA;

(b) *Committees exempted by statute.* Any advisory committee specifically exempted from the Act by law;

(c) *Committees not actually managed or controlled by the Executive Branch.* Any committee or group created by non-Federal entities, (such as a contractor or private organization) provided that such committees or groups are not actually managed or controlled by the Executive Branch;

(d) *Committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the

Central Intelligence Agency or the Federal Reserve System;

(e) *Groups assembled to provide individual advice.* Any meeting initiated by the President or Federal official(s) with more than one individual to obtain the advice of individual attendees.

However, agencies should be aware that such a group would be covered by the Act if it is utilized within the meaning of this part;

(f) *Intergovernmental committees.* Any committee composed wholly of Federal officials and elected officers of state, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However the purpose of such committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration. (See the Office of Management and Budget's (OMB's) guidelines on section 204(b) of the

Unfunded Mandates Reform Act of 1995, OMB Memorandum M-95-20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405);

(g) *Intra-Governmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(h) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any state or local committee, council, board, commission, or similar group established to advise or make recommendations to state or local officials or agencies;

(i) *Meetings with an individual.* Any meeting initiated by the President or Federal official(s) for the purpose of obtaining advice and/or recommendations from one individual;

(j) *Meetings with non-utilized groups.* Any meeting initiated by a group that is

not utilized by the executive branch with the President or Federal official(s) to express the group's views; and

(k) *Operational committees.* Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this part.

§ 102-3.40 Key points and principles.

The following table provides additional guidance in the form of answers to frequently asked questions and the identification of Key Points and Principles that may be applied to situations not covered elsewhere in this subpart:

Key points and principles	Section	Question(s)	Guidance
I. Definition of "utilized"	102-3.30	1. Can an agency accept advice and recommendations from external groups on a one-time or regular basis without violating FACA? 2. Can an agency meet on a one-time or regular basis with local citizen groups seeking to provide advice and recommendations on environmental or other issues without violating FACA? 3. A local citizens group would like to meet with local Federal Officials to help improve the condition of the forest's trails and quality of concessions. May the Government meet with the group without a committee chartered under FACA? 4. May an agency official attend meetings of external groups where advice and recommendations are offered to the Government during the course of discussions?	Yes, if the agency does not exercise "actual management and control" over the group. A. Although there is no precise legal definition of "actual management and control," the following factors may be used by an agency in determining whether or not a group is utilized within the meaning of the Act: • Does the agency appoint the group's members or otherwise determine its composition? • Does the agency set the group's agenda? • Does the agency fund the group's activities? B. Answering "yes" to any or all of these questions does not automatically mean the group is utilized within the meaning of the Act. However, an agency may need to reconsider the status of the group under FACA if the relationship in question is essentially indistinguishable from an advisory committee established by an agency.
II. Is the group "utilized"?	102-3.30	1. If, during the course of a public hearing, "Town Meeting," or similar event, advice and recommendations are offered to a Federal official by virtue of perceived group consensus or cohesion, must the meeting be adjourned until the group is chartered under FACA?	No, such public activities are often used by the Government to obtain information from the public at-large. Since the Government does not "manage or control" (utilize) the assembled group, FACA does not apply.

Key points and principles	Section	Question(s)	Guidance
III. Definition of an "advisory committee".	102-3.30	1. If, during a public meeting called by an agency, it appears that the audience is achieving consensus, must the meeting be stopped? 2. Is the presence of "consensus" during a meeting the most important factor in defining an "advisory committee" subject to FACA?	No, the public meeting need not be stopped. A. A group must either be established or utilized by the Executive Branch, or, in the case of an advisory committee mandated by statute, have a substantive reporting relationship to the President or another Federal official. B. Although all advisory committees strive toward achieving consensus on the issues before them, this goal is not always attainable. In some cases, it is known in advance that consensus is not possible given the subject matter being addressed. Accordingly, the desire to achieve consensus, or its development during public meetings, does not have a direct bearing upon the applicability of the Act to a given group.
IV. Exclusions from FACA's coverage.	102-3.35(f)	1. Is the exclusion from FACA covering elected officials of state, local, and tribal governments acting in their official capacities also applicable to associations of state officials or similar groups?	Yes. The scope of activities covered by the exclusion from FACA for intergovernmental activities should be construed broadly to facilitate Federal-State discussions on intergovernmental responsibilities or administration. A. Excluded activities include those related to: • Seeking consensus. • Exchanging views, information, advice, and/or recommendations. • Facilitating any other interaction relating to intergovernmental responsibilities or administration. B. Pursuant to a Presidential delegation, the Office of Management and Budget issued guidelines for this exemption, found in section 204(b) of the Unfunded Mandates Reform Act of 1995, OMB Memorandum M-95-20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street NW, Washington, DC 20405.
V. Advisory committees established under FACA may perform advisory functions only.	102-3.15(e)	1. Are "operational committees" subject to FACA? 2. What are the characteristics of an "operational committee"?	Only committees established or utilized by the Executive Branch in the interest of obtaining advice or recommendations are subject to FACA. Agencies are responsible for determining whether or not a committee is "operational" and therefore, not subject to FACA. A. Committees that are not advisory in nature are not subject to the Act. However, without specific authorization by the Congress, Federal functions (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities. B. Non-advisory, or "operational" committees have the following characteristics: • Specific functions and/or authorities provided by the Congress by law. • An ability to make and implement decisions. • A dedicated budget and staff. • A legal, authoritative relationship with an agency. • A membership which is appointed by the President, the Congress and/or an agency head.

Key points and principles	Section	Question(s)	Guidance
VI. Definition of an "advisory committee."	102-3.30	1. Is FACA applicable to meetings between Federal officials and contractors or licensees?	No. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to FACA.
VII. Definition of "Agency"	102-3.30	1. What definition of "Agency" is used to interpret FACA's application?	"Agency" has the same meaning as in section 551(i) of Title 5 of the United States Code.

Subpart B—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

§ 102-3.45 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act. Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving use by agencies of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) if such advice or recommendation was developed by use of a committee created by that academy. For purposes of this section, NAS also includes the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

§ 102-3.50 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or

recommendation provided to an agency by the NAS or NAPA under an agreement between the agency and an academy if such advice or recommendation was developed by use of a committee created by that academy unless:

(1) The committee was not subject to any actual management or control by an agency or an officer of the Federal Government; and

(2) In the case of the NAS, the academy certifies that it has complied substantially with the requirements of subsection (b) of section 15 of the Act; or

(3) In the case of the NAPA, the academy has certified that it has substantially complied with the requirements of subsections (b)(1), (2), and (5) of section 15 of the Act.

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act that are applicable to that academy. In addition, any committee created and used by an academy in the development of any advice or recommendation to be provided by the academy to an agency must be subject to actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with the NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. Such funding agreements must require, and agencies may rely upon, a written certification by an authorized representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of Section 15 of the Act; and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures have been substantially complied with in performing the work required under the agreement.

§ 102-3.55 Key points and principles.

The following table provides additional guidance in the form of answers to frequently asked questions and the identification of Key Points and Principles that can be applied to questions and situations not covered elsewhere in this subpart:

Key points and principles	Section	Question(s)	Guidance
I. Section 15 of FACA provides that NAS and NAPA may adopt separate procedures for complying with the Act.	102-3.50(a)	1. May agencies rely upon an academy certification regarding compliance with Section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?	Yes. NAS and NAPA are completely separate organizations, each independently chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the Section 15 provisions that apply to that academy.

Key points and principles	Section	Question(s)	Guidance
II. Section 15 of FACA provides that agencies may enter into funding agreements with NAS and NAPA without the academies' advisory committees being "utilized" as defined in § 102-3.30.	102-3.50(c)	1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy by use of a committee created by the academy, without violating the prohibition against agency management and control of academy committees?	Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management and control of the committee by the agency.

Subpart C—How Are Advisory Committees Established, Reestablished, Renewed, and Terminated?

§ 102-3.60 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity (President or agency) and the source of authority for the committee. This subpart covers the procedures associated with establishing, renewing, reestablishing, and terminating committees. These procedures include consulting with the Secretariat, preparing and filing a committee charter, publishing notice in the **Federal Register**, and amending a committee charter.

§ 102-3.65 Who can establish advisory committees?

Only the President and the heads of agencies can establish advisory committees under the Act. FACA identifies four sources of authority for establishing an advisory committee:

(a) *Directed by law.* By law where the Congress specifically directs the President or an agency to establish it (*non-discretionary*);

(b) *Authorized by law.* By law where the Congress authorizes but does not direct the President or an agency to establish it (*discretionary*);

(c) *Presidential authority.* By executive order of the President or other Presidential directive (*non-discretionary*); or

(d) *Agency authority.* By an agency under general authority in Title 5 of the United States Code or under other general agency-authorizing law (*discretionary*).

§ 102-3.70 What rules apply to the duration of an advisory committee?

An advisory committee automatically terminates 2 years after its date of establishment unless:

(a) The statutory authority used to establish the advisory committee provides a different duration;

(b) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the committee earlier;

(c) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the committee earlier; or

(d) The President or agency head, following appropriate procedures, renews the committee. If an advisory committee needed by the President or agency terminates because it was not renewed in a timely manner, it can be reestablished in accordance with § 102-3.75.

§ 102-3.75 What procedures are required to establish, reestablish, or renew an advisory committee?

(a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the committee Charter as outlined in this section, the agency head must consult with the Secretariat regarding its plans. Although the consultation must follow the procedures outlined in this section, agency heads are encouraged to go beyond the minimum and engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed committee or suggest alternate methods of attaining its purpose that the agency may wish to consider.

(b) *Consultation options.* Agency heads have the following options in satisfying the requirement for consulting with the Secretariat:

(1) *Develop and submit an annual plan.* Agency heads may develop and submit an annual plan identifying those committees they intend to establish, reestablish, renew, and terminate during the fiscal year; or

(2) *Submit a letter and the proposed charter.* Agency heads may submit a

letter and a proposed charter for each type of committee transaction to the Secretariat. The letter must include the information contained in paragraph (c) of this section.

(c) *Include required information in the consultation.* Consultations covering the establishment, reestablishment, and renewal of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the committee is essential to the conduct of agency business and in the public interest;

(2) *Lack of duplication of resources.* An explanation stating why the committee's functions cannot be performed by the agency, another existing advisory committee of the agency, or other means such as a public hearing; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. For purposes of attaining fair balance, agencies will consider for membership interested persons and groups with professional or personal qualifications or experience directly relating to the functions and tasks to be performed. This should be construed neither to limit the participation nor compel the selection of any particular individual or group to obtain divergent points of view that are relevant to the business of the advisory committee.

§ 102-3.80 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, reestablished, or renewed.

(a) *Procedure.* Upon receiving notification of the completed review from the Secretariat in accordance with § 102-3.75(a) or (b), the agency must publish a notice in the **Federal Register** announcing that the committee is being established, reestablished, or renewed. For a new committee, such notice must also include statements describing the nature and purpose of the committee

and affirming that the committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the committee charter is filed, except that the Secretariat may approve less than 15 days when requested by the agency for good cause. This requirement for advance notice does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 102–3.85 What charter filing requirements must be addressed by agencies?

No advisory committee may meet or take any action until a charter has been filed.

(a) *Basic requirement for discretionary advisory committees.* To establish, reestablish, or renew a discretionary advisory committee, a charter must be filed with:

- (1) The agency head;
- (2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency (the date of filing under this section constitutes the official date of establishment for the committee);
- (3) The Library of Congress, Anglo-American Acquisition Division, Government Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and
- (4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Basic requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for Presidential advisory committees is the date the charter is filed with the Secretariat.

(c) *Basic requirement for subcommittees that report directly to an agency official.* Subcommittees that report directly to an agency official must comply with this subpart and develop a charter in accordance with § 102–3.90.

§ 102–3.90 What information must be included in a committee's charter?

(a) *Purpose and contents of committee charter.* An advisory committee charter is intended to provide a description of

a committee's mission, goals and objectives. It also provides a basis for evaluating a committee's progress and its effectiveness. The advisory committee charter must contain the following information:

- (1) The committee's official designation;
 - (2) The objectives and the scope of the committee's activity;
 - (3) The period of time necessary to carry out the committee's purpose(s);
 - (4) The agency or official to whom the committee reports;
 - (5) The agency responsible for providing the necessary support to the committee;
 - (6) A description of the duties for which the committee is responsible and specification of the authority for any non-advisory functions;
 - (7) The estimated annual operation costs to operate the committee in dollars and person years;
 - (8) The estimated number and frequency of committee meetings;
 - (9) The planned termination date, if less than 2 years from the date of establishment of the committee;
 - (10) The name of the individual and/or organization responsible for fulfilling the provisions of section 6(b) of FACA, which requires a report to the Congress 1 year after a Presidential advisory committee provides public recommendations to the President; and
 - (11) The date the committee charter is filed in accordance with § 102–3.85.
- (b) The provisions of paragraphs (a)(1) through (a)(11) of this section apply to all subcommittees that report directly to an agency.

§ 102–3.95 How are minor charter amendments accomplished?

(a) *Responsibility and limitation.* The agency head is responsible for amending the charter of an advisory committee. Such amendments may be either minor or major. The procedures for making amendments and filing revised charters will depend upon the authority basis for the committee. However, agencies are reminded that amending any existing advisory committee charter does not constitute renewal of the committee under § 102–3.75.

(b) *Amendment procedures.* To make a minor amendment to a committee charter, such as revising the name of the advisory committee, or modifying the estimated number or frequency of

meetings, the following procedures must be followed:

(1) *Non-discretionary advisory committees.* The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authorizing authority. When the Congress by law, or the President by Executive Order, changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new law or Executive Order, and file the amended charter as specified in § 102–3.85.

(2) *Discretionary advisory committees.* The charter of a discretionary advisory committee may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. The agency must amend the charter language as necessary and file the amended charter as specified in § 102–3.85.

§ 102–3.100 How are major charter amendments accomplished?

Procedures for making major amendments to advisory committee charters, such as substantial changes in a committee's scope and objectives and related funding, are the same as in § 102–3.95, except that for discretionary advisory committees an agency must:

(a) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(b) Following review by the Secretariat, file the amended charter as specified in § 102–3.85.

§ 102–3.105 Key points and principles.

The following table provides additional guidance in the form of answers to frequently asked questions and the identification of Key Points and Principles that can be applied to questions and situations not covered elsewhere in this subpart:

Key points and principles	Section	Question(s)	Guidance
I. Only the President and the heads of agencies can establish advisory committees under the Act.	102–3.65	1. Can an agency head delegate responsibility for consulting with the Secretariat regarding the establishment, reestablishment, or renewal of advisory committees?	Yes. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, reestablishment, or renewal of committees are reserved for the agency head. Each agency Committee Management Officer (CMO) should assure that their internal processes for managing advisory committees include appropriate certifications by the agency head.
II. Agency heads are responsible for complying with FACA, including determining which advisory committees should be established.	102–3.125(e) 102–3.75(a)	1. Who retains the final authority for establishing an advisory committee?	Agency heads retain final authority for establishing, reestablishing, or renewing a particular committee. Such decisions should be consistent with § 102–3.125(e) and reflect consultation with the Secretariat under § 102–3.75(a).

Subpart D—How Are Advisory Committees Managed?

§ 102–3.110 What does this subpart cover and how does it apply?

This subpart provides the framework for maximizing the contributions of advisory committees to the Government by establishing specific responsibilities. FACA provides for specific functions to be carried out by the Congress, the agency head and the CMO, the DFO, and GSA. In general, the following principles are emphasized:

(a) *Provide committee support.* Before establishing an advisory committee, agencies should identify requirements and assure that adequate resources are available to support related to committee activities. Considerations related to support include office space, Federal staff support, and access to key decisionmakers.

(b) *Focus on mission.* Advisory committee members and staff should be fully aware of the advisory committee's mission, desired outcomes, and limitations, if any. In general, the more specific a committee's task and the more focused its activities, the higher the likelihood of success.

(c) *Follow plans and procedures.* Advisory committee members and their agency sponsors should work together to assure that a plan and necessary procedures are in place to support the committee's goals. In particular, agencies should be clear regarding what functions the committee can legally perform and those that it cannot.

(d) *Practice openness.* In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible. For example, agencies may wish to explore the use of the Internet to post committee information.

(e) *Seek feedback.* Agencies should continually seek feedback from advisory committee members and the public regarding the effectiveness of the committee's activities. At regular intervals, agencies should communicate to the committee how its advice has affected their programs and decisionmaking.

§ 102–3.115 What responsibilities are assigned by FACA to the Congress?

In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives is responsible for a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed.

§ 102–3.120 What responsibilities and functions are assigned by FACA to GSA?

(a) The functions under Section 7 of the Act are performed for the Administrator by the Secretariat. The Secretariat prescribes regulations, administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting the Act.

(b) The Secretariat carries out its responsibilities by:

- (1) Carrying out an annual comprehensive review of Governmentwide committee accomplishments, costs, benefits, and other efforts to measure performance;
- (2) Developing and distributing Governmentwide training regarding the Act and related principles and statutes;

(3) Supporting the Interagency Committee on Federal Advisory Committee Management in its efforts to improve compliance with FACA;

(4) Designing and maintaining a Governmentwide shared data system to facilitate collection of information required by the Act;

(5) Identifying performance measures that may be used to evaluate committee accomplishments; and

(6) Providing recommendations to the President and the Congress regarding proposals to improve the accomplishment of the Act's objectives.

§ 102–3.125 What roles and responsibilities for managing advisory committees are assigned by FACA to agency heads?

The head of each agency that establishes or utilizes one or more advisory committees must:

(a) Comply with the Act and this part;

(b) Issue administrative guidelines and management controls that apply to all advisory committees subject to the Act;

(c) Designate a CMO;

(d) Provide a written determination stating the reasons for closing any advisory committee meeting, in whole or in part, to the public in accordance with the bases for closure in the Government in the Sunshine Act, 5 U.S.C. 552b(c);

(e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose of functions of each committee;

(f) Determine that rates of pay for advisory committee members and/or staff are justified and levels of agency support are adequate;

(g) Appoint a DFO for each advisory committee and its subcommittees; and

(h) Provide the opportunity for reasonable participation by the public in

advisory committee activities, subject to the agency's guidelines and § 102–3.165.

§ 102–3.130 What roles and responsibilities for managing advisory committees are assigned by FACA to the Chairperson of an independent presidential advisory committee?

The Chairperson of an independent Presidential advisory committee must comply with the Act and this part and must:

- (a) Consult with the Secretariat concerning the role of the DFO and CMO;
- (b) Fulfill the responsibilities of an agency head as specified in this subpart; and
- (c) Consult with the Secretariat at least 30 days in advance regarding any proposal to close any meeting in whole or in part.

§ 102–3.135 What roles and responsibilities for managing advisory committees are assigned by FACA to an agency Committee Management Officer (CMO)?

In addition to implementing the provisions of section 8(b) of the Act, the CMO will carry out all responsibilities delegated by the agency head. The CMO should also ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

- (a) *Charter and membership documentation.* A set of approved charters for each advisory committee and membership lists for each advisory committee and subcommittee;
- (b) *Annual report.* Copies of the agency's portion of the *Annual Report of the President on Federal Advisory Committees* required by § 102–3.195(b);
- (c) *Agency guidelines.* Agency guidelines on committee management operations and procedures as maintained and updated; and
- (d) *Closed meeting determinations.* Agency determinations to close advisory committee meetings as required by § 102–3.125.

§ 102–3.140 What roles and responsibilities for managing advisory committees are assigned by FACA to the Designated Federal Officer (DFO)?

The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who may be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

- (a) Approve or call the meeting of the advisory committee or subcommittee;

(b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;

- (c) Attend the meetings;
- (d) Adjourn any meeting when he or she determines it to be in the public interest; and
- (e) Chair the meeting when so directed by the agency head.

§ 102–3.145 What is the role of committee members and staff?

The Act does not assign any specific responsibilities to members of advisory committees and staff. However, both members and staff perform critical roles in achieving the goals and objectives assigned to advisory committees. Agency heads, CMOs, and DFOs should consider these roles in the development of agency guidelines implementing the Act and this part. In general, such guidelines should reflect:

- (a) *Clear operating procedures.* Clear operating procedures for the conduct of advisory committee meetings, including the relationship between the advisory committee and its DFO;
- (b) *Agency operating policies.* In addition to the compliance with the Act, committee members and staff may be required to adhere to additional agency operating policies; and
- (c) *Other applicable statutes.* Other agency-specific laws and regulations may affect the agency's advisory committees directly or indirectly. Committee members and staff must understand these requirements.

§ 102–3.150 What other policies or requirements must be addressed by the agency head and included in the agency's guidelines implementing the Act?

In developing guidelines implementing the Act and this part at the agency level, agency heads must address the following issues related to committee members and staff:

- (a) *Duration of appointment.* Unless otherwise provided by statute, Presidential Directive, or the establishing authority, advisory committee members serve at the pleasure of the appointing authority. Membership terms are at the sole discretion of the appointing authority, unless otherwise provided for by the committee's establishment authority.
- (b) *Pay and compensation guidelines.* Each agency head must establish uniform pay and compensation guidelines for members and staff of an advisory committee.
- (c) *Compensation not required.* Nothing in this subpart requires an agency head to provide compensation, unless otherwise provided by law, to a member of an advisory committee.

(d) *Determination of need to provide compensation.* When compensation is deemed appropriate by an agency, it must fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS–15 under the General Schedule, unless a higher rate is mandated by statute, or the head of the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. The head of the agency must review such a determination annually. An agency may not fix the pay of the members of an advisory committee at a rate of pay higher than the daily equivalent of a rate for level IV of the Executive Schedule, as provided in 5 U.S.C. 5332.

(e) *Compensation of staff members.* An agency may set the pay of each advisory committee staff member at a rate of the General Schedule in which the Staff member's position would appropriately be placed (5 U.S.C. Chapter 51). An agency may not set the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS–15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS–15. This determination must be reviewed annually by the agency head. A staff member who is a Federal employee must serve with the knowledge of the DFO and the approval of the employee's direct supervisor. Staff members who are not Federal employees must be appointed in accordance with applicable agency procedures following consultation with the advisory committee.

(f) *Other pay considerations.* In establishing rates of compensation, the agency head must comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(g) *Pay for consultants to an advisory committee.* An agency must set the pay of a consultant to an advisory committee after giving consideration to the

qualifications required of the consultant and the significance, scope, and technical complexity of the work performed. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and must be in accordance with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(h) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this part prevents an agency from accepting the gratuitous services of an advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(i) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per

diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons employed intermittently in the Government service.

(j) *Services for committee members with physical disabilities.* While performing advisory committee duties, an advisory committee member with a physical disability may be provided services by a personal assistant for handicapped employees if the member qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(k) *Exclusions for Federal employees.* Nothing in this subpart prevents any person who (without regard to his or her service with an advisory committee) is

a full-time Federal employee from receiving compensation at a rate at which he or she otherwise would be compensated as a full-time Federal employee.

(l) *Exclusions for former Federal employees.* Nothing in this subpart prevents any person who immediately before his or her service with an advisory committee was a full-time Federal employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

§ 102–3.155 Key points and principles.

The following table provides additional guidance in the form of answers to frequently asked questions and the identification of Key Points and Principles that can be applied to questions and situations not covered elsewhere in this subpart:

Key points and principles	Section	Question(s)	Guidance
I. FACA does not specify the manner in which committee members must be appointed by an agency head. However, advisory committees must be fairly balanced.	102–3.15(c)	1. Does the appointment of an advisory committee member necessarily result in a lengthy process?	No. Each agency head may specify those policies and procedures, consistent with the Act and this rule, governing the appointment of advisory committee members and staff. Some factors that affect how long the appointment process takes include: • Solicitation of nominations. • Conflict of interest clearances. • Security/background evaluations. • Availability of candidates. • Other statutory or administrative requirements.
II. Agencies may provide support to an advisory committee in the form of staff or consultants, as appropriate.	102–3.145	1. Can advisory committee members be appointed as consultants? 2. What is the status of consultants as it relates to committee roles and responsibilities?	A. In some agencies, advisory committee members are appointed as consultants in order to compensate them for their services. Compensation is normally required only in those instances where it is necessary to achieve a balanced membership. B. Consultants may also be appointed as staff to an advisory committee. In such cases, consultants serve to provide the committee with needed information and support, and not as committee members. The appointment of consultants is not governed by FACA, but is subject to other statutes, policies, and internal agency procedures.

Key points and principles	Section	Question(s)	Guidance
III. Responsibilities of agency heads.	102–3.125	1. Can an organization, as opposed to an individual, be appointed as a committee member? 2. If so, can different persons represent the organization at different meetings?	A. No; organizations cannot be committee members. However, individuals may be appointed as members to represent organizations, including associations and other organized interests. B. Alternates may represent the appointed member with the approval of the sponsoring agency. The appointment of committee members as representatives or Special Government Employees (SGEs) must be determined by the appointing agency based upon the role to be played by the member. Depending upon the method of appointment, members may be covered by regulations issued by the U.S. Office of Government Ethics (OGE) and related statutes.
IV. Responsibilities of agency heads.	102–3.125	1. Must an agency's Committee Management Officer (CMO) and each committee Designated Federal Official (DFO) be appointed by the agency head? 2. May an agency have more than one CMO?	The agency head may delegate responsibility for appointing the CMO and DFOs. However, such appointments, including alternate selections, should be documented consistent with the agency's policies and procedures. A. The role of the agency's CMO is specified in the Act and includes oversight responsibilities for all committees within the agency. Accordingly, only one CMO may be appointed to perform these functions. B. The agency may, however, create additional positions which are subordinate to the CMO's agencywide roles and responsibilities.
V. The Federal Advisory Committee Act is the principal statute pertaining to advisory committees. However, other statutes may impact their use.	102–3.150	1. Do other statutes or regulations affect the way an agency manages its advisory committee management program?	Yes. While FACA provides a general framework for managing committees Governmentwide, other factors may affect how advisory committees are used and managed. These include: • The statutory or Presidential authority used to establish an advisory committee. • A Congressional limitation placed on an agency regarding its annual expenditures for advisory committees. • Presidential or agency management directives. • The applicability of conflict-of-interest statutes. • Agency regulations affecting advisory committees. • Other requirements imposed by law or regulation on an agency or its programs, such as those governing the disposition of Federal records.

Subpart E—Advisory Committee Meeting and Recordkeeping Procedures

§ 102–3.160 What does this subpart cover and how does it apply?

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including committee minutes and reports, must be prepared and made available to the public.

§ 102–3.165 What basic policies apply to advisory committee meetings?

The agency head, or the chairperson of an independent Presidential advisory committee, must ensure that:

- (a) Each advisory committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public;
- (b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and a reasonable number of interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee; and

(d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

§ 102–3.170 What basic policies apply to subcommittee meetings?

(a) Deliberations of subcommittees may lead to decisions that are adopted by a parent committee without further deliberation or discussion by the parent committee. If subcommittees conduct deliberations that lead to advice or

recommendations that could later be adopted by their parent committee without further deliberations, such meetings should be subject to all openness and recordkeeping policies of this subpart.

(b) Certain subcommittee activities, however, are wholly devoted to providing a full review of recommendations by the parent committee and may be carried out under the provisions of § 102-3.185.

§ 102-3.175 How are committee meetings announced to the public?

The agency or the Chairperson of an independent Presidential advisory committee must publish at least 15 calendar days prior to an advisory committee meeting a notice in the **Federal Register**, which includes:

- (a) The name of the advisory committee or subcommittee;
- (b) The time, date, place, and purpose of the meeting;
- (c) A summary of the agenda;
- (d) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the bases for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c); and
- (e) The name and telephone number of the DFO or other individual who may be contacted for additional information concerning the meeting.

§ 102-3.180 How are advisory committee meetings closed to the public?

To close all or part of a committee meeting, the DFO must:

- (a) *Obtain prior approval.* Submit a request to the agency head or in the case of an independent Presidential advisory committee, the Secretariat, citing the specific bases for closure in the Government in the Sunshine Act, 5 U.S.C. 552b(c) that justify the closure. The request must provide the agency head or the Secretariat at least 30 days to review the matter in order to make a determination before publication of the meeting notice required by § 102-3.170.
- (b) *Seek General Counsel review.* The General Counsel of the agency should review all requests to close meetings.
- (c) *Obtain agency determination.* If the agency head or in the case of an independent Presidential advisory committee, the Secretariat finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, he or she must issue a determination that all or part of the meeting be closed.
- (d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must

make a copy of the determination available to the public upon request.

§ 102-3.185 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

- (a) *Committee pre-deliberative work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee.
- (b) *Committee administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the committee not related to deliberation concerning the committee's functions, scope, and advice or recommendations to the Executive Branch.

§ 102-3.190 How are advisory committee meetings documented?

The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting are kept. The chairperson of each advisory committee must certify to the accuracy of all minutes of advisory committee meetings. The minutes must include:

- (a) The time, date, and place of the committee meeting;
- (b) A list of the persons who were present at the meeting, including committee members and staff, agency employees, and members of the public who presented oral or written statements;
- (c) An accurate description of each matter discussed and the resolution, if any, made by the committee regarding such matter;
- (d) Copies of each report or other document received, issued, or approved by the committee; and
- (e) Minutes of advisory committee and subcommittee meetings must be finalized within 90 calendar days of the meeting(s) covered.

§ 102-3.195 What reports must be prepared by an agency covering the activities of each advisory committee it establishes or utilizes?

(a) *Presidential committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report will be prepared and transmitted to the

Congress detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act. The Secretariat shall assure that such reports are prepared and transmitted to the Congress as directed by the President; either by his delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the Presidential advisory committee pursuant to § 102-3.90(j). In performing this function, GSA may solicit the assistance of the Office of Management and Budget and other appropriate organizations. Reports shall be consistent with specific instructions issued periodically by the Secretariat.

(b) *Annual Report of the President on Federal Advisory Committees.* The President's annual report to the Congress must be prepared by GSA consistent with the information specified in section 6(c) of the Act. The report will be based on data filed electronically on a fiscal year basis by each agency, using a shared Internet-based system maintained by GSA and furnished in accordance with instructions provided annually by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency report control number (IRCN) 0304-GSA-AN.

(c) *Annual report of closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed meetings must issue reports at least annually, setting forth a summary of activities consistent with the policy of section 552(b) of Title 5, United States Code.

(d) *Disposition of all committee reports.* Subject to section 552 of Title 5, United States Code, eight copies of each report made by an advisory committee, including any report on closed meetings as specified in paragraph (c) of this section, and, where appropriate, background papers prepared by consultants, must be filed with the Library of Congress as required by section 13 of the Act, for public inspection and use at the location specified § 102-3.85(a)(3).

(e) *Disposition of committee records.* Official records generated by or for an advisory committee must be retained for the life of the committee and, upon termination, handled in accordance with regulations issued by the National Archives and Records Administration (NARA).

§ 102-3.200 Key points and principles.

The following table provides additional guidance in the form of answers to frequently asked questions

and the identification of Key Points and Principles that can be applied to questions and situations not covered elsewhere in this subpart:

Key points and principles	Section	Question(s)	Guidance
I. With some exceptions, advisory committee meetings are open to the public.	102–3.15(d)	1. Must all advisory committee and subcommittee activities be open to the public?	No. Advisory committee meetings, when appropriate, may be closed in accordance with the bases for closure under the Government in the Sunshine Act. A. Subcommittees that report to a parent committee, and not directly to a Federal official, need not open their sessions to the public or comply with the Act's procedures for announcing meetings. B. However, Agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops substantive advice or recommendations which are subject to only nominal review by the parent committee before being submitted to a Federal agency or official. Such exclusions would run counter to FACA's provisions requiring contemporaneous access to the committee deliberative process.
II. Notices must be published in the Federal Register announcing committee meetings.	102–3.175	1. Can agencies publish a single Federal Register notice announcing multiple committee meetings?	Yes, agencies may publish a single notice announcing multiple meetings as long as such notices contain all of the information contained in §102–3.175. Such "blanket notices" should not announce meetings so far in advance as to prevent the public from being adequately informed of a committee's schedule. The bases for closure for each session still must be reviewed on a contemporaneous basis.
III. Advisory committee records must be managed in accordance with regulations issued by the National Archives and Records Administration (NARA).	102–195(e)	1. How long must an agency keep committee files once the committee has been terminated?	Following a committee's termination, its records should be scheduled for disposition in accordance with NARA regulations. The agency's records management officer should be consulted for further details.

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California; comments due by 1-17-00; published 1-6-00

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Rhode Island; comments due by 1-21-00; published 12-22-99

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Unbundled shared transport facilities use in conjunction with unbundled switching; local competition provisions; comments due by 1-19-00; published 1-14-00

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24 GHz band; licensing and service rules; comments due by 1-19-00; published 12-20-99

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Los Angeles and Long Beach, CA; 156.250 MHz frequency availability for port operations; comments due by 1-18-00; published 12-21-99

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Health Insurance Portability and Accountability Act—
Medicare and State health care programs; anti-kickback statute for shared risk arrangements; statutory exception; comments due by 1-18-00; published 11-19-99

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Alabama beach mouse, etc.; comments due by 1-18-00; published 11-18-99

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Federal Aviation Administration

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AlliedSignal, Inc.; comments due by 1-18-00; published 11-19-99

Ayres Corp.; comments due by 1-21-00; published 11-24-99

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.